

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22702

This is a summary of a decision issued following the March 2008 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® certificant (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) recommended that a client (“Client”) invest her entire individual retirement account (“IRA”) portfolio in equity mutual funds; 2) illustrated the performance of the equity funds to the Client with an inappropriately high rate of return; and 3) did not obtain further information from the Client after she indicated conflicting investment goals.

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

In December 1999, Respondent met with the client (“Client”) to discuss retirement benefits options. The Client was given three options by her employer: 1) a lump sum distribution; 2) a Single Life Annuity with a monthly distribution; and 3) a Survivor Annuity. Following the meeting with Respondent, the Client chose the lump sum distribution. Respondent then sent a letter to the Client advising her to invest in equity mutual funds to diversify her retirement plan. Respondent presented the Client with an illustration of the equity mutual funds in the sub-accounts of a variable annuity program that assumed a net rate of return of 9.85%.

In June 2000, the Client signed an IRA Rollover Agreement. The Client also filled out a Fact Finder that indicated her investment objectives as income and long-term growth and her risk exposure as low and partially aggressive. In August 2000, the Client purchased Class B equity mutual funds (“Equities”) with nearly all of her IRA funds. The Equities were split between four funds recommended by Respondent.

In June 2006, the Client filed a claim with the National Association of Securities Dealers (“NASD”) alleging that Respondent: 1) recommended Equities that were unsuitable; 2) misrepresented the risks associated with Equities; 3) failed to supervise the account; and 4) breached his fiduciary duty to the Client. Respondent filed an Answer to the claim stating that the Client acted against his advice and attempted to time the market. In May 2007, an NASD Arbitration Panel dismissed the claims in their entirety with prejudice and held that the claims were time barred by a statute of limitations.

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 found that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services because he: 1) recommended a portfolio of only Equities and put the Client's entire lump sum into Equities when the Client wanted a dedicated income stream; and 2) used an inappropriate variable annuity illustration that reflected a net rate of return of 9.85%. Thus, the Respondent violated Rule 201.

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

The Commission found that Respondent failed to provide services diligently. The Commission determined that Respondent was not thorough in obtaining information from the Client to clarify the Client's investment objectives after she gave Respondent a conflicting description of her risk exposure as low and partially aggressive, then wanted her entire account to be invested in Equities. Thus, Respondent violated Rule 701.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(g) of CFP Board's *Disciplinary Rules and Procedures* ("*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(g) provides grounds for discipline for providing false or misleading statements to CFP Board. The Commission found Article 3(g) grounds for discipline because Respondent made a false statement on the Declaration Section of his Initial Certification Application when he denied involvement in any civil action relating to his professional conduct.

The Commission issued a Private Censure to Respondent in accordance with Article 4.1 of the *Disciplinary Rules*. The Commission advised the Respondent to:

1. Be properly trained in the services he chooses to provide to the public;
2. Not accept clients he does not have the expertise to handle;
3. Document all steps of the financial planning process;
4. Help clients define their objectives thoroughly;
5. Review all alternatives to be considered by the client;
6. Not merely give the clients the answer they want to hear; and
7. Use appropriate sales illustrations.

The Commission considered the following mitigating factors:

1. Respondent is relatively new to the business;
2. The 10 year bull market created an unreasonable expectation in investors; and
3. Respondent was working with a difficult client.

The Commission considered no aggravating factors.