

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 23068

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

Whether a CFP[®] professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) made a loan to a client (“Client”) in violation of his employer’s written procedures and National Association of Securities Dealers (“NASD” now know as the Financial Industry Regulatory Authority or “FINRA”) Conduct Rules; 2) did not disclose to his employer (“Firm”) that he made the loan to the Client, in violation of Firm policy; 3) did not disclose to his firm that he executed a Power of Attorney granted by the Client; 4) exercised the Power of Attorney in connection with the sale of Respondent’s real property to the Client; 5) established a joint bank account with the Client; 6) was suspended and fined by the FINRA; and 7) did not disclose his FINRA suspension to CFP Board within 10 days.

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

In September 2007, Respondent disclosed to CFP Board his termination from the Firm and a related FINRA inquiry. Respondent was terminated from the Firm for violation of Firm policy and NASD Conduct Rule 2370.

According to the documents included in the FINRA inquiry, the Client approached Respondent about selling certain real property that the Client had inherited, and Respondent suggested several options to the Client, one of which was a 1031 exchange. The properties identified for the 1031 exchange included a property owned by Respondent. Respondent obtained approval from the Firm for the 1031 exchange.

The Client purchased Respondent’s property pursuant to the 1031 exchange. In order to complete the transaction, the Client obtained a loan from Respondent of approximately \$14,000 for the balance of the purchase price. Respondent neither disclosed the loan to the Firm nor obtained approval for the loan from the Firm, both of which were in violation of Firm policies. Respondent also did not disclose to the Firm a Power of Attorney executed by the Client that granted Respondent the power to sell, exchange, lease or rent the Client’s property.

Following the closing of the transaction and pursuant to the Power of Attorney, Respondent established a bank account controlled jointly by Respondent and the Client. Respondent

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deposited the Client's funds into the account. Respondent also reimbursed himself from the account for certain expenses related to the closing.

According to an Acceptance, Waiver and Consent agreement entered with FINRA, Respondent was suspended from association with any FINRA member in any capacity for five business days and fined \$5,000, for violation of NASD Conduct Rules 2370 and 2110. FINRA notified Respondent of the effective dates of his suspension in a December 2008 letter ("Notification Letter").

Respondent notified CFP Board of his FINRA suspension approximately 20 days after the date of the Notification Letter. Article 12.2 of the CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") requires CFP Board designees to notify CFP Board of professional suspensions, in writing, within 10 calendar days after the date on which the CFP Board designee is notified of the suspension.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. *Rule 103(d) – A CFP Board designee shall not commingle client funds or other property with a CFP Board designee's personal funds and/or other property or the funds and/or other property of a CFP Board designee's firm.*

The Commission found that Respondent commingled client funds with his personal funds by establishing a joint bank account that contained both the Client's funds and funds to which Respondent was entitled. Thus, Respondent violated Rule 103(d).

B. *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 he: 1) did not disclose to the Firm that he made a loan to the Client, in violation of the Firm's policy; 2) did not disclose to the Firm the Power of Attorney granted by the Client; and 3) made the loan to the Client in violation of the Firm's policies and NASD Conduct Rules 2370 and 2110. Thus, Respondent violated Rule 201.

C. *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 found that Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he made the loan to the Client in violation of the Firm's written policies and NASD Conduct Rules 2370 and 2110. Thus, Respondent violated Rule 406.

D. 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 failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities by violating NASD Conduct Rules. Thus, Respondent violated Rule 606(a).

E. 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 violated Rules 103(d), 201, 406, 606(a) and 607 of the *Code of Ethics* and thereby did not perform services in accordance with the rules, regulations and policies of CFP Board. Thus, Respondent violated Rule 606(b).

F. 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 reflected adversely on his integrity and fitness as a CFP Board designee, upon the marks, or upon the profession when he: 1) did not disclose to the Firm that he made a loan to the Client, in violation of Firm policy; 2) did not disclose to the Firm the Power of Attorney granted by the Client; 3) made the loan to the Client in violation of the Firm's policies and NASD Conduct Rules 2370 and 2110; and 4) commingled the Client's funds with his own. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline based on Articles 3(a), 3(d) and 3(e) of the *Disciplinary Rules*. Article 3(a) of CFP Board's *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 103(d), 201, 406, 606(a), 606(b) and 607 of the *Code of Ethics*. Article 3(d) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act or omission that is the proper basis for a professional suspension. The Commission found Article 3(d) grounds for discipline because Respondent engaged in acts which are the proper basis for professional suspension and was suspended by FINRA as a result. Article 3(e) provides grounds for discipline for any act or omission which violates the *Disciplinary Rules*. The Commission found Article 3(e) grounds for discipline because Respondent did not disclose FINRA's suspension to CFP Board within 10 days of receiving notification of the suspension, as required by Article 12.2 of the *Disciplinary Rules*. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a 30-day suspension.

The Commission considered as mitigating factors that: 1) no client losses were involved; 2) the loan to the Client was an isolated incident; and 3) Respondent had no previous disciplinary history with CFP Board.

The Commission considered no aggravating factors.