

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES

NUMBER 21894

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 his employer (“Broker Dealer”) found that he had violated its policies by signing documents for a client (“Client”) without written authorization from the Broker Dealer and by not reporting outside activities to the Broker Dealer.

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

In December 2007, Respondent disclosed on his CFP® Certification Renewal Application that he was the subject of a 2007 Financial Industry Regulatory Authority (“FINRA”, f/k/a National Association of Securities Dealers or NASD) arbitration. In July 2007, Respondent’s client filed a customer complaint with FINRA alleging that Respondent: 1) purchased several annuity policies without fully explaining the terms of the contracts to the Client; and 2) signed the Client’s name to the applications and contracts without his permission or power of attorney.

In July 2007, the Client also filed a customer complaint with the Broker Dealer. Respondent was discharged by the Broker Dealer for failure to follow firm policies regarding the reporting of outside activities and for acting upon the Client’s verbal instructions to sign the Client’s name on various documents.

In August 2008, during a telephone conversation with CFP Board Staff, Respondent said the annuities were purchased with the knowledge and verbal authorization of the Client.

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 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 his Broker-Dealer’s policy when he: 1) failed to report outside business activities; and 2) failed to obtain written permission prior to signing clients’ names to documents. Thus, Respondent violated Rule 406.

ACH 21894

- 1 -

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.

The Commission found that Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he: 1) failed to report outside business activities; and 2) failed to obtain written permission prior to signing clients' names to documents. Thus, Respondent violated Rule 606(a).

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.

The Commission found that Respondent failed to perform services in accordance with CFP Board rules, regulations and policies because he violated Rules 406, 606(a) and 607 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.

The Commission found that Respondent engaged in conduct which reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession because he failed to disclose outside business activities to the firm, which resulted in a violation of firm policy. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules") provides grounds for discipline for violation of the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) based on the above *Code of Ethics* rule violations. The Commission issued a Private Censure to Respondent pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors:

1. Respondent had a clean record spanning 35 years; and
2. The Client did not surrender or transfer the annuities at issue.

The Commission considered the following aggravating factors:

1. Evidence of Respondent's poor business practices abounded in the annuity applications; and
2. The Client was awarded a cash settlement in arbitration that was paid entirely by Respondent.