CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 19875

This is a summary of a decision issued following the February 2010 hearings of the Disciplinary and Ethics Commission ("Commission") of Certified Financial Planner Board of Standards, Inc. ("CFP Board"). The conduct at issue in this case occurred prior to January 1, 2009. The Rules in effect at that time under the *Code of Ethics and Professional Responsibility* ("*Code of Ethics*") were Rules 101 through 705.

I. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* by: 1) offering securities to her financial planning clients issued by her advisory firm ("Company"); 2) using inaccurate financial projections in the private placement memorandum ("PPM").

II. Findings of Fact Relevant to the Commission's Decision

In August 2006, an anonymous informant filed a complaint with CFP Board against Respondent and another CFP® professional regarding Respondent's involvement in an SEC and state regulatory authority investigation.

In January 2009, Respondent entered into a Letter of Acceptance, Waiver and Consent ("AWC") with the Financial Industry Regulatory Authority, Inc. ("FINRA," f/k/a National Association of Securities Dealers or "NASD") regarding violations of NASD Rule 2110. The AWC arose out of FINRA's investigation of Respondent's sale of shares in a private placement offering ("Offering") conducted in 2004 pursuant to a PPM that offered shares of Company. Respondent had learned of inaccuracies in the financial projections set forth in the PPM but did not disclose them to investors in the Offering. In the AWC, Respondent consented to paying a $10,000 fine and to a censure by FINRA.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. *Rule 101(b) – A CFP Board designee shall not solicit clients through false or misleading communications or advertisements. In promotional activities, a CFP Board designee shall not make materially false or misleading communications to the public or create unjustified expectations regarding matters relating to financial planning or the professional activities and competence of the CFP Board designee. The term "promotional activities" includes, but is not limited to, speeches, interviews, books and/or printed publications, seminars, radio and television shows, and video cassettes.*

The Commission found that Respondent knowingly used materially inaccurate projections in her communications to investors, including prospective and existing clients, and thereby made materially false and misleading communications to the public and failed to act with integrity. Thus, Respondent violated Rule 101(b).

B. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

The Commission found that Respondent failed to disclose material inaccuracies in the PPM to investors and thereby engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. Thus, Respondent violated Rule 102.

C. *Rule 201 – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.*

The Commission found that Respondent failed to disclose material inaccuracies in the PPM to investors in the Offering and thereby failed to exercise reasonable and prudent professional judgment in providing professional services. Thus, Respondent violated Rule 201.

D. *Rule 606(a) – In all professional activities a CFP Board designee shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities.*

The Commission found that Respondent entered into an AWC with FINRA related to violations of NASD Rule 2110. Without admitting or denying the findings in the AWC, Respondent consented to a $10,000 monetary fine and a censure. By violating NASD Rule 2110, Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities. Thus, Respondent violated Rule 606(a).

E. *Rule 606(b) – In all professional activities a CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board.*

The Commission found that Respondent violated Rules 101(b), 102, 201, 606(a) and 607 and thereby failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board. Thus, Respondent violated Rule 606(b).

F. *Rule 607 – A CFP Board designee shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.*

The Commission found that an inherent conflict of interest existed when Respondent sold shares in the Offering to existing financial planning clients. The Commission further found that Respondent failed to disclose materially inaccurate financial projections contained in the PPM to investors. Respondent thereby engaged in conduct that reflects adversely on Respondent's integrity and fitness as a CFP Board designee, upon the marks, and upon the profession. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"). Article 3(a) of CFP Board's *Disciplinary Rules* provides grounds for discipline for a violation of the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 101(b), 102, 201, 606(a), 606(b) and 607 of the *Code of Ethics*. Pursuant to Article 4.1 of the *Disciplinary Rules*, the Commission issued a Private Censure to Respondent.

The Commission cited as mitigating factors that Respondent: 1) had no prior disciplinary history; and 2) acknowledged she should have disclosed the inaccuracy in the financial projections and incurred the cost of disclosing the inaccuracies. The Commission did not cite any aggravating factors.