

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 22451

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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<sup>®</sup> certificant (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* (“Standards”) when he: 1) sold promissory notes to individuals who were not customers of his broker-dealer (“Broker-Dealer”) without notice to the Broker-Dealer; and 2) received compensation for the sale of the promissory notes without permission from the Broker-Dealer.

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

CFP Board alleged the following facts in its Complaint:

1. In his July 2008 Renewal Application, Respondent disclosed his involvement in two 2007 civil suits and his agreement to a Financial Industry Regulatory Authority (“FINRA”, f/k/a National Association of Securities Dealers or NASD) Acceptance Waiver and Consent (“AWC”).
2. The two claimants (“Claimants”) in the 2007 civil suits were clients of an organization (“Organization”) that conducted quarterly seminars on real estate and other investment opportunities.
3. According to Respondent, he made his first contact with the Claimants prior to June 2003, shortly after becoming employed by the Broker-Dealer.
4. Between August and October 2003, Respondent sold Claimants promissory notes issued by another company (“Company”). The promissory notes were not registered as securities at the time of sale, and Claimants were not customers of the Broker-Dealer.
5. According to the AWC, Respondent received commissions for the sale of the promissory notes. According to Respondent, he did not work for the Company and received compensation from a company affiliated with the Organization.
6. Respondent did not give his employer, Broker-Dealer, prior written notice about the promissory note transactions with Claimants.
7. In May 2006, the Company defaulted on the promissory notes. Respondent and the Company were named in the two 2007 civil suits. The allegations against Respondent were dismissed in each suit.
8. According to the AWC, Respondent violated NASD Conduct Rules 2110 and 3040 and was suspended for 14 months.
9. In March 2009, CFP Board sent requests for information to Respondent for his narrative responses and supporting documents. Respondent sent his narrative responses to CFP Board but did not provide supporting documents.
10. In May 2009, CFP Board sent a Complaint to Respondent. Respondent did not acknowledge or respond to the Complaint.

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### III. Commission's Analysis and Conclusions Regarding Rule Violations

CFP Board alleged the following rule violations and grounds for discipline in its Complaint:

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

Respondent failed to exercise reasonable and prudent professional judgment in providing professional services because he failed to: 1) notify his employer, Broker-Dealer, of the promissory note transactions; and 2) obtain Broker-Dealer's permission prior to receiving compensation for the sale of the promissory notes. Thus, Respondent violated Rule 201.

- B. *Rule 302 – A CFP Board designee shall offer advice only in those areas in which the CFP Board designee has competence. In areas where the CFP Board designee is not professionally competent, the CFP Board designee shall seek the counsel of qualified individuals and/or refer clients to such parties.*

Respondent failed to offer advice only in those areas in which he had competence because he offered the promissory notes to the Claimants. Respondent was not competent to offer promissory notes to the Claimants as a suitable investment because: 1) he was not employed by the Company or compensated by it; and 2) he did not provide any information to show that he was familiar with the needs of the Claimants or that the promissory notes were suitable for the Claimants. Respondent also failed to refer the Claimants to an individual who was competent to offer and sell promissory notes as a suitable investment. Thus, Respondent violated Rule 302.

- C. *Rule 401(a) – In rendering professional services, a CFP Board designee shall disclose to the client material information relevant to the professional relationship, including conflict(s) of interest, the CFP Board designee's business affiliation, address, telephone number, credentials, qualifications, licenses, compensation structure and any agency relationships, and the scope of the CFP Board designee's authority in that capacity.*

Respondent failed to disclose to clients material information relevant to the professional relationship because he did not disclose to Claimants: 1) any potential conflict of interest; 2) his business affiliation; or 3) the compensation structure for the sale of the promissory notes. Thus, Respondent violated Rule 401(a).

- 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.*

Respondent failed to perform professional services with dedication to the lawful objectives of his employer because he violated FINRA rules when he participated in private securities transactions without providing prior written notice to the Broker-Dealer, as shown in the AWC. Thus, Respondent violated Rule 406.

E. *Rule 408 – A CFP Board designee shall inform his/her employer, partners or co-owners of compensation or other benefit arrangements in connection with his or her services to clients, which are in addition to compensation from the employer, partners or co-owners for such services.*

Respondent failed to inform his employer of compensation or other benefit arrangements in connection with his services to clients because he did not inform the Broker-Dealer of the commissions he received for sale of the promissory notes. Thus, Respondent violated Rule 408.

F. *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.*

Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies because he violated NASD Conduct Rules 2110 and 3040 as found in the AWC. Thus, Respondent violated Rule 606(a).

#### IV. Discipline Imposed

CFP Board alleged grounds for discipline under Articles 3(d), 3(e) and 3(f) of the *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”). Article 3(d) provides grounds for discipline for any act which is the proper basis for professional suspension. CFP Board alleged Article 3(d) grounds for discipline because Respondent violated NASD Conduct Rules 2110 and 3040, which led to his FINRA suspension. Article 3(e) provides grounds for discipline for any act or omission which violates the *Disciplinary Rules*. CFP Board alleged Article 3(e) grounds for discipline because Respondent failed to report his suspension within 10 calendar days as required by Article 12.2 of the *Disciplinary Rules*. Article 3(f) provides grounds for discipline for failure to respond to a request by CFP Board. CFP Board alleged Article 3(f) grounds for discipline because Respondent failed to supply information requested by CFP Board.

Article 7.4 of the *Disciplinary Rules* provides that allegations from CFP Board’s Complaint shall be deemed admitted if a CFP Board designee fails to file an Answer within 20 calendar days from the date of service of the Complaint, as provided in Article 7.3. The Commission deemed that the above facts and violations be admitted because Respondent did not file an Answer to the Complaint. Based on the above rule violations and grounds for discipline, the Commission issued an Order to Revoke Permanently the Respondent’s right to use the CFP<sup>®</sup>, CERTIFIED FINANCIAL PLANNER<sup>™</sup> and  certification marks pursuant to Article 7.4.