

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 21787

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* (“Standards”) when he: 1) did not fully inform his client (“Client”) as to the nature of an investment he made for her and did not provide risk disclosure documents to her; 2) did not inform the Client about a civil suit he initiated against the company that offered the product; 3) did not research the company that offered the product before the Client invested in it; 4) commingled his investment funds with the Client’s; 5) used the CFP[®] marks while not certified; and 6) violated federal and state securities regulations.

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

In October 2007, Respondent disclosed on his Certification Renewal Application that the Client had filed a complaint against him with a state securities division (“SD”) regarding a promissory note Respondent sold to the Client in 1995.

In May 1995, Respondent invested \$100,000 of his own money in a project for a film production company (“Film Company”) to produce a film. In June 1995, Respondent informed the Client about the investment opportunity, a five-year, \$100,000 promissory note that would purportedly be worth \$150,000 at the end of five years. Respondent did not inform the Client that her funds would be used to finance film production. On June 23, 1995, the Client invested \$100,000 in the project.

In March 1996, Respondent filed a civil suit in United States District Court against the Film Company and the Film Company’s President (“President”) (together, “Defendants”). According to Respondent’s Complaint, he: 1) wired \$100,000 to Defendants in May 1995; and 2) delivered a check for \$100,000 to Defendants in June 1995. Respondent alleged intentional fraud, negligent misrepresentation and breach of contract on the part of Defendants and demanded rescission of the promissory note agreement and full restitution. Respondent did not identify the Client or any other individual as a Plaintiff in the Complaint.

In June 1998, Respondent prepared a portfolio appraisal that showed the Client that the investment had a value of \$133,000. In September 2008, in response to a CFP Board Request for Information, Respondent informed CFP Board that he had:

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1. Informed the Client of the lawsuit during a 1996 quarterly review meeting; and
2. Determined the \$133,000 value on the Client's investment based on Respondent's recollection that the investment would accrue simple interest of 10% (\$10,000) for the first year, 11% (\$11,000) for the second year and 12% (\$12,000) for the third year.

Respondent did not provide any documents to support the statements he made to CFP Board.

In April 2000, Respondent obtained a judgment in his favor in the civil suit. Respondent was unable to collect on the judgment. In October 2000, Respondent obtained an investigation report on the Defendants. The report showed that the President had a poor financial history.

In a written statement to CFP Board in September 2008, the Client stated that in June 2000, she asked Respondent to cash in her \$100,000 investment. Respondent replied that the investment was worthless, that the Film Company was bankrupt and that the President ran off with the invested funds. The Client also claimed that Respondent said he would pay back her \$100,000 investment. The Client had difficulty obtaining the full amount of her investment from Respondent and in June 2006, the Client filed a complaint with SD.

In September 2006, Respondent signed a Consent Order with SD. According to the Consent Order:

1. The investment product was not registered in the state and the transaction was a private securities transaction;
2. Respondent violated NASD Rule 3040 because he engaged in outside business activities without giving notice to his firm when he engaged in the transaction;
3. Respondent did not provide any risk disclosure documents to the Client;
4. Respondent did not ask the Client to complete a suitability questionnaire or a subscription agreement;
5. Respondent did not provide the Client with information as to how her \$100,000 investment was actually used; and
6. Respondent violated provisions of the state securities act for: 1) making false and misleading statements; 2) engaging in fraud, dishonest practices and misrepresentation; and 3) selling unregistered securities.

In September 2008, the Client informed CFP Board that Respondent did not prepare a written financial plan for her. Respondent had informed CFP Board in November 2007 that he had prepared a written financial plan for the Client. Respondent was not able to provide documents to support either statement.

The Client also informed CFP Board that Respondent was using the CFP® marks at a time when he was not certified. According to a March 22, 2004 Notice of Relinquishment from CFP Board, Respondent's right to use the CFP® marks expired in October 2003. The Client provided CFP Board with a copy of Respondent's business card and an e-mail showing that Respondent continued to use the CFP® marks after 2003. Respondent did not reinstate or renew his certification until December 2005.

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: 1) failed to provide the Client with information as to how her investment of \$100,000 was used; 2) failed to provide risk disclosure documents; and 3) failed to inform the Client that the investment was in an unregistered security. The Commission found that Respondent's failures to disclose information were false or misleading, and amounted to conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly making a false or misleading statement to the Client. Thus, Respondent violated Rule 102.

