

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES

NUMBER 22798

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This is a summary of a decision issued following the July 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 candidate for CFP® certification (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* (“Standards”) when he placed an incorrect date, at his client’s request, next to his branch office manager’s (“Manager”) signature on several documents.

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

In 2008, Respondent disclosed his involvement in the following matters on his Initial Certification Application (“Application”): 1) a 1999 internal investigation by his broker-dealer (“Firm Investigation”) that resulted in his being issued a letter of reprimand; and 2) a 2007 civil suit. While conducting its investigation of the above matters, CFP Board discovered Respondent’s involvement in the following additional matters: 1) a 1992 NASD Arbitration; 2) a 1996 NASD Arbitration; and 3) a 1999 New York Stock Exchange (“NYSE”) investigation. In a Settlement Agreement entered into with the Commission, Respondent consented to the facts presented below.

The 1992 NASD Arbitration was settled for \$750 with no individual contribution from Respondent. Respondent was dismissed from the 1996 NASD Arbitration prior to settlement, and Respondent’s broker-dealer settled the 1996 NASD Arbitration for \$4,500. In 2007, a former client filed a civil suit against Respondent and was ordered to resolve the dispute through arbitration. The case was dismissed without prejudice.

According to a statement from Respondent to the NYSE, in November 1994, a client law firm (“Firm”) established a profit sharing plan (“Profit Sharing Plan”) with Respondent’s broker-dealer. Respondent was the account executive responsible for administering the Profit Sharing Plan. During an internal audit in July 1998, the Firm discovered it was missing prototype documents for the Profit Sharing Plan.

On two occasions during August 1998, a paralegal from the Firm (“Paralegal”) requested that Respondent recreate prototype documents for the Firm, first for the Profit Sharing Plan and later for the Firm’s “money purchase plan” (“Money Purchase Plan”).

On the first occasion, Respondent informed the Paralegal that he did not know if it was possible to “recreate” prototype documents, but that he would request the advice of the trust officer in charge of the account (“Trust Officer”) and the broker-dealer’s Vice President (“VP”).

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In August 1998, Respondent asked the Trust Officer if it was possible to “recreate” the Profit Sharing Plan prototype documents. Respondent also left a detailed voice message with the VP. According to Respondent, the Trust Officer informed him that she had spoken to the VP regarding the Profit Sharing Plan prototype documents and that the broker-dealer could act on the Paralegal’s request.

Respondent prepared and delivered prototype documents to the Firm for the Profit Sharing Plan and the Money Purchase Plan. The Firm returned completed documents to Respondent and Respondent took the documents to his Manager’s office for signature. The Manager signed and dated the prototype documents. Realizing an inconsistency between the Firm’s date on the prototype documents and the Manager’s signature date, Respondent then obtained duplicate prototype documents from the Firm and asked his Manager to sign but not date the documents. The Manager did so, and Respondent took the documents to his office and placed the date of November 21, 1994 next to his Manager’s signature.

Later in August 1998, Respondent had a conference call with a Firm attorney and the VP. The VP informed the attorney that the broker-dealer could not backdate documents for the Money Purchase Plan because the plan had never been established. Respondent contacted legal counsel for the broker-dealer and the Firm Investigation was initiated some time after the call.

According to Respondent, he cooperated fully with the Firm Investigation. As a result of the Firm Investigation, the broker-dealer found Respondent’s backdating of the documents to be unacceptable and inconsistent with its standards. Respondent consented to a suspension without pay of five business days, a \$1,000 fine and a letter of reprimand in his personnel file. The NYSE began its 1999 investigation as a result of Respondent disclosing the letter of reprimand on his Form RE-3.

In March 2000, the Firm entered into an agreement with the Internal Revenue Service (“IRS”) in which the IRS agreed to treat both plans as if they were in full compliance with applicable provisions of the Internal Revenue Code. In December 2000, the NYSE closed its investigation with a no action letter to Respondent. In April 2001, Respondent requested reimbursement from his broker-dealer for the pay withheld during his suspension and the \$1,000 fine. Respondent also requested a letter for his personnel file explaining the circumstances of the reprimand and the eventual outcome of the situation. In May 2001, the broker-dealer refused the requests.

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

- A. *Rule 102 – Engaging 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 found that Respondent, at his client’s request, placed an incorrect date next to his Manager’s signature on documents relating to the Firm Profit Sharing Plan and Money Purchase Plan. According to the Commission, by backdating documents in order to give the appearance that they were executed earlier than they were, Respondent provided false and misleading information to his client and employer, which is a violation of Rule 102.

*B. Rule 201 – Failing to Exercise Reasonable And Prudent Professional Judgment In Providing Professional Services*

The Commission found that by backdating documents at a client's request in order to give the appearance that they were executed earlier than they were, Respondent failed to exercise reasonable and prudent professional judgment in providing professional services. Thus, Respondent violated Rule 201.

*C. Rule 406 – Failing to perform services with dedication to the lawful objectives of the employer and in accordance with this code of ethics*

The Commission found that by backdating documents in violation of his broker-dealer's standards, which resulted in letter of reprimand from his employer, Respondent failed to perform services with dedication to the lawful objectives of the employer and in accordance with the *Code of Ethics*. Thus, Respondent violated Rule 406.

*D. Rule 606(b) – Performing services in accordance with applicable laws, regulations and other established policies of CFP Board*

The Commission found that Respondent violated Rules 102, 201, 406, and 607, and thus violated Rule 606(b).

*E. Rule 607 – Engaging 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 by backdating documents in order to create the appearance the documents were executed earlier than they were, in violation of his broker-dealer's standards, Respondent engaged in conduct which reflects adversely on his integrity or fitness as a CFP Board designee, upon the marks, and upon the profession. Thus, Respondent violated Rule 607.

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 which violates the provisions of the *Code of Ethics*. The Commission found Article 3(a) grounds for discipline because Respondent violated Rules 102, 201, 406, 606(b) and 607 of the *Code of Ethics*. Article 3(g) establishes grounds for discipline for any false or misleading statement made to CFP Board. The Commission found Article 3(g) grounds for discipline because Respondent failed to disclose the 1992 NASD Arbitration, the 1996 NASD Arbitration, and the 1999 NYSE investigation on the Declaration Section of his Application.

Respondent made an Offer of Settlement to the Commission. In his Offer of Settlement, Respondent agreed to accept a Private Censure. The Commission accepted the Offer of Settlement and issued a Private Censure to Respondent.

The Commission considered no mitigating or aggravating factors.