

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21744

This is a summary of a decision issued following the November 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 candidate for CFP® certification (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he signed clients’ signatures on documents without their authorization.

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

In February 2007, Respondent’s broker-dealer (“Broker-Dealer”) began an internal review of Respondent for signing clients’ signatures in violation of the Broker-Dealer’s corporate policy. Respondent verbally admitted to the Broker-Dealer that he signed clients’ signatures on the firm’s documents. The Broker-Dealer received approximately 25 affidavits of fact certifying that client signatures on documents were not authentic. The Broker-Dealer also found that Respondent violated company policy when he: 1) charged clients fees for financial services without providing any deliverable; and 2) did not disclose mutual fund sales loads.

In March 2007, the National Association of Securities Dealers (“NASD”, now the Financial Industry Regulatory Authority or “FINRA”) began an investigation of Respondent for forgery. In June 2007, Respondent signed a Letter of Acceptance, Waiver and Consent (“AWC”) with FINRA and consented to the following findings:

1. Between July 2000 and January 2007, Respondent forged the signature of a client on several financial advisory service agreements and on mutual fund redemption forms to cause unauthorized transfers of approximately \$5,000 from the client’s mutual fund to a new account established by Respondent; and
2. As a result of his actions, Respondent violated NASD Conduct Rules 2330(a) and 2110 and IM-2310-2.

By signing the AWC, Respondent consented to be barred from association with any FINRA member in any capacity.

III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

The Commission found that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, or that Respondent or knowingly made a false or misleading statement to his clients in the course of professional activities when he falsely identified documents as having been signed by clients, then presented the documents to the Broker-Dealer to process information and requests that had not been provided or made by the clients. Thus, Respondent violated Rule 102.

- B. *Rule 103(c) – Upon receiving funds or other property of a client, a CFP Board designee shall promptly or as otherwise permitted by law or provided by agreement with the client, deliver to the client or third party any funds or other property which the client or third party is entitled to receive and, upon request by the client, render a full accounting regarding such funds or other property.*

The Commission found that Respondent failed to deliver promptly property to clients that they were entitled to when he charged clients fees for financial services and then failed to provide deliverables. Thus, Respondent violated Rule 103(c).

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

The Commission found that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services because he charged clients a fee for a service that was not provided. Thus, Respondent violated Rule 201.

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

The Commission found that Respondent failed to act in the interest of a client because he signed documents in the client's name, causing unauthorized transfers that the client did not request and that were not in the client's best interest. Thus, Respondent violated Rule 202.

- E. *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.*

The Commission found that Respondent failed to perform professional services with dedication to the lawful objectives of his employer because he violated the Broker-Dealer's corporate policy when he: 1) presented documents for processing that had been signed by him and not by the clients; and 2) charged clients fees for financial services that he did not deliver. Thus, Respondent violated Rule 406.

F. 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.

The Commission found that Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board because he violated Rules 102, 103(c), 201, 202, 406 and 607, as discussed herein. Thus, Respondent violated Rule 606(b).

G. 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.

The Commission found that Respondent engaged in conduct which reflects adversely on his integrity or fitness as a CFP Board designee, upon the marks and upon the profession when he, in violation of corporate policy: 1) signed clients' signatures without their authorization; and 2) failed to provide clients with the services they had paid for. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(d), 12.2 and 12.3 of CFP Board's *Disciplinary Rules and Procedures*. Article 3(d) provides grounds for discipline for any act or omission which is the proper basis for professional suspension. The Commission found Article 3(d) grounds for discipline because Respondent was barred by FINRA in the AWC. Article 12.2 requires that CFP Board designees provide written notification to CFP Board of professional suspensions. The Commission found Article 12.2 grounds for discipline because Respondent did not notify CFP Board of his bar by FINRA.

Respondent submitted an Offer of Settlement to the Commission in which he stated his willingness to accept a Private Censure. The Commission rejected the Offer of Settlement because it determined that Respondent's actions constituted grounds for a higher discipline than a Private Censure. The Commission made a Counter Offer to Respondent in which it proposed Permanent Revocation of Respondent's right to use the CFP® marks pursuant to Article 4 of the *Disciplinary Rules*. Respondent accepted the Counter Offer and agreed to the sanction.

The Commission considered no mitigating or aggravating factors.