- B. *Rule 103(d) – A CFP Board designee shall not commingle client funds or other property with a CFP Board designee's personal funds and/or other property or the funds and/or other property of a CFP Board designee's firm.*

Based on Respondent's \$100,000 wire to the Film Company in May 1995 and delivery of a \$100,000 check to the Film Company in June 1995, the Commission determined that Respondent had combined his investment with the Client's. By combining his investment funds with his Client's, Respondent commingled his funds with the Client's. Thus, Respondent violated Rule 103(d).

- 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 professional judgment because he failed to: 1) provide the Client with risk disclosure documents for the investment; 2) include the Client as a Plaintiff in the civil suit; 3) inform the Client of the civil suit at the time of filing; 4) inform the Client of the award until 2000; and 5) provide a copy of the award to Client until 2004. Thus, Respondent violated Rule 201.

- D. *Rule 601 – A CFP Board designee shall use the marks in compliance with the rules and regulations of CFP Board, as established and amended from time to time.*

The Commission found that Respondent sent the Client an e-mail and a business card with the CFP® mark on them at a time when Respondent had relinquished his use of the CFP® marks. The Commission found that because Respondent used the marks while not certified, he failed to use the marks in compliance with CFP Board's rules and regulations. Thus, Respondent violated Rule 601.

E. 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.

The Commission found that Respondent failed to perform professional services in accordance with applicable laws, rules and regulations of a governmental agency because he signed the Consent Order with the SD, and consented to its finding that he violated NASD Rule 3040 and sections of the state securities act. Thus, Respondent violated Rule 606(a) of the *Code of Ethics*.

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.

The Commission found that Respondent:

1. Failed to provide the Client with information as to how her \$100,000 investment was actually used;
2. Failed to provide the Client with any risk disclosure document;
3. Failed to inform the Client the investment was an unregistered security;
4. Provided an apparently false portfolio appraisal to the Client;
5. Failed to inform the Client about Respondent's civil suit against the Film Company and its President;
6. Commingled his own funds with the Client's;
7. Failed to use the CFP[®] marks in compliance with the rules and regulations of CFP Board;
8. Failed to research the Film Company before the Client invested in it; and
9. Violated *Code of Ethics* Rules 102, 103(d), 201, 601, 606(a), 606(b), 701, and 704.

The Commission determined that these actions amounted to conduct which reflects adversely on a CFP Board designee's integrity or fitness, upon the marks and upon the profession. The Commission found that because Respondent engaged in such conduct, he violated Rule 607.

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

The Commission found that Respondent failed to provide services diligently because he: 1) failed to provide the Client with any risk disclosure document on her investment; 2) failed to prepare any document on the Client's investment objectives, risk tolerance or investment experience; and 3) failed to provide the Client with any research results on the financial stability of the Film Company before making the investment for the Client. As a result, Respondent violated Rule 701.

H. Rule 704 – Consistent with the nature and scope of the engagement, a CFP Board designee shall make a reasonable investigation regarding the financial products recommended to clients. Such an investigation may be made by the CFP Board designee or by others provided the CFP Board designee acts reasonably in relying upon such investigation.

The Commission found that Respondent did not make a reasonable investigation regarding the investment product he recommended to the Client because he: 1) failed to inform the Client that

the investment was an unregistered security; and 2) failed to research the financial stability of the Film Company before making the investment for the Client. Thus, Respondent violated Rule 704.

- I. *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 the above *Code of Ethics* rules, Respondent failed to perform services in accordance with the rules, regulations and policies of CFP Board. Thus, Respondent violated Rule 606(b).

IV. Discipline Imposed

The Commission found grounds for discipline based on Articles 3(a) and 3(g) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules"). Article 3(a) of the *Disciplinary Rules* states that any act or omission which violates provisions of the *Code of Ethics* constitutes grounds for discipline. Article 3(g) establishes grounds for discipline for any false or misleading statement made to CFP Board.

The Commission found Article 3(a) grounds for discipline because Respondent violated the *Code of Ethics* Rules discussed above. The Commission found Article 3(g) grounds for discipline because Respondent made a false statement to CFP Board. The Commission found that Respondent's statement that he prepared a written financial plan for the Client was false when: 1) he could not provide documents to support the statement; and 2) the Client informed CFP Board that Respondent never prepared a financial plan for her.

The Commission issued an Order to Revoke Permanently the Respondent's right to use the CFP[®], CERTIFIED FINANCIAL PLANNER[™] and  certification marks. No mitigating or aggravating factors were considered.