

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21365

This is a summary of a decision issued following the July 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 a Financial Industry Regulatory Authority (“FINRA”, f/k/a National Association of Securities Dealers or NASD) investigation showed that he and his company (“Company”) violated securities laws related to the sale of securities on military bases.

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

In June 2007, Respondent disclosed on his Certification Renewal Application that the Securities and Exchange Commission (“SEC”) and FINRA had investigated Respondent and his Company. Respondent founded the Company in June 1986 and was its sole owner and President. Between 2002 and 2004, the Company sold securities primarily to military personnel.

The SEC investigation was closed in April 2007. In September 2007, Respondent and his Company entered into an Acceptance, Waiver and Consent agreement (“AWC”) and an accompanying Corrective Action Statement (“CAS”) with FINRA.

The AWC made the following findings:

1. Respondent and the Company violated NASD Rules 3010 and 2210 when they failed to adequately supervise the Company’s website and the websites of two registered representatives. The registered representatives’ websites contained exaggerated and unwarranted claims about their expertise and the success that clients could anticipate. The Company’s website stated that a large number of representatives were CFP® certifiants when, in fact, only a small percentage were.
2. Respondent and the Company violated NASD Rules 3010 and 2110 when the Company’s registered representatives listed, on communications with the public, locations where they conducted securities business without identifying their supervising Company branch office or Office of Supervisory Jurisdiction (“OSJ”);
3. Respondent and the Company violated NASD Rules 3070, 3010 and 2110 when: 1) they failed to timely disclose on Form U-4 that the license of one of the Company’s registered representatives was suspended by the military because the representative solicited insurance sales on base without appropriate licensing from an insurance company; and 2)

ACH 21365

- 1 -

the Company failed to timely report six customer complaints, and did not have an effective supervisory system in place that was reasonably designed to prevent such reporting violations;

4. The Company violated Exchange Act Section 17(a), SEC Rule 17a-3, SEC Rule 17a-4 and NASD Rules 3110 and 2110 because it failed to retain all e-mails related to its business and failed to retain certain customer account records;
5. Respondent and the Company violated NASD Rules 3010 and 2110 by failing to adequately supervise securities sales to military service members by independent contractors at remote sites, including failure to adequately supervise compliance with Department of Defense (“DOD”) regulations regarding on-base solicitation;
6. The Company violated NASD Rules 3011 and 2110 and a Municipal Securities Rulemaking Board rule when it did not establish an effective anti-money laundering compliance program; and
7. Respondent and the Company failed to comply with continuing education requirements and thus violated NASD Rules 1120, 3010 and 2110.

The Company was censured and fined jointly and severally with Respondent. Respondent was suspended from acting in any principal capacity with any FINRA member for 20 business days and fined jointly and severally with the Company.

III. Commission’s Analysis and Conclusions Regarding Rule Violations

- A. *Rule 101(a) – A CFP Board designee shall not solicit clients through false or misleading communications or advertisements. A CFP Board designee shall not make a false or misleading communication about the size, scope or areas of competence of the CFP Board designee’s practice or of any organization with which the CFP Board designee is associated.*

Based on the AWC, the Commission found that Respondent, personally and as president of the Company, solicited clients through false or misleading communications or advertisements when he allowed: 1) registered representatives’ websites to contain exaggerated and unwarranted claims about their expertise and success; and 2) the Company’s website to misrepresent the number of CFP® certificants employed by it. Thus, Respondent violated Rule 101(a).

- B. *Rule 401(a) – In rendering professional services, a CFP Board designee shall disclose to the client material information relevant to the professional relationship, including, conflict(s) of interest, the CFP Board designee’s business affiliation, address, telephone number, credentials, qualifications, licenses, compensation structure and any agency relationships, and the scope of the CFP Board designee’s authority in that capacity.*

Based on the AWC, the Commission found that Respondent, personally and as president of the Company, failed to disclose material information relevant to his professional relationship with clients because he and the professionals he supervised did not identify Respondent’s business affiliation, address, telephone number, the supervising branch office or the OSJ to Company clients, as required by federal securities laws. Thus, Respondent violated Rule 401(a).

C. Rule 401(b) – In rendering professional services, a CFP Board designee shall disclose to the client the information required by all laws applicable to the relationship in a manner complying with such laws.

Based on the AWC, the Commission found that Respondent, personally and as president of the Company, failed to: 1) timely disclose on Company forms and on a representative's Form U-4 that the representative's license had been suspended; and 2) disclose six customer complaints. Thus, Respondent violated Rule 401(b).

D. 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 rules and regulations of governmental agencies and other applicable authorities because he violated federal securities laws, and DOD rules and regulations. Thus, Respondent violated Rule 606(a).

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

The Commission found that Respondent failed to provide services diligently because: 1) Respondent failed to establish, maintain or enforce procedures reasonably designed to ensure compliance with DOD regulations; and 2) Respondent, personally and in his capacity as president of the Company, did not create a system to review, retain and preserve e-mails that contained vital client information. Thus, Respondent violated Rule 701.

F. Rule 705 – A CFP Board designee shall properly supervise subordinates with regard to their delivery of financial planning services, and shall not accept or condone conduct in violation of this Code of Ethics.

The Commission found that Respondent, personally and as president of the Company, failed to properly supervise subordinates and condoned conduct that violated the *Code of Ethics* because he failed to establish an effective supervisory system designed to prevent the violations found in the AWC. Thus, Respondent violated Rule 705.

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 Public Letter of Admonition to Respondent, pursuant to Article 4.2 of the *Disciplinary Rules*. The Commission ordered that the Respondent ensure that the Company's website accurately reflects the number of CFP[®] certificants in the organization.

The Commission considered the following mitigating factors:

1. Respondent's personal appearance before the Commission shows that he values the CFP® marks;
2. Respondent had no client or DOD complaints in his 20 years in the industry;
3. The AWC related to books and records violations, and nothing more;
4. Respondent showed remorse;
5. Respondent has made changes to his procedures to address the issues raised in the AWC; and
6. Respondent has discontinued the sale of the Plans since the AWC.

The Commission considered the AWC agreement between Respondent and FINRA as an aggravating factor.