CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 23335

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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 repeatedly purchased securities in a non-discretionary account without authorization from the client ("Client").

II. Findings of Fact

In February 2009, Respondent disclosed on his Renewal Application for CFP® Certification his involvement in a 2008 Financial Industry Regulatory Authority ("FINRA") Arbitration. In March 2008, the Client filed a Statement of Claim ("Claim") with FINRA against Respondent and Respondent's firm, generally alleging breach of contract and unauthorized purchases of securities. In their response to the Claim, Respondent and Respondent's firm generally stated that the Client had ratified the transactions by not objecting to the transactions after receiving monthly account statements showing the seven transactions from March 2007 to July 2007.

In April 2009, a FINRA arbitration panel found Respondent and his firm jointly and severally liable and awarded the Client approximately $61,000 in compensatory damages. According to Respondent's U-4 on FINRA's Central Registration Depository, Respondent individually contributed the entire award through his errors and omissions insurance.

In Respondent's Answer to CFP Board's Complaint, Respondent admitted that communicated poorly with the Client, and that he had no record to verify that the Client authorized the several purchases of securities.

III. Rule Violations

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

According to the Commission, Respondent acknowledged in his Answer to CFP Board's Complaint ("Answer") that he had no records to indicate that the Client gave authorization for the securities purchases to be executed. The Commission further found that Respondent failed to confirm the securities purchases with the Client prior to embarking on them. Thus, the Commission determined that Respondent failed to exercise reasonable and prudent judgment in providing professional services and 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.*

According to the Commission, Respondent admitted in his Answer to a violation of Rule 606(b) when he acknowledged a violation of Rule 701. The Commission also determined that Respondent violated Rules 201, 607 and 701 of CFP Board's *Code of Ethics*. Thus, the Commission determined Respondent failed to perform services in accordance with applicable rules and regulations and other established polices of CFP Board, in violation of Rule 606(b).

*C. 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.*

Respondent admitted in his Answer that he communicated poorly and did not keep accurate records. The Commission found that this conduct ultimately led to a loss to the Client of approximately $61,000. Thus, the Commission determined that Respondent engaged in conduct that reflected adversely on his integrity and fitness as a CFP Board designee, upon the marks and upon the profession, and violated Rule 607.

*D. Rule 701 – CFP Board designee shall provide services diligently.*

Respondent admitted in his Answer he failed to provide professional services with diligence when he did not receive confirmation from the Client to make the securities purchases. Thus, the Commission determined that Respondent violated *Code of Ethics* Rule 701.

## IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") provides grounds for discipline for violation of the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) based on the above *Code of Ethics* rule violations. The Commission issued a Private Censure to Respondent pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors:

1) Respondent had no prior complaints;
2) Respondent took responsibility for his actions; and
3) Respondent provided substantive communications with the Client after placing orders that indicated Respondent believed he had obtained the Client's approval and did not try to conceal the trades.

The Commission did not cite any aggravating factors in making its decision.