

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22183

The following is a summary of a decision issued following the November 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® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he lied to his employer about his use of prohibited solicitation materials, resulting in a Letter of Caution from the National Association of Securities Dealers (“NASD”).

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

In a Settlement Agreement entered into with the Commission, Respondent consented to the facts presented below.

In 2005, Respondent began using presentation materials related to his employer’s Investment Advisory (“IA”) program, which was for use by approved financial advisors of the firm. Respondent had not been approved by his firm to use the IA program.

Respondent’s manager provided him with the presentation materials, which included graphs displaying the performance of the IA program for the period 1997-2005 (“Prohibited Materials”). Respondent used the IA program at home shows beginning in September 2005. To improve interest in the IA program, Respondent also used the Prohibited Materials.

In December 2005, the firm’s management confronted Respondent about his use of the Prohibited Materials. According to Respondent, he stated initially that he did not use the Prohibited Materials. After the Prohibited Materials were found in Respondent’s office, Respondent admitted to his employer that he had used the graphs.

Respondent’s misrepresentations regarding his use of the Prohibited Materials in client presentations led to his termination and a subsequent NASD investigation. In Respondent’s response to an NASD inquiry, Respondent admitted that he lied to his employer about using the Prohibited Materials. The NASD investigation resulted in a Letter of Caution issued by NASD staff. The NASD staff found that Respondent violated NASD Conduct Rule 2110 for failing to observe high standards of commercial honor and just and equitable principles of trade when he lied about using the Prohibited Materials.

In Respondent’s undated response to NASD, he incorrectly used the CFP® certification mark. In two instances, Respondent placed “CFP” after his name without the required ®.

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.*

The Commission found that in Respondent's response to NASD's inquiry, he admitted that he lied to his employer about using the Prohibited Materials. Thus, Respondent engaged in conduct engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 102.

- B. *Rule 601 – A CFP Board designee shall use the marks in compliance with the rules and regulations of CFP Board.*

The Commission determined that Respondent used "CFP" without the required ® in his response to NASD. Thus, Respondent violated Rule 601.

- C. *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 violated NASD Conduct Rule 2110. Thus, Respondent violated Rule 606(a).

- 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 Respondent did not perform services in accordance with applicable rules, regulations and other established policies of CFP Board when he violated Rules 102, 601, 606(a) and 607 of the *Code of Ethics*. Thus, Respondent violated Rule 606(b).

- E. *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 lied to the firm's management when asked whether he had used the Prohibited Material in a client presentation. As a result of his conduct, Respondent's employment was terminated and he was issued a Letter of Caution by NASD staff. The Commission found that Respondent's conduct reflected adversely on the integrity and fitness of Respondent, upon the marks, and upon the profession. 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 a violation of the *Code of Ethics*. The Commission found Article 3(a) grounds for discipline based on its finding that Respondent violated the above *Code of Ethics* rules.

Respondent submitted an Offer of Settlement to the Commission. The Commission proposed a Counter-Offer, wherein Respondent acknowledged the above facts and rule violations. The Commission issued a Public Letter of Admonition to Respondent in accordance with the Settlement Agreement.

The Commission considered the lack of client harm as a mitigating factor.

The Commission considered the following aggravating factors:

1. Respondent made a misrepresentation to a supervisor; and
2. Respondent was issued a NASD Letter of Caution.