

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22350

This is a summary of a decision issued following the February 2010 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 performed supervisory functions without proper registration and received a Financial Industry Regulatory Authority, Inc. (“FINRA” formerly known as National Association of Securities Dealers or “NASD”) suspension and fine as a result.

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

In 2008, following a FINRA investigation, Respondent entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with FINRA. Pursuant to the AWC, Respondent consented to the entry of findings that he performed certain supervisory functions requiring principal registration without being registered with FINRA in that capacity, in violation of NASD Membership and Registration Rule 1021 and NASD Conduct Rule 2110. FINRA had previously warned Respondent against acting in a supervisory capacity without principal registration. Pursuant to the AWC, FINRA fined Respondent \$15,000 and suspended him from association with any FINRA member in any capacity for six months.

Respondent failed to notify CFP Board of his professional suspension within 10 calendar days of the suspension, as required by Article 12.2 of CFP Board’s *Disciplinary Rules and Procedures* (“Disciplinary Rules”).

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 the Code of Ethics.*

The Commission found that Respondent consented to the entry of findings that he performed certain supervisory functions requiring principal registration without being registered with FINRA in that capacity, in violation of NASD Membership and Registration Rule 1021 and NASD Conduct Rule 2110. The Commission determined that Respondent’s conduct could have subjected his employer to civil liability or penalty. Based on its findings, the Commission

determined that Respondent failed to perform professional services with dedication to the lawful objectives of his employer and in accordance with CFP Board's *Code of Ethics*. Thus, Respondent violated Rule 406.

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 consented to the entry of findings in the FINRA AWC that he violated NASD Membership and Registration Rule 1021 and NASD Conduct Rule 2110. Based on its findings, the Commission determined that Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities. 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 conduct which reflects adversely on integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.

The Commission found that Respondent consented to the entry of findings that he performed certain supervisory functions requiring principal registration without being registered with FINRA in that capacity, in violation of NASD Membership and Registration Rule 1021 and NASD Conduct Rule 2110. Based on its findings, the Commission determined 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. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(e) of the *Disciplinary Rules*. Article 3(a) provides grounds for discipline for a violation of the *Code of Ethics*. The Commission found Article 3(a) grounds for discipline because Respondent violated the above *Code of Ethics* rules. Article 3(e) provides grounds for discipline for an act or omission that violates the *Disciplinary Rules*. The Commission found Article 3(e) grounds for discipline because Respondent failed to notify CFP Board within 10 days of his notification of the suspension, as required by Article 12.2 of the *Disciplinary Rules*.

The Commission issued a suspension of Respondent's right to use the CFP® marks for one year and one day pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors:

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1. External personal or family issues may have been a factor in Respondent's failure to secure proper licensing; and
2. Respondent disclosed the pending FINRA investigation against him to CFP Board.

The Commission considered as an aggravating factor that Respondent received a clear warning from FINRA about his need for supervisory authority and ignored the warning for several years.

V. Appeals Committee Decision

Respondent appealed the Commission's decision. The Appeals Committee affirmed the Commission's factual findings and modified the sanction imposed by the Commission from a suspension of one year and one day to a Public Letter of Admonition, pursuant to Article 4.2 of the *Disciplinary Rules*. In determining that the discipline imposed by the Commission was clearly erroneous, the Appeals Committee felt that the nature of the offense did not justify the severity of the Commission's disciplinary sanction of a suspension for one year and one day.