CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22103

This is a summary of a decision issued following the February 2011 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. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) persistently failed to properly document customer transactions and was subsequently terminated by his firm and investigated by the Financial Industry Regulatory Authority, Inc. ("FINRA", formerly known as the National Association of Securities Dealers, or "NASD"); and 2) continued to act as a compliance officer in some capacity, despite entering into a Letter of Understanding wherein he agreed to no longer act as a compliance officer.

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

In February 2008, Respondent disclosed his involvement in an internal review and termination by his former firm ("Firm 1") and a related FINRA inquiry ("2007 FINRA Inquiry"). During a routine background check, CFP Board discovered that the State Division of Securities ("Division") restricted Respondent's registration in the state ("2007 Restriction on Registration").

In April 2007, Firm 1 terminated Respondent's employment for persistent documentation problems with customer transactions. Firm 1 discussed documentation concerns with Respondent, including concerns related to the use of white-out on documents and the lack of documentation related to the suitability of investments. In its internal review, Firm 1 found continuing documentation concerns, including missing documentation, conflicting information on multiple forms, and surrender charges and other fees being altered on a blank form signed by Respondent and a client. The 2007 FINRA Inquiry related to the termination was closed with no action.

In February 2007, the Division issued an Order to Show Cause Why Registration Should Not Be Revoked ("2007 Show Cause Order") to the Firm. According to the 2007 Show Cause Order, in 2004, the Division initiated an investigation into the activities of two supervised employees and found that they misappropriated customer funds and/or improperly sold annuities while employed in a branch of Firm 1. According to Respondent, he was a licensed Series 24 supervisor for the Branch Office at the time.

In November 2004, the Division and Firm 1 entered into a Letter of Understanding ("2004 Letter of Understanding"). Pursuant to the 2004 Letter of Understanding, the Division required Firm 1 to identify a compliance officer in the state other than Respondent. According to the 2007 Show Cause Order, the intent of the 2004 Letter of Understanding was to prohibit Respondent from acting in any supervisory capacity in the state. According to the 2007 Show Cause Order, however, the Division determined that Respondent continued to act as a compliance officer in some capacity, as he continued to receive an override commission on all sales.

In May 2007, Respondent applied for registration as a representative of a different firm ("Firm 2"). In June 2007, Respondent signed an Agreement for Conditional Registration with the Division. Respondent agreed, among other provisions, to heightened supervision by Firm 2, a prohibition from supervisory duties or responsibilities and a prohibition from training other agents or participating in any training seminars in any capacity other than as a participant.

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 found that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he continued to receive an override commission on all sales despite the supervisory prohibition contained in the 2004 Letter of Understanding. Thus, Respondent violated Rule 201.

B. 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 when he continued to receive an override commission on all sales despite the supervisory prohibition contained in the 2004 Letter of Understanding. Thus, Respondent violated Rule 406.

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, by violating Rules 201, 406 and 607 of the *Code of Ethics*, Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board. 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 that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks and upon the profession when he continued to receive an override commission on all sales despite the supervisory prohibition contained in the 2004 Letter of Understanding. 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 any act or omission that violates the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 201, 406, 606(b) and 607 of the *Code of Ethics*. Pursuant to Article 4.1 of the *Disciplinary Rules*, the Commission issued a Private Censure to Respondent.

The Commission considered that Respondent provided evidence of correspondence over a span of several years indicating his concerns regarding his apparent supervisory position to his firm's management as a mitigating factor.

The Commission considered that Respondent had prior disciplinary history with CFP Board as an aggravating factor.