

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 20942

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This is a summary of a decision issued following the November 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 he did not notify a client (“Client”) that he would not be preparing her tax returns, and did not follow up with the Client regarding her tax returns.

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

In March 2007, CFP Board began an investigation of Respondent’s conduct related to a grievance filed against Respondent by the Client.

In 1998, Respondent met with the Client and agreed to prepare her taxes. Respondent prepared the Client’s taxes for the 1999-2002 tax years. In 2004, Respondent met with the Client to prepare the Client’s taxes for the 2003 tax year. Respondent was not able to complete the tax return because the Client was missing a Form 1099R. In an April 2007 letter to his employer, Respondent claimed this was the last time he saw the Client.

In a March 2007 letter to CFP Board, the Client stated that after her 2004 meeting with Respondent, she never received the prepared tax return from Respondent and that Respondent did not return her telephone calls. In a written statement to CFP Board in July 2007, Respondent stated that he would always answer the Client’s phone calls, and had tried several times to contact her, but that his calls were not returned.

In 2005, the Client mailed tax information to Respondent for the 2004 tax year. The Client received an undated form letter from Respondent’s employer acknowledging the mailing. According to the Client, Respondent did not answer her correspondence about her 2004 taxes or call her to schedule an appointment. The Client alleged that in late 2005, she sent Respondent her tax information to prepare her 2005 taxes.

In November and December 2006, the Client received Request for Payment Notices from the Internal Revenue Service (“IRS”) indicating that she had amounts due on her income taxes for the 2003, 2004 and 2005 tax years.

In 2007, the Client filed a complaint with Respondent's employer and with CFP Board alleging that Respondent failed to communicate with her about her tax return filings for 2003, 2004, and 2005. Respondent's employer sent the Client a letter indicating that they were unable to comment on her tax-related complaint.

During testimony at his hearing, Respondent acknowledged that he did not follow up with the Client, and did not communicate affirmatively with the Client regarding outstanding tax issues.

### 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 Respondent's failure to notify his Client that the Client's tax returns would not be prepared, and failure to communicate affirmatively with the Client was not reasonable and prudent. By acting in a manner that was not reasonable and prudent, Respondent failed to exercise reasonable and prudent professional judgment in providing professional services. Thus, Respondent violated Rule 201.

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

The Commission found that Respondent failed to provide services when he: 1) failed to notify the Client that he would no longer be preparing her taxes; 2) admitted to lax communication with the Client and did not affirmatively communicate with the Client on outstanding tax issues; and (3) caused the Client to receive an IRS Request for Payment Notice for delinquent payment of taxes. By failing to provide services diligently, Respondent violated Rule 701.

### IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") provides grounds for discipline for any act or omission which violates CFP Board's *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) of the *Disciplinary Rules* because Respondent violated *Code of Ethics* Rules 201 and 701.

The Commission issued a Private Censure to Respondent pursuant to Article 4.1 of the *Disciplinary Rules*. The Commission urged Respondent to be more diligent in documenting client communications and reminded Respondent that clients rely on CFP® certificants to exercise the highest level of professionalism.

The Commission considered as a mitigating factor that Respondent freely admitted deficiencies in his procedures and has implemented changes to those procedures.

The Commission considered no aggravating factors.