CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 22855

This is a summary of a decision issued following the November 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, and after, January 1, 2009. The Rules in effect for conduct occurring prior to January 1, 2009 were Rules 101 through 705 of CFP Board's *Code of Ethics and Professional Responsibility* ("*Code of Ethics*"). The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board's *Rules of Conduct*.

I. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when she: 1) failed to adequately supervise Subordinate's professional services; 2) made a guest appearance on a television show and authored a newsletter column ("Media Appearances") without prior approval by her Firm; 3) violated National Association of Securities Dealers ("NASD," now know as the Financial Industry Regulatory Authority or "FINRA") Conduct Rule 2210(b)(1) because she failed to obtain prior approval from her registered principal before making Media Appearances; and 4) defaulted on her credit card payment obligations.

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

In October 2008, Respondent disclosed her involvement in multiple customer complaints filed in February 2008 ("February Complaints"), April 2008 ("April Complaints") and June 2008 ("June Complaint") (collectively, "Customer Complaints"), a 2008 Firm suspension and termination ("2008 Suspension and Termination") and a 2008 FINRA investigation ("2008 Investigation"). CFP Board also discovered a 2009 Credit Card A Judgment ("Card A Judgment") and a 2009 Credit Card B Judgment ("Card B Judgment").

2008 Suspension and Termination

In 2007, Firm initiated the 2007 Internal Review into allegations in the that Respondent closed financial plans prior to her completion of the plans, had clients sign blank forms, backdated financial plan delivery assurance forms and failed to obtain approval for the Media Appearances. In March 2008, Firm notified Respondent that she had been suspended from March 2008 until June 2008, at which point she would be terminated. As the basis for the 2008 Suspension and Termination, Firm cited the following violations of Firm's policy:

1. Respondent closed financial plans prior to the creation of a deliverable to the client. This action violated Firm's policy, which specifically prohibited closing a financial plan prior to the delivery of the recommendations.
2. Respondent maintained blank signed forms in client files and several customers indicated that they signed blank financial advisory service agreements. More specifically, one client indicated that he was unaware of the $2,500 recurring annual financial planning fee. These actions violated Firm's policy, which prohibited the maintenance of blank, signed forms.
3. Respondent provided a backdated delivery assurance form to a client, which the client was directed to return to Respondent's home address in order to avoid detection by the Office of Supervisory Jurisdiction's ("OSJ") mail log. Respondent's actions violated Firm's policy, which prohibits the receipt of mail at a non-registered location without prior notification of a registered principal and compliance with Firm's policies and procedures.
4. Respondent's registered principal did not approve the Media Appearances prior to Respondent making the Media Appearances. Respondent's actions violated Firm's policy, which prohibits unapproved media appearances.
5. Respondent contacted a client who submitted a complaint letter after she was specifically instructed not to by Firm. Respondent's actions violated Firm's policy, which prohibits contacting clients during the complaint resolution process.
6. Respondent failed to obtain signed confidentiality agreements from previous staff members. Respondent's actions violated Firm's policy, which requires that all staff must sign an Employment Confidentiality Agreement.

2008 Investigation

In May 2008, FINRA contacted Respondent requesting information regarding the 2007 Internal Review, the 2008 Suspension and Termination, the February Complaints, the April Complaints and the Media Appearances. In July 2010, FINRA completed its investigation and issued a Cautionary Action Letter ("Letter") to Respondent. In the Letter, FINRA cautioned Respondent that she violated NASD Conduct Rule 2210(b)(1) when she failed to obtain prior approval from her registered principal before making the Media Appearances.

February Complaints

In February 2008, four clients filed customer complaints against Respondent. The February Complaints alleged that Respondent: 1) backdated forms; 2) failed to disclose financial planning fees; and 3) failed to provide proper written deliverables. Respondent denied all of the allegations.

In Firm's Form U5 filing, it determined that it found a lack of: 1) disclosure regarding termination and transfer fees; and 2) proper written deliverables provided to the clients. Accordingly, Firm settled the complaints by refunding the financial planning fees paid by each client.

April Complaints

In April 2008, three clients filed customer complaints against Respondent. The April Complaints alleged that Respondent: 1) backdated forms; 2) failed to disclose financial planning fees; and 3) failed to provide proper written deliverables. Respondent denied all of the allegations.

In Firm's Form U5 filing, it determined that it found a lack of: 1) disclosure regarding termination and transfer fees; and 2) proper written deliverables provided to the clients. Accordingly, Firm settled the complaints by refunding the financial planning fees paid by each client.

