

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21781

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 caused his firm to violate record-keeping provisions of the Investment Advisers Act of 1940 (“Investment Act” or “Act”).

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

Respondent disclosed on his October 19, 2007 Certification Renewal Application that he was involved in a Securities and Exchange Commission (“SEC”) Investigation (“SEC Investigation”) or “Investigation”) which was settled by the parties. The subjects of the Investigation included Respondent, another broker (“Broker”), and an investment firm (“Firm”). From January 1, 2002 through April 1, 2004, the Firm, a dually registered investment advisor and broker-dealer, had a division (“Division”) that was the registered investment adviser. Respondent and Broker were Senior Vice Presidents and Portfolio Managers of the Division. Respondent and Broker were jointly responsible for making and keeping records of client agreements for the Division.

The SEC’s Investigation concerned the Firm referring clients to its own investment advisers and charging a higher commission rate to referred clients than non-referred clients. The SEC found that the Firm failed to: 1) disclose other brokerage options to its clients; 2) disclose the firm’s potential conflict of interest in receiving referrals from registered representatives; and 3) review its clients’ quality of trade execution. When the SEC requested records of client agreements for its Investigation, the Firm produced agreements for less than one-half of its clients.

Respondent and Broker were jointly responsible for making and keeping the records of agreements with clients that the SEC requested. Upon being informed by the SEC of its other failures to disclose the availability of other brokerage options to its clients and to review its clients’ quality of trade execution, the Firm revised its disclosures and changed its policies and procedures to monitor execution quality on client transactions.

On February 17, 2006, the SEC issued a Cease and Desist Order (“Order”) (amended on November 14, 2006 and on August 20, 2007) against Respondent, the Firm, and Broker. In its Order, the SEC found that Respondent willfully aided and abetted and caused the Firm to fail to make and keep records of agreements with advisory clients, which was a violation of Section 204 of the Investment Act and Rule 204(a)(10) under the Act. Section 204 requires registered

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investment advisers to make and keep certain books and records. Rule 204(a) requires registered investment advisers to keep true, accurate and current books and records of all written agreements entered into by the investment adviser with any client.

In an October 3, 2005 Offer of Settlement (“Offer”) to the SEC, Respondent admitted to willfully aiding and abetting and causing the Firm’s violations of Section 204 of the Investment Act and Rule 204(a)(10) under the Act. Respondent consented to “cease and desist from committing or causing any violations and any future violations of Section 204 of the [Investment] Advisers Act and Rule 204-2(a)(10) promulgated thereunder.”

III. Commission’s Analysis and Conclusions Regarding Rule Violations

A. *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 the Code of Ethics.*

Respondent and Broker were jointly responsible for making and keeping records of agreements between the Firm and its clients. By failing to make and keep the records of client agreements, Respondent caused the Firm to not be able to produce records for the SEC’s Investigation and thereby violated provisions of the Investment Act. The Commission found that by causing the Firm to violate provisions of the Investment Act, Respondent failed to perform professional services with dedication to the lawful objectives of Respondent’s employer. Thus, Respondent violated Rule 406 of the CFP Board’s *Code of Ethics*.

B. *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 consented under the Offer and as per the SEC Order to cease and desist from committing or causing any violations and any future violations of Section 204 of the Investment Act and Rule 204-2(a)(10) under the Act. The Commission found that committing or causing a violation of federal laws, rules and regulations such as the Investment Act and the rules promulgated under the act is a violation of Rule 606(a). The Commission found that Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies. Thus, Respondent violated Rule 606(a) of the *Code of Ethics*.

C. *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 Respondent admitted to: 1) willfully aiding and abetting and causing the Firm to fail to make and keep records of client agreements; and 2) as a result, to willfully aiding and abetting and causing the Firm to violate Section 204 of the Investment Act and Rule 204-2(a)(10) under the Investment Act. The Commission found that the above actions amounted to conduct that reflects adversely on Respondent’s integrity or fitness, on the marks, and upon the profession. Thus, Respondent violated Rule 607 of the *Code of Ethics*.

D. 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 by violating Rules 406, 606(a) and 607 of the CFP Board’s *Code of Ethics*, Respondent failed to perform services in accordance with CFP Board rules. Thus, Respondent violated Rule 606(b) of the *Code of Ethics*.

IV. Discipline Imposed

The Commission found that Respondent’s violation of CFP Board’s *Code of Ethics* amounted to grounds for discipline under the CFP Board’s *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”). Under Article 4.1 of the *Disciplinary Rules*, the Commission issued a Private Censure to Respondent. The Commission decided against a public letter of admonition because of what it viewed as obvious efforts by Respondent and the Firm to address disclosure and record-keeping inadequacies.

The Commission considered the following mitigating factors:

1. Respondent did not have primary responsibility for maintaining records at the Firm;
2. The Firm was working on updating disclosure documents prior to the SEC Investigation;
3. The SEC removed the civil money penalty against Respondent personally; and
4. There was no evidence of client complaints against Respondent or the Firm.

The Commission considered no aggravating factors.