

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 19888

---

This is a summary of a decision issued following the July 2008 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. Issue Presented

Whether a candidate for CFP® certification (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he invested all of the life savings of a client (“Client”) in variable annuities.

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

In October 2006, Respondent disclosed on his CFP® Certification Renewal Application that the Client had named him in a 2006 Financial Industry Regulatory Authority (“FINRA”, f/k/a National Association of Securities Dealers or NASD) Arbitration.

In January 2000 and February 2000, the Client, who was retired at the time, completed the purchase of two variable annuity contracts recommended and sold to him by Respondent. In March 2000, the Client signed a Customer Account Information Form (“Form”). The Form indicated that the Client had a moderate risk tolerance. The Form did not indicate that the investment funds consisted of the Client’s total life savings.

Respondent placed all of the Client’s funds into the variable annuities. He placed 100% of the funds into equities and allocated 55% of those funds to Emerging Growth and Markets. In June 2006, the Client filed a customer complaint with FINRA regarding the sale of the variable annuity contracts. The FINRA Arbitration Panel (“FINRA Panel”) found that Respondent breached his duties to the Client and that Respondent’s investment advice resulted in the Client investing nearly all of his assets in unsuitable securities. The FINRA Panel determined that Respondent was liable to the Client and entered an award against Respondent.

III. Commission’s Analysis and Conclusions Regarding Rule Violations

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

The Commission found that a reasonable professional acting in a similar situation as Respondent’s would not have invested all of a retiree’s life savings in the manner that Respondent did. The Commission determined that Respondent did not exercise reasonable and

prudent professional judgment in providing professional services because he allocated 100% of the Client's life savings into equities and placed 55% of the equity funds in Emerging and Growth Markets. Thus, Respondent violated Rule 201.

*B. 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 failed to perform services in accordance with the applicable rules of CFP Board because he violated the *Code of Ethics* rules discussed herein. Thus, Respondent violated Rule 606(b).

*C. 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 Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee because; as the FINRA Panel found, he gave the Client investment advice that resulted in the Client investing nearly all of his assets in unsuitable securities. Thus, Respondent violated Rule 607.

#### IV. Discipline Imposed

The Commission issued a Private Censure to Respondent pursuant to Article 4.1 of CFP Board's *Disciplinary Rules and Procedures*. The Commission ordered Respondent to complete, within six months of the Decision Order, six additional continuing education credits specifically focused on appropriate asset allocation for clients who desire continuous withdrawals.

The Commission considered the following mitigating factors:

1. Respondent had no other complaints in a 19-year history in the brokerage industry;
2. Respondent's testimony and response to the FINRA Panel indicate that Respondent drove 150 miles round-trip three times a year to meet with the Client, review the Client's portfolio performance and allocation; and
3. Respondent's testimony indicated that his relationship with the Client continued over a period of six years.