CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 20420

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 candidate for CFP® certification ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he executed numerous trades in the account of a client ("Client") without her approval.

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

CFP Board alleged the following facts in its Complaint:

In September 1994, the Client and her brother filed a civil complaint against Respondent, his branch manager and his firm ("Firm"), generally alleging unsuitability, churning and misrepresentation of several investments Respondent recommended and sold to the Client. In August 1992, the Client deposited $38,703.53 into a securities account at the Firm. From August 1992 to June 1994, Respondent conducted numerous trades in the account without the Client's approval, including during a month when the Client was hospitalized. Respondent and the Firm received commissions from the trades that exceeded the Client's initial deposit. By June 1994, the Client's account was worth $16,556.76. The parties settled the matter in December 1995.

In 1994, the New York Stock Exchange ("NYSE") initiated an inquiry regarding the Client's matter. In 1997, Respondent and the NYSE entered into a Stipulation and Consent to Penalty. Respondent consented to the following findings:

1. Respondent engaged in conduct inconsistent with just and equitable principles of trade when he: 1) recommended transactions in the accounts of a customer which were unsuitable in light of her investment objectives, investment experience and/or financial resources; and 2) effected excessive transactions in the accounts of a customer of his member firm employer; and
2. Respondent violated NYSE Rule 408(a) when he exercised discretion in the accounts of a customer without first obtaining written authorization from her.

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 determined that Respondent recommended, solicited and implemented a highly speculative, volatile, risky and over-concentrated investment portfolio that lacked diversification and was unsuitable for the Client in light of her age and future financial objectives. The Commission found that Respondent failed to exercise reasonable and prudent judgment in providing professional services because he recommended an unsuitable investment portfolio to the Client. Thus, Respondent violated Rule 201.

B. Rule 701 – A CFP Board designee shall provide services diligently.

The Commission found Respondent failed to provide services diligently because he failed to manage the client relationship appropriately with respect to termination of the relationship. The Commission also found that Respondent failed to repeatedly and regularly document communications with clients regarding his recommendations. Thus, Respondent violated Rule 701.

C. Rule 703 – A financial planning practitioner shall make and/or implement only recommendations which are suitable for the client.

The Commission found that Respondent failed to make and/or implement only recommendations which were suitable for his Client when he implemented a highly speculative, volatile, risky and over-concentrated investment portfolio that lacked diversification and was unsuitable in light of the age and financial objectives of the Client. Thus, Respondent violated Rule 703.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") 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 issued a Private Censure to Respondent pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors:

1. Respondent expressed a commitment to the financial planning process;
2. Respondent's actions took place several years before he began to pursue CFP® certification;
3. Respondent made changes to his practice to prevent similar occurrences in the future; and
4. Respondent advocated CFP® certification to employees under his supervision.

The Commission considered no aggravating factors.