

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21331

This is a summary of a decision issued following the February 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® certificiant (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he invested a client’s (“Client”) retirement funds in aggressive investments that made the Client’s cash positions no longer adequate to fund his required withdrawals.

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

In 1999, Respondent developed a retirement plan for the Client. In November 1999, based on Respondent’s advice, the Client transferred \$459,058.78, the entire value of his 401(k) account, to a Rollover IRA to be managed by Respondent.

Respondent’s computer model suggested that the Client could withdraw up to \$29,000 per year from the IRA. The Client wanted to be more cautious about his withdrawals and decided to withdraw \$15,000 per year. Respondent advised the Client that even though the Client would be paying a 10% penalty for his early withdrawals, the penalty was necessary for the Client to meet his income needs. The Client understood that Respondent’s management of the account would result in enough money generated to offset the early withdrawal penalties.

The Client’s funds were invested in mutual funds and individual stocks, including aggressive technology stocks. From 1999 through 2005, Respondent purchased funds and equities for the Client’s account, reducing the Client’s cash reserves. By 2005, the Client’s account value was \$182,063.91. Respondent continued to purchase more positions in risky equities and mutual funds. The Client’s portfolio became increasingly aggressive to the point that Client’s cash positions were no longer adequate to fund the Client’s required withdrawals.

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: 1) Respondent over-concentrated the Client’s funds in technology stocks and mutual funds; and 2) Respondent continued to purchase positions in risky equities and mutual funds despite a history of losses. The Commission determined that as a result of

Respondent's actions, the Client's portfolio mix became too aggressive, to the point that his cash positions were no longer adequate to fund his required withdrawals. The Commission found that Respondent did not act as a reasonable and prudent professional would have. Thus, Respondent failed to exercise reasonable and prudent professional judgment in providing professional services and violated *Code of Ethics* Rule 201.

IV. Discipline Imposed

The Commission found grounds for discipline under Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"), which provides grounds for discipline for a violation of the *Code of Ethics*. 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 testified that he valued the CFP® marks; and
2. Respondent appeared to have the best interest of the Client at heart.

The Commission considered the following aggravating factors:

1. Respondent should have considered the fact that the Client was a retired machine shop operator; and
2. Respondent created an inappropriately aggressive portfolio for a client with a five-year time horizon and need for income.