

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22807

This is a summary of a decision issued following the February 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. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) fostered a sales culture that encouraged the utilization of proprietary products to enhance revenue; 2) recommended proprietary products that were not in the best interest of the clients; 3) allowed advisors under his supervision to engage in forgery and false record-keeping; 4) permitted the forging of signatures on documentation submitted to the corporate office to release compensation; and 5) directed his staff person to affix his name on an internal broker-dealer exception request form.

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

In November 2008, CFP Board opened an investigation of Respondent in connection with a 2007 State Bureau of Securities Regulation (“Bureau”) inquiry (“2007 Inquiry”) regarding financial plans. In December 2009, Respondent informed CFP Board that the Bureau filed a complaint against his broker-dealer and himself as Group Vice President. In March 2008, Respondent and his broker-dealer entered into a consent order (“2008 Consent Order”) with the Bureau.

According to the 2008 Consent Order, Respondent and his broker-dealer failed to report significant issues regarding securities violations to the Bureau as required by a 2005 Settlement Agreement (“2005 Agreement”), executed by the broker-dealer and the Bureau. Attached to the 2005 Agreement were numerous emails, between Respondent and other employees of the broker-dealer, which indicated that Respondent fostered a sales culture that encouraged the utilization of proprietary products to enhance revenue. These products were not in the best interest of the clients.

According to the 2005 Agreement, Respondent’s job performance was based on a system which awarded bonus compensation for those advisors who sold a greater percentage of proprietary products than non-proprietary products. The 2005 Agreement cited a December 2003 email from Respondent to an investment adviser, wherein Respondent tried to change the mix of fund selections in the investment adviser’s model portfolio in favor of the broker-dealer’s proprietary products. This email was also attached to the 2005 Agreement as Exhibit 2. According to the

2005 Agreement, Respondent earned over \$900,000 in bonus pay in 2003, an amount over four times his salary for that year.

According to the 2008 Consent Order, as the Group Vice President, Respondent was ultimately responsible for supervising six advisors who engaged in forgery and false record-keeping in the company's branch office in violation of state law. According to the 2008 Consent Order, the forgery and false record-keeping was a direct result of Respondent's failure to provide appropriate supervision.

The Bureau stated that Respondent had a cavalier attitude about forgery, as evidenced by three incidents that the broker-dealer characterized as red flags: 1) Respondent inappropriately tipped off an advisor that the advisor was being investigated for potential forgery; 2) within Respondent's market group, individuals forged advisor, advisor/coach, and field vice president signatures on documentation submitted to the corporate office to release advisor/coach compensation; and 3) Respondent directed a staff person to affix his name on an internal broker-dealer exception request form which was required for the broker-dealer to be in compliance with State law regarding supervisory structures. According to the 2008 Consent Order, the disclosure and forgery issues occurred as a result of a sales culture within the company promoted by Respondent.

As a result of the 2008 Consent Order, Respondent was prohibited from: 1) engaging in any management activities within the state that are subject to the Bureau's regulatory jurisdiction for five years; 2) engaging in any sales activity within the state that is subject to the Bureau's jurisdiction for five years; and 3) making any public statement in regulatory filings or otherwise that denies any allegation in the 2008 Consent Order or implies that any allegation lacks a factual basis.

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 when, as Group Vice President, he: 1) fostered a sales culture that encouraged the utilization of proprietary products to enhance revenue; and 2) recommended proprietary products that were not in the best interest of the clients. Thus, Respondent violated Rule 201.

B. *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.*

The Commission found that Respondent was ultimately responsible for supervising the six advisors who engaged in forgery and false record-keeping in the company's branch office in violation of state law. The forgery and the false record-keeping was a direct result of

Respondent's failure to provide appropriate supervision. By engaging in conduct that violated state law, Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities. Thus, Respondent violated Rule 606(a).

C. 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 201, 406, 606(a), 607 and 705 as discussed herein. Thus, Respondent violated Rule 606(b).

D. 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 that reflects adversely on his integrity or fitness as a CFP Board designee, upon the marks and upon the profession when, as Group Vice President, he: 1) fostered a sales culture that encouraged the utilization of proprietary products to enhance revenue; and 2) recommended proprietary products that were not in the best interest of the clients. Thus, Respondent violated Rule 607.

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.

The Commission found that Respondent failed to properly supervise subordinates with regard to their delivery of financial planning services when he: 1) allowed advisors under his supervision to engage in forgery and false record-keeping; 2) permitted the forging of advisor, advisors' coach, and field vice president signatures on documentation submitted to the corporate office to release compensation; and 3) directed his staff person to affix his name on an internal broker-dealer exception request form. Thus, Respondent violated 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 201, 406, 606(a), 606(b) 607 and 705 of the *Code of Ethics*. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a five year suspension.

The Commission considered as a mitigating factor that:

1. Respondent self-disclosed the 2007 State Inquiry on his Renewal Application for CFP® Certification in September 2008.

The Commission considered the following aggravating factors:

1. Respondent exhibited no remorse, and did not accept responsibility for his conduct.
2. Respondent's fostering of a sales culture that encouraged the use of proprietary products to enhance revenue, as evidenced by the many emails attached to the 2005 Agreement.
3. Respondent was suspended for five years from engaging in managerial activities, yet Respondent remained in a managerial position with the broker-dealer.
4. While serving as a mentor to other registered representatives, Respondent continued to be assessed based on sales production and assets under management.