CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21048

This is a summary of a decision issued following the July 2009 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* when he: 1) sold securities to clients while not licensed to do so; 2) promised investors large returns and guaranteed their principal on fraudulent investments; and 3) pleaded guilty to a felony investment fraud charge.

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

In April 2007, a grievance was filed with CFP Board against Respondent for his alleged involvement in investment fraud. In March 2008, Respondent was arrested by police at the request of a state ("State") attorney general's office ("AGO"). The AGO issued a seven-count indictment against Respondent for his involvement in an alleged investment fraud scam. Five of the counts constituted a class 3 felony in the State and two counts were for theft over $15,000.

According to the indictment, Respondent sold promissory notes to clients in the State between 2003 and 2004. Promissory notes are considered securities in the State. In 1998, the Securities and Exchange Commission ("SEC") enjoined Respondent from selling securities. During the time that Respondent sold promissory notes in 2003 and 2004, he was not registered to sell securities in the State.

In November 2008, Respondent pleaded guilty to a single felony investment fraud charge for making an untrue statement of material fact or omitting a material fact in connection with the offer, sale, or purchase of any security in the State. Respondent promised investors large returns and guaranteed their principal through a series of promissory notes. At the time of Respondent's hearing, the investments were past due and remained unpaid. Respondent was subsequently sentenced to 10 years in prison for operating a fraudulent investment scheme.

III. Interim Suspension Proceedings

Based on Respondent's conduct, CFP Board issued an Order to Show Cause to Respondent to show cause why his right to use the CFP®, CERTIFIED FINANCIAL PLANNER™ and CFP certification marks ("CFP® marks") should not be temporarily suspended during the pendency of

CFP Board's disciplinary proceedings. During a hearing before a quorum of the Commission in November 2008, Respondent failed to prove that he did not pose an immediate threat to the public after being the subject of a civil suit, a grievance filed with CFP Board, and an arrest related to felony charges for investment fraud. Pursuant to Article 5.6 of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"), the Commission determined to order an Interim Suspension to Respondent because it found that Respondent posed an immediate threat to the public and that the gravity of the nature of Respondent's conduct impinged upon the stature and reputation of the CFP® marks. Respondent's right to use the CFP® marks was temporarily suspended pending the outcome of a full hearing before the Commission.

IV. 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 determined that Respondent made false statements to clients when he promised them large returns on their investments and guaranteed their principal, then failed to pay on the investments as promised. 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 in providing professional services in that he: 1) promised investors specific returns and guaranteed their principal on investments, then was not able to follow through on the guarantees he made; and 2) sold securities to clients in the form of promissory notes after being enjoined by the SEC from doing so. Thus, Respondent violated Rule 201.

C. Rule 302 – A CFP Board designee shall offer advice only in those areas in which the CFP Board designee has competence.

The Commission found that Respondent failed to offer advice only in those areas in which he has competence because he sold securities to clients at a time when he was not licensed to do so. Thus, Respondent violated Rule 302.

D. 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 his employer because he sold securities to clients when he was not licensed to do so. Thus, Respondent violated Rule 406.

E. *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 failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities because he pleaded guilty to an investment fraud charge, which is a felony criminal act. Thus, Respondent violated Rule 606(a).

F. *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 CFP Board rules, regulations and policies because he violated *Code of Ethics* Rules 102, 201, 302, 406, 606(a) and 607 as discussed herein. Thus, Respondent violated Rule 606(b).

G. *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 or fitness as a CFP Board designee, upon the marks and upon the profession because he: 1) promised investors specific returns and guaranteed their principal on investments, then failed to pay on the investments as promised; and 2) violated the above *Code of Ethics* rules. Thus, Respondent violated Rule 607.

V. Discipline Imposed

The Commission found grounds for discipline under Articles 3(c) and 3(e) of the *Disciplinary Rules*. Article 3(c) provides grounds for discipline for a violation of state or federal criminal laws. The Commission found Article 3(c) grounds for discipline because Respondent committed investment fraud, in violation of state law. Article 3(e) provides grounds for discipline for any act or omission which violates the *Disciplinary Rules*. The Commission found Article 3(e) grounds for discipline because Respondent failed to report his criminal conviction to CFP Board within 10 days of receiving notification of the conviction, as required by Article 12.2 of the *Disciplinary Rules*.

Based on the above rule violations and grounds for discipline, the Commission issued an Order to Revoke Permanently the Respondent's right to use the CFP® marks pursuant to Article 4.4 of the *Disciplinary Rules*.

The Commission considered no mitigating or aggravating factors.