

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21763

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 did not return the financial planning fee to a client (“Grievant”), who terminated Respondent’s services, until six months after the fee request.

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

In November 2006, Grievant hired Respondent to prepare a financial plan for her. In March 2007, Respondent accepted a check for the financial plan. According to Respondent, a draft of the plan was completed in April 2007. Respondent did not give Grievant a copy of the draft plan.

According to Respondent, in April 2007, Grievant informed Respondent of her engagement and impending marriage. Respondent claimed he informed Grievant that this new information would have a dramatic effect on the financial plan. Respondent claimed he told Grievant’s fiancé, who called Respondent to inquire about the plan, that the plan was no longer valid considering the impending wedding.

In May 2007, Grievant e-mailed Respondent to terminate his services. Grievant’s e-mail stated, “I understand [my fiancé] called you earlier, please don’t do anything for me; I don’t trust you anymore and will not feel comfortable working with you. Just refund the \$3,000 I paid as soon as possible.”

In June 2007, Grievant’s fiancé called Respondent regarding the return of the \$3,000 financial planning fee. Respondent refused to return the fee until he received an explanation from Grievant as to why she no longer considered him trustworthy. In October 2007, CFP Board sent Respondent a Notice of Investigation (“NOI”). In November 2007, Respondent returned the fee through his broker-dealer affiliate.

III. Commission's Analysis and Conclusions Regarding Rule Violations

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

The Commission noted that Respondent did not return the financial planning fee to Grievant until after Respondent received the NOI, nearly six months after Grievant's initial demand for the fee. The Commission found that Respondent failed to exercise reasonable and prudent professional judgment because he failed to return Grievant's money in a reasonably prompt manner. The Commission determined that Respondent's reason for not returning the money, that he felt he was owed an explanation, was inadequate to justify his actions. Thus, Respondent violated Rule 201 of the *Code of Ethics*.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") provides for grounds of discipline for a violation of the *Code of Ethics*. Once grounds for discipline are established, the Commission may impose discipline under Article 4 of the *Disciplinary Rules*. The Commission found Article 3(a) grounds for discipline based on the Rule 201 violation and issued a Private Censure to Respondent pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered Respondent's effort to prepare an accurate financial plan based on the Grievant's changed circumstances as a mitigating factor.

The Commission considered no aggravating factors. However, the Commission noted that it was imprudent and inappropriate for Respondent to hold the Grievant's fee for nearly 120 days, until Respondent received an explanation from the Grievant regarding Grievant's termination of the relationship.