CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21725

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 he: 1) did not prepare a financial plan for a client ("Client") after agreeing to do so; 2) borrowed money from the Client; 3) recommended and sold a viatical to the Client, who was 85 years old at the time, when Respondent was not licensed to do so; and 4) did not provide an Answer to CFP Board's Complaint.

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

CFP Board alleged the following facts in its Complaint:

In 2007, Respondent agreed to prepare a financial plan for the Client, who was 85 years old at the time. Respondent did not prepare the financial plan.

In August 2007, Respondent requested and received from the Client a $1,000 loan. Later in August 2007, Respondent recommended that the Client invest $75,000 in a viatical. The amount comprised approximately two-thirds of the Client's life savings and was estimated to lead to a profit in five years. The investment was cancelled after a meeting with the Client's attorney.

According to the securities regulator in the state where Respondent provided services ("State"), only a licensed broker-dealer is authorized to sell viaticals in the State. Respondent was not licensed as a broker or dealer in the State. According to the Financial Industry Regulatory Authority's ("FINRA", f/k/a National Association of Securities Dealers or NASD) Central Registration Depository, Respondent's securities license expired in April 2006.

In October 2007, the Client's daughter ("Grievant") filed a grievance against Respondent with CFP Board. According to the Grievant, the Client loaned a total of $1,608.14 to Respondent and paid for Respondent's lunches, dinners, wine, cigarettes and groceries.

Respondent did not respond to the following communications by CFP Board: 1) an October 2007 Notice of Investigation; 2) a November 2007 Second Request Letter; 3) a January 2008 telephone call; 4) a February 2008 Order to Show Cause; and 5) CFP Board's May 2008 Complaint. In a telephone conversation with CFP Board, the Grievant informed CFP Board that Respondent was aware of CFP Board's investigation and had asked her to withdraw her grievance.

III. Commission's Analysis and Conclusions Regarding Rule Violations

CFP Board alleged the following rule violations in its Complaint:

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 because he recommended and attempted to sell an unregistered securities product to the Client at a time when he was not licensed to do so. Thus, Respondent violated Rule 201.

B. *Rule 202 – A financial planning practitioner shall act in the interest of the client.*

Respondent failed to act in the interest of the Client when he:

1. Failed to create a financial plan taking the Client's investment objectives into consideration;
2. Recommended an unregistered investment product to the 85-year-old Client that involved two-thirds of the Client's income and a five-year period of maturity; and
3. Borrowed money from the Client, which is presumed not to be in the Client's best interest according to CFP Board's Advisory Opinion 2001-1 unless a client is a financial institution or a family member, which the Client was not.

Thus, Respondent violated Rule 202.

C. *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 services in accordance with applicable rules, regulations and other established policies of CFP Board because he violated Rules 201, 201, 607 and 703, as discussed herein. Thus, Respondent violated Rule 606(b).

D. *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 which reflects adversely on his integrity and fitness as a CFP Board designee because he failed to act in the Client's best interest when he borrowed money from the Client. Thus, Respondent violated Rule 607.

E. *Rule 703 – A financial planning practitioner shall make and/or implement only recommendations which are suitable for the client.*

Respondent failed to make and/or implement only recommendations that were suitable for the Client because he recommended that the Client, who was 85 years old, invest two-thirds of his life savings in an unsecured and unregistered product. Thus, Respondent violated Rule 703.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") provides grounds for discipline for a violation of CFP Board's *Code of Ethics*. CFP Board alleged Article 3(a) grounds for discipline for violation of the above *Code of Ethics* rules. CFP Board also alleged Article 3(f) grounds for discipline. Article 3(f) provides grounds for discipline for failure to respond to a request by the Commission, without good cause shown, or for obstruction of CFP Board staff in the performance of their duties. According to CFP Board, grounds for discipline arose under Article 3(f) because Respondent repeatedly failed to respond to requests for information by CFP Board.

Article 7.4 of the *Disciplinary Rules* provides that allegations from CFP Board's Complaint shall be deemed admitted if a CFP Board designee fails to file an Answer within 20 calendar days from the date of service of the Complaint. The Commission deemed that the above facts and violations be admitted because Respondent did not file an Answer to the Complaint.

The Commission issued an Order of Revocation pursuant to Article 7.4 of the *Disciplinary Rules*, revoking Respondent's right to use the CFP®, CERTIFIED FINANCIAL PLANNER™ and CFP certification marks.

The Commission considered no aggravating or mitigating factors in making its Decision.