CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22305

This is a summary of a decision issued following the June 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) accepted a $100,000 loan from a client, which violated his firm's policy against borrowing from clients; 2) failed to repay the client's loan according to the original terms of the promissory note; 3) failed to disclose any potential conflicts of interest and the risks associated with the promissory note; 4) failed to determine whether the promissory note he executed with his client was appropriate for his client; and 5) allowed the client to purchase a piece of real estate for Respondent's benefit; and 6) failed to disclose any potential conflicts of interest and the risks associated with the client's purchase of a piece of real estate.

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

In June 2002, Respondent asked a client to lend him $75,000 because of financial hardships Respondent was experiencing. Respondent executed a Promissory Note ("Note") for $75,000. The entire indebtedness was due and payable in March 2007. Respondent failed to disclose any potential conflicts of interest and the risks associated with the Note. Shortly after executing the Note, Respondent asked his client to lend him an additional $25,000. The Note was re-executed in 2004, combining the Note with the additional $25,000 loan into one promissory note for $100,000 ("2004 Note"). Respondent failed to pay his client the principal and interest owed by the due date.

In June 2007, Respondent and his client agreed to amend the terms of repayment of the 2004 Note ("Amended 2004 Note"). Respondent complied with the repayment terms of the Amended 2004 Note, repaying the loan in full by July 2007.

From 2003-2005, Respondent advised the same client to invest in beachfront real estate. The client invested in several properties for his own benefit. In August 2005, Respondent asked his client to purchase a piece of property for Respondent's benefit. Respondent and his client agreed that the client would title the property in his name, pay the mortgage and allow Respondent to reimburse the client for the mortgage payments. The client would transfer ownership of the property to Respondent once the mortgage was paid in full. Respondent failed to disclose any potential conflicts of interest and the risks associated with the purchase of this piece of property.

Respondent acknowledged his termination from his firm for accepting the loan from his client. Although Respondent stated that he fully disclosed all aspects of the loan to his firm, it asked him to voluntarily resign from the broker-dealer.

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 determined that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he accepted a $100,000 loan from a client. Respondent admitted he exercised poor judgment by accepting the loan. Therefore, Respondent violated *Code of Ethics* Rule 201.

B. *Rule 201 – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.*

The Commission determined that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he failed to repay a client's loan according to the original terms of the Note and the 2004 Note. Respondent admitted he exercised poor judgment by failing to repay the loan according to the original terms of the 2004 Note. Therefore, Respondent violated *Code of Ethics* Rule 201.

C. *Rule 201 – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.*

The Commission determined that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he: 1) failed to disclose any potential conflicts of interest and the risks associated with the Note, the 2004 Note and the Amended 2004 Note; and 2) failed to disclose any potential conflicts of interest and the risks associated with the purchase of the real estate for Respondent's benefit. Respondent admitted he exercised poor judgment by purchasing the real estate. Therefore, Respondent violated *Code of Ethics* Rule 201.

D. *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 determined that Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he accepted a loan from a client in violation of his firm's policy against borrowing from clients. Respondent's firm terminated his employment as a registered representative with its broker-dealer due to his violation of firm policy. Therefore, Respondent violated *Code of Ethics* Rule 406.

E. *Rule 409 – If a CFP Board designee enters into a personal business transaction with a client, separate from regular professional services provided to that client, the transaction shall be on terms which are fair and reasonable to the client and the CFP Board designee shall disclose, in writing, the risks of the transaction, conflict(s) of interest of the CFP Board designee, and other relevant information, if any, necessary to make the transaction fair to the client.*

The Commission determined that Respondent failed to enter into a personal business transaction with a client on terms which are fair and reasonable to the client when he: 1) failed to disclose any potential conflicts of interest and the risks associated with the Note, the 2004 Note and the Amended 2004 Note; and 2) failed to disclose any potential conflicts of interest and the risks associated with the client's purchase of real estate for Respondent's benefit. Therefore, Respondent violated *Code of Ethics* Rule 409.

F. *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 determined that Respondent failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when he: 1) accepted a $100,000 loan from a client, which violated his firm's policy against borrowing from clients; 2) failed to repay the client's loan according to the original terms of the Note and the 2004 Note; 3) failed to disclose any potential conflicts of interest and the risks associated with the Note, the 2004 Note and the Amended 2004 Note; 4) failed to determine whether the Note, the 2004 Note and the Amended 2004 Note were appropriate for his client; 5) allowed the client to purchase a piece of real estate for Respondent's benefit; and 6) failed to disclose any potential conflicts of interest and the risks associated with the client's purchase of real estate for Respondent's benefit. Therefore, Respondent violated Rules 201, 406, 409, and 607, thus also violating *Code of Ethics* Rule 606(b).

G. *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 determined that Respondent engaged in conduct reflecting adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he: 1) accepted a $100,000 loan from a client, which violated his firm's policy against borrowing from clients; 2) failed to repay the client's loan according to the original terms of the Note and the 2004 Note; 3) failed to disclose any potential conflicts of interest and the risks associated with the Note, the 2004 Note and the Amended 2004 Note; 4) failed to determine whether the Note, the 2004 Note and the Amended 2004 Note were appropriate for his client; 5) allowed the client to purchase a piece of real estate for Respondent's benefit; and 6) failed to disclose any potential conflicts of interest and the risks associated with the client's purchase of real estate for Respondent's benefit. Therefore, Respondent violated *Code of Ethics* 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, 409, 606(b) and 607 of the *Code of Ethics*. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a three month suspension.

The Commission considered no mitigating factors.

In aggravation, the Commission considered that Respondent significantly delayed repayment of his client's loan.

V. Appeals Committee Decision

Respondent appealed the Commission's decision. The Appeals Committee affirmed the Commission's factual findings and discipline.