

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 21319

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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. Issues Presented

Whether a candidate for CFP® certification (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he conducted unregistered financial planning seminars about insurance products without identifying himself as an insurance producer, offered inducements to purchase financial planning services and conducted business in an unregistered branch office.

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

In June 2007, CFP Board received an anonymous grievance claiming that Respondent was selling high commission insurance policies to seniors and had received a sanction or fine from a state department of banking and insurance (“DBI”). Respondent had not disclosed his involvement in the DBI action on his 2006 Certification Renewal Application.

In February 2006, the DBI and Respondent agreed to a Consent Order (“Consent Order”). The Consent Order imposed a fine on Respondent and found that Respondent violated state code and state statutory provisions because:

1. In 2004, Respondent conducted financial planning seminars to discuss insurance products but failed to identify himself as an insurance producer prior to commencing his solicitation;
2. Respondent did not register the names of the seminars as required by the state;
3. Respondent offered an improper inducement in the form of a gift certificate to be used toward a reduced financial planning fee; and
4. Respondent maintained a branch office for the sale of insurance products but failed to submit a branch office registration form before conducting business there.

In October 2007, CFP Board asked Respondent for copies of the seminar materials and advertisements, as well as information on seminar attendees and new client accounts. Respondent replied with a letter stating that he could not provide the requested documents because they were destroyed in a flood. In March 2008, CFP Board requested that Respondent provide any documents and recollections as to how he introduced himself to the seminar attendees. Respondent submitted a written statement to CFP Board providing the information requested but did not provide the requested documents.

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### III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *Rule 101(b) – In promotional activities, a CFP Board designee shall not make materially false or misleading communications to the public or create unjustified expectations regarding matters relating to financial planning or the professional activities and competence of the CFP Board designee.*

The Commission found that Respondent made misleading communications to the public when he conducted a seminar advertised as a financial planning seminar, then failed to identify himself as an insurance producer before beginning his solicitation. The DBI found that the Respondent's failure to identify himself as an insurance producer violated a state code provision. Thus, Respondent violated Rule 101(b).

- B. *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 because he violated state code and state statutory provisions as indicated in the Consent Order. Thus, Respondent violated Rule 606(a).

- C. *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 policies of CFP Board because he violated *Code of Ethics* Rules 101(b), 606(a), 607 and 612 as discussed herein. Thus, he violated Rule 606(b).

- D. *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 his integrity or fitness as a CFP Board designee when he: 1) failed to disclose that he was providing services as an insurance producer; 2) failed to register the name of his seminars; 3) failed to register a branch office before conducting business there; and 4) offered an improper financial inducement for financial planning services. By engaging in conduct which reflects adversely on his integrity or fitness as a CFP Board designee, Respondent violated Rule 607.

*E. Rule 612 – A CFP Board designee shall comply with all applicable renewal requirements established by CFP Board.*

The Commission found that Respondent failed to comply with all applicable renewal requirements established by CFP Board when he failed to disclose the Consent Order on his Certification Renewal Application. Thus, Respondent violated Rule 612.

#### IV. Discipline Imposed

Article 3(f) of CFP Board's *Disciplinary Rules and Procedures* provides grounds for discipline for failure to respond to a request by CFP Board, without good cause shown. The Commission determined that Article 3(f) grounds for discipline existed because Respondent failed to respond to a request by CFP Board for documents and information in October 2007 and March 2008.

Article 3(g) provides grounds for discipline for any false or misleading statement made to CFP Board. The Commission found that Respondent made a misleading statement to CFP Board by indicating on the Declaration Section of the Renewal Application that he had not been a defendant in or respondent in a governmental agency proceeding or the subject of a governmental investigation or inquiry, when he had been involved in the DBI investigation. Thus, the Commission found grounds for discipline under Article 3(g).

Based on the above rule violations and grounds for discipline, the Commission issued a suspension of one year and one day effective on the date of its Decision Order.

The Commission considered the following mitigating factors:

1. Respondent's wife/business partner's illness;
2. Respondent's sale of his business and relocation;
3. Respondent's loss of records in a flooded basement;
4. Respondent's personal illness at the time of the hearing; and
5. Respondent's conduct resulted in no harm to the public.

The Commission considered no aggravating factors.