

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22505

This 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. Issues Presented

Whether a CFP[®] professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) forged a client’s signature by cutting and pasting the signature from one document to another; 2) disclosed client information to third parties without authorization from the client; 3) mailed a solicitation in potential violation of a non-compete agreement between an employee and the employee’s former firm; 4) misrepresented to his partner that he had sought the advice of counsel prior to mailing the solicitation; and 5) received a 15-day professional suspension from a state regulator.

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

Respondent provided client account numbers, account balances, an account balance sheet and account position reports to a third party involved in a lawsuit against the client. Respondent also provided a charity with the names of clients that he thought would support the charity, so the charity could solicit donations from the clients. Respondent served as a steering committee chairperson of the charity. Respondent admitted that he should not have provided the client names without obtaining each client’s consent.

Respondent’s firm began to have preliminary employment discussions with an employee of another firm. Pursuant to these discussions, Respondent’s corporate counsel reviewed the non-compete agreement to which the employee was subject. The employee joined the firm in November 2008. Shortly thereafter, Respondent and his partner discussed mailing a solicitation to the employee’s former clients. The solicitation letter was mailed and garnered a response from the employee’s former firm reminding him of his obligation to honor the non-compete agreement. Respondent stated that he contacted the firm’s corporate attorney to discuss the mailing. Further, Respondent stated that he informed his partner and the employee that he had discussed the mailing with the firm’s attorney. Respondent’s former partner stated to CFP Board that when he asked the firm’s attorney whether he had reviewed the solicitation letter, the attorney stated that he “had not seen, discussed, or approved the solicitation letter.”

Respondent instructed an employee to cut and paste clients’ signatures from one document to a proper transfer form, without obtaining the clients’ consent. These actions resulted in a state regulatory investigation and Order of Censure, Prohibition and Suspension (“Order”). The Order provided for a censure, a prohibition from acting in a supervisory capacity for any broker-dealer or investment advisor, and a 15 day suspension should Respondent be approved for registration as a broker-dealer, securities agent, investment advisor or investment advisor representative.

ACH 22505

- 1 -

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, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

The Commission determined that by failing to obtain client signatures on a transfer form, then cutting and pasting the signatures to the form, Respondent engaged in dishonest and deceitful conduct. Thus, Respondent violated Rule 102.

- 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 when he instructed an employee to cut and paste clients' signatures onto a form without their consent. Thus, Respondent violated Rule 201.

- C. *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 mailed a solicitation letter to a new employee's clients, when the employee was subject to a non-compete agreement with his previous employer. The Commission found that Respondent's solicitation subjected his firm to a potential breach of contract claim. As a result of mailing the solicitation in violation of the employees' non-compete agreement, the Commission determined that Respondent failed to perform professional services with dedication to the lawful objectives of his employer and in accordance with the *Code of Ethics*. Thus, Respondent violated Rule 406.

- D. *Rule 501 – A CFP Board designee shall not reveal – or use for his or her own benefit – without the client's consent, any personally identifiable information relating to the client relationship or the affairs of the client, except and to the extent disclosure or use is reasonably necessary*

The Commission determined that Respondent provided, without prior consent, client information to third parties. Thus, Respondent violated Rule 501.

- E. *Rule 503 – A CFP Board designee doing business as a partner or principal of a financial services firm owes the CFP Board designee's partners or co-owners a responsibility to act in good faith.*

The Commission determined that Respondent misrepresented to his partner and an employee that he had obtained the advice of counsel regarding the legality of the solicitation to a new employee's client, when in fact, he had not. By making untrue statements to his partner and an employee, the Commission determined that Respondent failed to act in good faith toward partners and co-owners. Thus, Respondent violated Rule 503.

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 found that Respondent failed to perform services in accordance with CFP Board rules, regulations and policies because he violated *Code of Ethics* Rules 102, 201, 406, 501, 503, 606(a) and 607 as discussed herein. Thus, Respondent violated 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 found that Respondent engaged in conduct which reflected adversely on his integrity or fitness as a CFP Board designee, upon the marks and upon the profession because he: 1) cut and pasted client signatures from one document to another; 2) disclosed client information to third parties without authorization from the client; 3) mailed a solicitation in potential violation of an employee's non-compete agreement; 4) misrepresented to his partner that he had sought the advice of counsel on the non-compete agreement prior to mailing the solicitation; and 5) received a 15-day professional suspension from the a state regulator. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline based on Articles 3(a) and 3(e) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules"). Article 3(a) of the *Disciplinary Rules* states that any act or omission which violates provisions of the *Code of Ethics* constitutes grounds for discipline. Article 3(e) establishes grounds for discipline for any act or omission which violates the provisions of the *Disciplinary Rules* or an order of discipline. The Commission found Article 3(a) grounds for discipline because Respondent violated the *Code of Ethics* rules discussed above. The Commission found Article 3(e) grounds for discipline because Respondent failed to disclose a suspension of his professional license within 10 calendar days.

The Commission issued an Order to Revoke the Respondent's right to use the CFP[®], CERTIFIED FINANCIAL PLANNER[™] and  certification marks. As a mitigating factor, the Commission cited Respondent's severe health problems and an apparent redemptive desire to perform charitable work. As an aggravating factor, the Commission cited the egregiousness of Respondent's conduct.