

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 19994

This is a summary of a decision issued following the March 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 CFP[®] certificant (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when she sold an interest-bearing promissory note to her client (“Client”) that she represented to the Client as a limited liability interest in a real estate investment venture.

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

CFP Board made the following allegations in its Complaint:

In November 2006, the Client filed a grievance against Respondent with CFP Board related to a default judgment the Client obtained against Respondent in November 2006.

In January 2006, Respondent advised the Client to invest in a company (“Company”), and that the investment was a limited liability interest in a real estate investment venture. In 2006, the Client filed a lawsuit against Respondent claiming that Respondent induced the Client to withdraw funds from his 401(k) account to participate in a real estate investment that turned out to be an interest-bearing promissory note issued to the Company.

In July 2006, Respondent was terminated by the Investment Advisor for offering and selling the Company note. According to the termination notice, Respondent was terminated for offering and selling a financial product that she was not permitted to offer and sell.

In November 2006, the Client was granted a default judgment against Respondent and the Company. According to the default judgment, Respondent was affiliated with the Company in an unknown capacity. Respondent did not pay his portion of the judgment.

Respondent did not respond to CFP Board’s January 2007 Notice of Investigation or second Notice of Investigation issued in February 2007. In January 2008, Respondent or her designee acknowledged receipt of CFP Board’s Amended Complaint. Respondent did not submit an Answer to the Complaint, and therefore, the allegations in the Complaint were deemed admitted. Respondent did not appear at her March 2008 hearing.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. *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 misrepresented the nature of the investment to the Client. Thus, Respondent violated Rule 102.

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

The Commission found that Respondent failed to exercise reasonable and prudent professional judgment when she advised the Client to liquidate his 401(k) account and invest the proceeds in a real-estate investment venture that turned out to be an interest-bearing promissory note. Thus, Respondent violated Rule 201.

C. *Rule 406 – A CFP Board designee who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this Code of Ethics.*

The Commission found that Respondent failed to perform professional services with dedication to the lawful objectives of her employer because she offered and sold a financial product that her employer did not permit her to offer or sell. Thus, Respondent violated Rule 406.

D. *Rule 407(a) – A CFP Board designee shall advise his/her employer of outside affiliations which reasonably may compromise service to an employer.*

The Commission found that Respondent did not advise the Investment Advisor of her affiliation with the Company and, as a result, the Investment Advisor was not aware of some of the sales activities conducted by Respondent with the Investment Advisor's clients. Thus, the Commission found that Respondent failed to advise her employer of outside affiliations which reasonably may have compromised her service to her employer and violated Rule 407(a).

E. *Rule 408 – A CFP Board designee shall inform his/her employer, partners or co-owners of compensation or other benefit arrangements in connection with his or her services to clients, which are in addition to compensation from the employer, partners or co-owners for such services.*

The Commission found that Respondent failed to inform her employer of compensation or other benefit arrangements in connection with her services to clients because she failed to inform the Investment Advisor of the outside business activities she performed for the Company. Thus, Respondent violated Rule 408.

F. Rule 409 – If a CFP Board designee enters into a personal business transaction with a client, separate from regular professional services provided to that client, the transaction shall be on terms which are fair and reasonable to the client and the CFP Board designee shall disclose, in writing, the risks of the transaction, conflict(s) of interest of the CFP Board designee, and other relevant information, if any, necessary to make the transaction fair to the client.

The Commission found that: 1) the investment was a personal business transaction between Respondent and the Client because it was not condoned by the Investment Advisor; 2) the transaction was not fair and reasonable to the Client because the information the Client received about the transaction was misrepresented to him; and 3) Respondent did not disclose the possibility of risks and any conflicts of interest to the Client. Thus, Respondent violated Rule 409.

G. 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 applicable rules, regulations and other established policies of CFP Board because she violated the *Code of Ethics* rules as discussed herein. Thus, Respondent violated Rule 606(b).

H. 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 which reflects adversely on her integrity or fitness, upon the marks and upon the profession when she: 1) sold a financial product she was not permitted to; 2) did not appear to defend a lawsuit in which she was named as a defendant; 3) did not pay the Client the judgment due; 4) did not respond to CFP Board's investigation; and 5) did not appear at her scheduled CFP Board hearing. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* provides grounds for discipline for a violation of the *Code of Ethics*. The Commission found Article 3(a) grounds for discipline because Respondent violated the above *Code of Ethics* rules. The Commission also found grounds for discipline under Article 3(f), which provides grounds for discipline for failure to respond to a request by CFP Board, without good cause shown, because Respondent failed to respond to CFP Board's Notice of Investigation, second Notice of Investigation and Complaint.

The Commission ordered permanent revocation of Respondent's right to use the marks pursuant to Article 4.4 of the *Disciplinary Rules*.

The Commission considered no mitigating or aggravating factors.