CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21718

This is a summary of a Settlement Agreement entered into at the February 2011 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® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) corrected a trading error in a client's account by reimbursing the client from his own personal funds, rather than following firm policy with respect to resolving trading errors; and 2) traded a security in his personal securities account ahead of trading the same security in a client's account.

II. Findings of Fact

In September 2010, Respondent disclosed on his Reinstatement Application that he received a Cautionary Action Letter from the Financial Industry Regulatory Authority, Inc. ("FINRA", formerly known as the National Association of Securities Dealers or "NASD") as a result of reimbursing a client from his own funds and trading ahead.

In March 2007, Respondent and one of his clients decided to eliminate a small position in her accounts. Respondent liquidated the fund in her two main accounts, but forgot to eliminate the same fund in two smaller accounts. A few days later, the client brought this error to Respondent's attention and Respondent sold the remaining positions. Respondent corrected the trading error by writing a personal check to the client. He stated that his firm's process for correcting a trading error was to report the error, open a case and wait for the firm to correct the error.

Respondent often recommended securities he personally owned to clients because he felt those securities would be the best recommendations. Respondent purchased a security for his personal account, then spoke with a client later in the day about the same security. The client asked Respondent to purchase shares for him, and the client eventually paid 25 cents more per share than Respondent. Respondent stated the "trading ahead" was accidental, and his firm did not make its policy regarding "trading ahead" a well-known fact at that time.

In October 2009, FINRA issued a Cautionary Action Letter ("Letter") to Respondent. FINRA found the following deficiencies in Respondent's conduct:

1. Respondent failed to comply with NASD Rule 2110 when he corrected a trading error by compensating a client for the loss she sustained rather than escalating the matter to Respondent's registered principal, as required by the firm's written supervisory procedures; and

2. Respondent failed to comply with NASD Rule 2110 when Respondent traded in his personal securities account ahead of trading the same security in a client's account without submitting the client trades to the home office, as required by the firm's written supervisory procedures.

III. <u>Rule Violations</u>

A. *Rule 201 – 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 when he: 1) corrected a trading error in a client's account by reimbursing the client from his own personal funds, rather than following firm policy with respect to resolving trading errors; and 2) traded a security in his personal securities account ahead of trading the same security in a client's account. Therefore, Respondent violated Rule 201.

B. *Rule 406 – A CFP Board designee who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this* Code of Ethics

Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he corrected a trading error in a client's account by reimbursing the client from his own personal funds, rather than following firm policy with respect to resolving trading errors. Therefore, Respondent violated Rule 406.

C. *Rule 406 – A CFP Board designee who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this* Code of Ethics

Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he traded a security in his personal securities account ahead of trading the same security in a client's account, in violation of his firm's policy against "trading ahead." Therefore, Respondent violated Rule 406.

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.*

Respondent failed to perform professional services in accordance with the applicable laws, rules and regulations of governmental agencies and other applicable authorities when he violated

NASD Rule 2110, resulting in a 2009 FINRA Cautionary Action Letter because he: 1) corrected a trading error in a client's account by reimbursing the client from his own personal funds, rather than following firm policy with respect to resolving trading errors; and 2) traded a security in his personal securities account ahead of trading the same security in a client's account, in violation of his firm's policy against "trading ahead." Therefore, Respondent violated Rule 606(a).

E. *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.*

Respondent failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when he: 1) failed to completely liquidate a position in a client's accounts, resulting in a trading error; 2) corrected a trading error in a client's account by reimbursing the client from his own personal funds, rather than following firm policy with respect to resolving trading errors; and 3) traded a security in his personal securities account ahead of trading the same security in a client's account, in violation of his firm's policy against "trading ahead." Therefore, Respondent violated Rules 201, 406, 606(a), 607 and 701, in violation of Rule 606(b).

F. *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.*

Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he: 1) failed to completely liquidate a position in a client's accounts, resulting in a trading error; 2) corrected a trading error in a client's account by reimbursing the client from his own personal funds, rather than following firm policy with respect to resolving trading errors; and 3) traded a security in his personal securities account ahead of trading the same security in a client's account, in violation of his firm's policy against "trading ahead." Therefore, Respondent violated Rule 607.

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

Respondent failed to provide services diligently when he failed to completely liquidate a position in all of a client's accounts, resulting in a trading error that needed to be corrected. Therefore, Respondent violated Rule 701.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* provides grounds for discipline for any act or omission that violates the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 201, 406, 606(a), 606(b), 607 and 701 of the *Code of Ethics*. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented 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's FINRA discipline was not public; 2) Respondent's private settlement with his client was for a small amount; and 3) Respondent traded ahead on only one occasion. The Commission did not consider any aggravating factors.