

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21409

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. Issue Presented

Whether a CFP[®] certificant (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he was the subject of a civil suit by a client (“Claimant”) for recommendations he had made to Claimant regarding the purchase of a life insurance policy.

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

CFP Board alleged the following in its Complaint:

1. In February 1995, Claimant owned a life insurance policy (“Policy”) with a cash value of \$86,000 and a guaranteed face amount death benefit of approximately \$111,000;
2. In October 1995, Claimant purchased a universal life insurance policy (“Universal Policy”) based on a recommendation by Respondent. Respondent recommended that Claimant use the cash value of the Policy to pay the premiums on the Universal Policy;
3. In March 1996, a 20-year Universal Policy was issued to Claimant in the amount of \$150,000 with an initial premium of \$11,158.30 and a monthly premium of \$923.00. The Policy named Claimant as the insured, and Claimant’s daughters as the owners and beneficiaries;
4. In May 2004, Respondent informed Claimant that the Policy had a cash value of \$143,316.01 and a loan balance of \$133,978.62, which left a net cash value of \$9,337.39 and a death benefit of \$16,503.38. Respondent cautioned Claimant that the Policy must continue to have cash value in order to pay the interest on the loan. Respondent also informed Claimant that the Universal Policy had a face value of \$150,000 and a cash value of \$40,000. The \$40,000 cash value would cover the premiums for three years. Respondent said that after three years, the \$11,158.30 annual premium must be paid out of pocket to continue the policy; and
5. In December 2005, Claimant filed a lawsuit against Respondent claiming that she was never informed that using the cash value of the Policy to make the Universal Policy payments could, at some point, require Claimant’s daughters to pay the Universal Policy premiums out of pocket in order to keep the policy in force.

The Commission did not agree with the facts alleged by CFP Board in its Complaint.

The Commission found that Respondent improperly used the CFP[®] certification marks on his letterhead.

III. Commission's Analysis and Conclusions Regarding Rule Violations

CFP Board alleged that Respondent violated Rules 201, 401(a), 607 and 701 of CFP Board's *Code of Ethics and Professional Responsibility* ("*Code of Ethics*"). CFP Board alleged the following violations:

1. Respondent violated Rule 201 because he failed to explain to Claimant that withdrawals from the Policy could render the policy worthless, and thus, failed to exercise reasonable and prudent professional judgment;
2. Respondent violated Rule 401(a) by failing to disclose the depletion of the cash value of the Policy to Claimant, and thus, failed to disclose material information relevant to the professional relationship;
3. Respondent violated Rule 607 because there was no documentation to show Respondent was properly registered as an investment advisor representative when he accepted a limited power of attorney from Claimant, and if Respondent was not properly registered, such lack of registration reflected adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession; and
4. Respondent violated Rule 701 because he did not provide Claimant with reasonable investment alternatives, and thus, failed to provide services diligently.

The Commission determined that CFP Board did not prove by a preponderance of the evidence that Respondent violated Rules 201, 401(a), 607 and 701 of CFP Board's *Code of Ethics*.

IV. Discipline Imposed

The Commission dismissed the case and cautioned Respondent regarding the importance of documenting goals and objectives for clients, as well as documenting a client's rejection of recommendations made by a certificant. The Commission directed Respondent to consider whether his insurance business required additional insurance expertise in his practice. The Commission also ordered Respondent to change his letterhead to reflect proper usage of the CFP® mark.

The Commission considered no mitigating or aggravating factors.