

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22516

This is a summary of a Settlement Agreement approved at 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. Issue Presented

Whether a CFP[®] professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) failed to reasonably supervise a registered representative (“Representative”); and 2) did not respond adequately to red flags that should have alerted him that the Representative’s transactions were unsuitable for her customers.

II. Findings of Fact

In October 2010, Respondent entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with the Financial Industry Regulatory Authority (“FINRA”). In the AWC, Respondent consented to the entry of findings that as a principal and branch office manager with his firm from September 2003 through May 2006, Respondent was responsible for supervising the Representative. Respondent’s duties generally included approving new accounts and reviewing and approving trades, including variable annuities transactions.

According to the AWC, the Representative’s sales primarily involved variable annuities purchased by elderly clients. After several customers complained about the Representative’s variable annuity transactions, Respondent’s firm placed the Representative under heightened supervision. In 2004, Respondent and the Representative signed a heightened supervision agreement that required Respondent to: 1) pre-approve all of the Representative’s annuity business and new account openings; 2) speak with each of the Representative’s customers aged 65 or older; and 3) help the Representative diversify her business.

According to the AWC, Respondent approved the transactions despite numerous red flags that should have alerted him to their potential unsuitability. The AWC concluded with the finding that Respondent failed to take appropriate action that was reasonably designed to detect and prevent the Representative’s violations.

In the AWC, Respondent consented to findings that he violated NASD Rules 3010 and 2110 when he: 1) failed to reasonably supervise the Representative from September 2003 through May 2006; and 2) did not respond adequately to red flags that should have alerted him that the Representative’s transactions were unsuitable for her customers. Pursuant to the AWC, FINRA

ACH 22516

-1-

issued Respondent a five-month suspension from acting in any supervisory or principal capacity with any member firm and a \$10,000 fine.

III. Rule Violations

- A. *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 when he violated NASD Rules 3010 and 2110 by: 1) failing to reasonably supervise the Representative from September 2003 through May 2006; and 2) not responding adequately to red flags that should have alerted him that the Representative's transactions were unsuitable for her customers. Thus, Respondent violated *Code of Ethics* Rule 606(a).

- B. *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.*

By violating Rules 606(a), 607, 701 and 705, Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board. Thus, Respondent violated *Code of Ethics* Rule 606(b).

- C. *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.*

Respondent engaged in conduct that reflects adversely on his integrity or fitness as a CFP Board designee, upon the marks and upon the profession when he: 1) failed to reasonably supervise the Representative from September 2003 through May 2006; and 2) did not adequately respond to red flags that should have alerted him that the Representative's transactions were unsuitable for her customers, both of which resulted in violations of NASD Rules 3010 and 2110 and FINRA discipline. Thus, Respondent violated *Code of Ethics* Rule 607.

- D. *Rule 701 – A CFP Board designee shall provide services diligently.*

Respondent failed to provide services diligently when he failed to properly supervise the Representative or take appropriate action to detect and prevent the Representative's unsuitable transactions. Thus, Respondent violated *Code of Ethics* Rule 701.

- E. *Rule 705 – A CFP Board designee shall properly supervise subordinates with regard to their delivery of financial planning services, and shall not accept or condone conduct in violation of this Code of Ethics.*

Respondent failed to properly supervise a subordinate with regard to her delivery of financial planning services when he failed to: 1) reasonably supervise the Representative from September 2003 through May 2006; and 2) adequately respond to red flags that should have alerted him that the Representative's transactions were unsuitable for her customers. Thus, Respondent violated *Code of Ethics* Rule 705.

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 606(a), 606(b), 607, 701 and 705 of the *Code of Ethics*. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the above Findings of Fact and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a three-month suspension of his right to use the CFP® certification marks, pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors:

1. Respondent did not receive a full professional suspension;
2. Respondent did take some steps to supervise by contacting and meeting with the Representative;
3. Respondent voluntarily relinquished his Series 23 license, indicating that he appreciated the gravity of his supervisory lapses;
4. Respondent fully cooperated with CFP Board during the investigation;
5. Respondent maintained a clean industry record for 25 years; and
6. Respondent has been an engaged member of financial planning associations.

The Commission considered as an aggravating factor the large number of complaints against the Representative.