

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 23323

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This is a summary of a Settlement Agreement entered into at 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. Issue Presented

Whether a CFP<sup>®</sup> professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* (“*Standards*”) when he engaged in unauthorized outside business activities resulting in a fine and a suspension of his securities, insurance, and investment advisor licenses for 30 days.

II. Findings of Fact

In March 2008, the State Insurance Commissioner (“Commissioner”) alleged that Respondent and two other individuals started X Capital Management, an account in which clients’ funds were commingled and traded at the discretion of an X Capital Management partner. Clients who participated in the account were identified as accredited investors when, in fact, at least one client did not meet the accredited investor qualifications. The Commissioner also alleged that the account operated outside of Respondent’s broker-dealer and Respondent did not disclose the nature of the account to his broker-dealer. Respondent’s broker-dealer discovered the account in 2005 during a branch audit and advised Respondent and his partners to cease trading in the account, to liquidate positions and to stop adding new positions. Respondent liquidated the positions but did not dissolve the fund and made no disbursements to investors until 2008.

In January 2009, Respondent entered into a Consent Order. The Consent Order imposed a \$5,000.00 fine and suspended Respondent’s securities, insurance, and investment advisor licenses for 30 days. The Consent Order required Respondent, for a period of three years, to obtain written permission from his broker-dealer and the State Insurance Division at least 30 days prior to any attempt to raise funds for business purposes. Respondent reported the suspension to CFP Board on his Renewal Application submitted in February 2009.

Without admitting or denying the violations contained in the Order, Respondent consented to the entry of findings that he: 1) violated the State Code by engaging in dishonest or unethical practices in the securities or investment business; 2) violated the State Administrative Code by acting as a custodian of money or securities of a non-familial customer; 3) violated the State Administrative Code by effecting transactions not recorded on the books and records of the broker-dealer without prior written authorization by the broker-dealer; 4) violated the State Administrative Code by sharing profits or splitting commissions, profits, or other compensation

ACH 23323

- 1 -

with an unregistered person; and 5) violated the State Administrative Code by recommending customer securities transactions without reasonable grounds to believe that such transactions were suitable.

### III. Rule Violations

- A. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage 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.*

Respondent: 1) misrepresented clients who participated in the account as accredited investors to government regulators when, in fact, at least one client did not meet the accredited investor qualification; and 2) operated the account outside of Respondent's broker-dealer and did not disclose the nature of the account to his broker-dealer. Thus, Respondent violated Rule 102.

- B. *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. Commingling one or more clients' funds or other property together is permitted, subject to compliance with applicable legal requirements and provided accurate records are maintained for each client's funds or other property.*

Respondent and two other individuals started X Capital Management, an account in which clients' funds of investors were commingled and traded at the discretion of an X Capital Management partner. The Commission also found that Respondent did not record these transactions on the regular books and records of the broker-dealer. Thus, Respondent violated Rule 103(d).

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

Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he: 1) participated in X Capital Management, an account in which clients' funds were commingled, traded at the discretion of an X Capital Management partner, and operated outside of Respondent's broker-dealer; and 2) misrepresented clients who participated in the account as accredited investors when, in fact, at least one client did not meet the qualifications of accredited investor. Thus, Respondent violated Rule 201.

D. *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.*

Respondent did not act with dedication to the lawful objectives of his employer and in accordance with CFP Board's *Code of Ethics* when he: 1) participated in X Capital Management, an account in which clients' funds were commingled, traded at the discretion of an X Capital Management partner, and operated outside of Respondent's broker-dealer; and 2) entered into the 2009 State Consent Order, which imposed a license suspension and a fine, and cited violations of the State Code and the State Administrative Code. Thus, Respondent violated Rule 406.

E. *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.*

Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he: 1) entered into the 2009 State Consent Order, which imposed a license suspension and a fine, and cited violations of the State Code and the State Administrative Code. Thus, Respondent violated Rule 606(a).

F. *Rule 606(b) – In all professional activities a CFP Board designee shall perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board.*

Respondent failed to perform services in accordance with the rules, regulations and policies of CFP Board when he violated the above *Code of Ethics* Rules. Thus, Respondent violated Rule 606(b).

G. *Rule 607 – A CFP Board designee shall not engage in conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.*

Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he: 1) participated in X Capital Management, an account in which clients' funds were commingled, traded at the discretion of an X Capital Management partner, and operated outside of Respondent's broker-dealer; and 2) entered into the 2009 State Consent Order, which imposed a license suspension and a fine, and cited violations of the State Code and the State Administrative Code. Thus, Respondent violated Rule 607.

#### IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(d) and 3(e) of CFP Board's *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. Article 3(d) provides grounds for discipline for any act that is the proper basis for a professional suspension. The Commission found Article 3(d) grounds for discipline because the Commissioner suspended Respondent's securities, insurance, and investment advisor licenses for 30 days. Article 3(e) provides grounds for discipline for any act or omission that violates the *Disciplinary Rules*. The Commission found Article 3(e) grounds for discipline because he failed to notify CFP Board within 10 days of his notification of his suspension, as required by Article 12.2 of the *Disciplinary Rules*.

Respondent and CFP Board entered into a Settlement Agreement in which Respondent consented to the above Findings of Fact and Rule Violations. Pursuant to the Settlement Agreement, the Commission issued a suspension of Respondent's right to use the CFP<sup>®</sup> marks for two years in accordance with Article 4.3 of the *Disciplinary Rules*.

The Commission considered as an aggravating factor that Respondent testified that he did not make any money or commissions but, according to the Management Compensation Agreement, Class A members were paid 20 percent of gross profits. The Commission did not consider any mitigating factors.