

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22820

This is a summary of a decision issued following the June 2010 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 promised to personally make the client whole after the client sustained alleged losses on a free withdrawal from an annuity.

II. Findings of Fact

In 2005, Respondent prepared an investment proposal for Client A. This proposal recommended that Client A place his Individual Retirement Account (“IRA”) worth \$54,000, a managed Exchange-Traded Fund (“ETF”) worth \$172,000, and an annuity worth \$200,000 under Respondent’s control. As compensation for management of these investments, Respondent charged Client A a 1.58% quarterly fee. In 2006, pursuant to the investment proposal, Client A purchased a variable annuity.

After holding the annuity for approximately two years, Client A notified Respondent that he intended to withdraw all of his investments from Respondent’s control due to the lackluster performance of the annuity. As part of withdrawing his investments from Respondent’s control, Client A asked Respondent to provide specific information on the effect an annual free withdrawal would have on the surrender charge and the annuity’s enhanced guarantee. Respondent responded by providing a hypothetical scenario illustrating how the annual free withdrawal affected the surrender charges and the enhanced guarantee.

Client A requested that Respondent confirm the effect of the free withdrawal on the surrender charge and enhanced guarantee. Based on Respondent’s confirmation of this information, Client A requested and received a free withdrawal from the annuity.

After making the withdrawal, Client A contacted Respondent to complain that the enhanced guarantee had been reduced by the withdrawal more than Respondent had confirmed a few weeks earlier. Client A also complained to Respondent that the surrender charge on the annuity had not been reduced as Respondent indicated it would be. Ultimately, it became clear that Respondent received inaccurate information during recorded conference calls that took place to verify the effect of the free withdrawal on the surrender charge and the enhanced guarantee.

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After trying to resolve the discrepancies in the effect of the free withdrawal with the insurance company, Respondent indicated in an email that he would “personally make good on the enhanced guarantee difference because [he] did give [his client] [his] word that [he] would stand behind that information that [he] passed on to [his client].” In response to a request for clarification regarding this statement by CFP Board, Respondent stated that he intended to “personally make good” on the enhanced guarantee difference through the proper channels with his broker-dealer.

III. Rule Violations

- A. *Rule 201 - A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.*

The Commission determined Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he stated in an email that he would “personally make good on the enhanced guarantee difference.” Personally settling a customer complaint without following a broker-dealer’s customer complaint procedures is a violation of NASD Rule 2110. Therefore, if Respondent had followed through with his offer to Client A, he would have violated NASD Rule 2110. Thus, Respondent violated *Code of Ethics* Rule 201.

- 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.*

The Commission determined Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board when he violated *Code of Ethics* Rules 201 and 607. 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 integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.*

The Commission determined Respondent engaged in conduct which reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he stated in an email that he would “personally make good on the enhanced guarantee difference.” Personally settling a customer complaint without following a broker-dealer’s customer complaint procedures is a violation of NASD Rule 2110. Therefore, if Respondent had followed through with his offer to Client A, he would have violated NASD Rule 2110. Thus, Respondent violated *Code of Ethics* Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Article 3(a) of the *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. The Commission issued Respondent a private censure, pursuant to Article 4.1 of the *Disciplinary Rules*.

In imposing a private censure, the Commission considered the following mitigating factors:

- 1) Respondent attempted to resolve Client A's issues with the insurance company;
- 2) Respondent continued to serve Client A even after his compensation ended; and
- 3) The grievance appeared to be a vendetta precipitated by the client's new advisor.

The Commission cited no aggravating factors.