CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21403

This is a summary of a Settlement Agreement entered into at the February 2010 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® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when she executed trades in a trust account without the trustee's authorization.

II. Findings of Fact

In September 2005, the client and his niece met with Respondent to review the client's trust ("Trust") portfolio. The client was the trustee of the Trust, and the client's niece was one of the Trust's beneficiaries. Respondent explained that she believed the Trust was overconcentrated in individual equities and recommended a reallocation of the Trust's assets for a more diversified portfolio. They concluded the meeting with Respondent's promise to provide the client and his niece with Respondent's specific recommendations in the next few days.

Respondent subsequently faxed her recommendations to the client's niece for her to share with the client. The client's niece informed Respondent that she and her uncle had reviewed the proposal, and her uncle had authorized Respondent to implement the suggested changes. Based on the client's niece's statement that the client approved of the suggested changes, Respondent executed the trades in October 2005.

In June 2006, the client's niece called and indicated that the client was not happy with the sale of a particular stock. In May 2007, the client's customer complaint evolved into a National Association of Securities Dealers ("NASD," now known as Financial Industry Regulatory Authority, Inc. or "FINRA") Arbitration alleging that Respondent executed unauthorized trades. The matter was settled for $150,000 with Respondent contributing $75,000.

NASD subsequently conducted an independent investigation of the matter and issued a Letter of Caution to Respondent. In its Letter of Caution, NASD stated that Respondent's failure to speak with the trustee and obtain authorization from him prior to executing the trades constituted a violation of NASD Conduct Rule 2110.

III. Rule Violations

A. Rule 201 Violation – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.

Respondent failed to exercise reasonable and prudent professional judgment in providing professional services because she executed trades in a trust account without obtaining the trustee's approval. Thus, Respondent violated Rule 201.

B. Rule 606(a) Violation – 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.

Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when she executed unauthorized trades in violation of NASD Conduct Rule 2110. Thus, Respondent violated Rule 606(a).

C. Rule 606(b) Violation — In all professional activities a CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board.

Respondent failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when she executed unauthorized trades in violation of *Code of Ethics* Rules 201, 606(a), 607 and 701. Thus, Respondent violated Rule 606(b).

D. Rule 607 Violation – 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.

Respondent engaged in conduct that reflects adversely on her integrity and fitness as a CFP Board designee, upon the marks and upon the profession when she: 1) executed trades without proper authorization; and 2) violated *Code of Ethics* Rules 201, 606(a), 606(a) and 701. Thus, Respondent violated Rule 607.

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

Respondent failed to provide services diligently when she executed trades in a trust account without obtaining the trustee's approval. Thus, 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 that violates CFP Board's *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated *Code of Ethics* Rules 201, 606(a), 606(b), 607 and 701.

The Commission and Respondent entered into a Settlement Agreement consenting to the above Findings of Fact and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a Public Letter of Admonition, pursuant to Article 4.2 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors:

1. Respondent accepted responsibility for her actions;
2. The trustee/client was a sophisticated investor;
3. Respondent reported the matter to CFP Board;
4. Respondent cooperated fully with the FINRA and CFP Board investigations;
5. Respondent's investment recommendation to diversify the portfolio was reasonable; and
6. The trustee received notice of the trades.

The Commission did not consider any aggravating factors.