June Complaint

In June 2008, one client filed a complaint alleging that Respondent: 1) did not provide adequate disclosure regarding a wrap fee; and 2) Respondent purchased shares without obtaining the client's approval to purchase the shares. Respondent denied all of the allegations. Firm A settled the complaint by refunding all of the fees and reimbursing the client for the unauthorized share purchase.

Relationship with Subordinate

Respondent employed Subordinate to act as Respondent's administrative assistant and to assist Respondent with clients. In 2007, Respondent left her practice to care for her ailing mother, leaving Subordinate in charge of her practice. According to Respondent's undated response to FINRA's inquiry, while Respondent was caring for her mother, Subordinate signed her name to several client documents, backdated several client documents and executed unauthorized stock purchases. Further, Respondent stated that Subordinate severely damaged her practice while she was out caring for her ailing mother, leading to the Customer Complaints and the 2008 Suspension and Termination.

Card A and Card B Judgment

In March 2009, Bank A filed a Verified Complaint against Respondent alleging that Respondent defaulted on her obligation to pay the outstanding balance on her credit card of approximately $29,900. In August 2009, the Circuit Court of State ("Court") entered a default judgment against Respondent in the amount of approximately $29,900 for failure to answer or appear in response to the Verified Complaint.

In May 2009, Bank B filed a Complaint against Respondent alleging that Respondent defaulted on her obligation to pay the outstanding balance on her credit card of approximately $10,400. In October 2009, the Court entered a default judgment against Respondent in the amount of approximately $10,400 for failure to answer or appear in response to the Complaint.

In a June 2010 letter to CFP Board, Respondent indicated that she incurred the Card A Judgment and the Card B Judgment due to the 2008 Suspension and Termination and expenses she incurred in purchasing the family home from her ex-husband. Respondent attempted to work with her creditors and was unaware that the Court had entered default judgments against her.

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 determined that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when she: 1) failed to adequately supervise Subordinate's professional services; and 2) made the Media Appearances without prior approval by Firm. The Commission noted that Respondent could have exercised better judgment in supervising Subordinate's work while she was absent. Thus, Respondent violated *Code of Ethics* Rule 201.

B. Rule 406 – A CFP Board designee who is an employee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this Code of Ethics.

The Commission determined that Respondent failed to perform professional services with dedication to the lawful objectives of her employer and in accordance with the *Code of Ethics* when: 1) she violated Firm's policy by making the Media Appearances without prior approval from Firm; and 2) Firm suspended and subsequently terminated Respondent as a result of her conduct. Thus, Respondent violated *Code of Ethics* Rule 406.

C. 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 determined that Respondent failed to perform professional services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when FINRA cautioned Respondent that she violated NASD Conduct Rule 221 O(b)(1) because she failed to obtain prior approval from Firm before making the Media Appearances. Thus, Respondent violated *Code of Ethics* Rule 606(a).

D. 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 that Respondent failed to perform professional services in accordance with applicable rules, regulations and other established policies of CFP Board when she made the Media Appearances without prior approval from Firm, in violation of Firm's policy, and failed to adequately supervise Subordinate. Thus, Respondent violated *Code of Ethics* Rule 606(b).

E. Rule 705 – A CFP Board Designee shall properly supervise subordinate 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 determined that Respondent failed to properly supervise Subordinate with regard to his delivery of financial planning services. Thus, Respondent violated *Code of Ethics* Rule 705.

F. Rule 6.5 – A certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certficiant, upon the CFP® marks, or upon the profession.

The Commission determined that Respondent engaged in conduct that reflects adversely on her integrity and fitness as a CFP® professional, upon the CFP® marks, and upon the profession when she defaulted on her credit card payment obligations resulting in the Card A Judgment and Card B Judgment. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct.*

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 and Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 201, 406, 606(a), 606(b) and 705 of the *Code of Ethics* and Rule 6.5 of the *Rules of Conduct.* Pursuant to Article 4.1 of the *Disciplinary Rules,* the Commission issued a Private Censure to Respondent.

The Commission considered the following as mitigating factors:

1) Respondent cooperated with the investigation;
2) Respondent's financial issues were due to her drastic drop in income from $300,000 to $30,000;
3) Respondent's compliance issues occurred while she was absent from her practice to care for her mother;
4) Respondent reasonably expected that her Office of Supervisory Jurisdiction would exercise oversight over Subordinate while she was absent; and
5) Respondent's termination and the associated customer complaints appear to have been manufactured by Firm.

The Commission considered no aggravating factors.