CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 23777

This is a summary of a Settlement Agreement approved at 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 candidate for CFP® certification ("Respondent") violated CFP Board's *Standards of Professional Conduct* when his recommendation resulted in 70% of the clients' assets being invested in annuities.

II. Findings of Fact

In September 2007, a State Securities Division sent a letter to Respondent investigating investment recommendations he made to his clients. In response to the letter, Respondent stated that he recommended that the clients purchase a variable annuity with funds obtained by liquidating stock. The clients sold the stock in January 2006 and purchased a variable annuity using the proceeds from the sale.

In June 2008, the State Securities Division sent a letter to the broker-dealer Respondent was working for when he recommended the variable annuity. In response to the June 2008 letter, Respondent stated that the clients said the stock dividends were not meeting their income needs and the clients were concerned about the stock losing value. Respondent acknowledged that the clients already owned annuities at that time. Respondent stated in his letter to the State Securities Division that he did not have access to the clients' account files because he changed employment and was not allowed to retain files. Respondent also said his old employer closed their investment division so he thought obtaining the clients' account files would be difficult.

The State Securities Division filed a Petition for Administrative Penalties and Show Cause Why Costs Should Not Be Imposed ("Petition") against Respondent in November 2008. The Petition alleged that the clients had a net worth of approximately $1 million in December 2005 with 54% of these funds invested in annuities. Respondent's recommendation to sell the stock and buy the variable annuity resulted in 70% of the clients' assets being invested in annuities. The Petition also alleged that the clients were not taking the allowable withdrawals from their existing annuities which could have provided them with the income they desired. The Petition alleged that Respondent violated state law by engaging in a dishonest or unethical business practice because the recommendation of the variable annuity was unsuitable.

In February 2009, Respondent entered into a Consent Order ("Order") with the State Securities Division. Pursuant to the terms of the Order, Respondent was censured, ordered to disgorge $3,000 of commission, and ordered to pay $2,000 for the cost of the investigation.

III. Rule Violations

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

Respondent recommended that his clients sell stock and buy a variable annuity to obtain the income they desired. This recommendation resulted in 70% of the clients' assets being invested in annuities. Although Respondent stated that the annuity purchase was meant to provide income to the clients, they were not taking the allowable withdrawals from their existing annuities, which could have provided them with the income they desired. Without admitting or denying the accusations, Respondent consented to the findings that he made an unsuitable recommendation by over-concentrating clients' assets in annuities, in violation of state law. As a result, Respondent did not exercise reasonable and prudent professional judgment in providing professional services. Thus, Respondent violated Rule 201.

B. *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 recommended that his clients sell stock and buy a variable annuity to obtain the income they desired. This recommendation resulted in 70% of the clients' assets being invested in annuities. Although Respondent stated that the annuity purchase was meant to provide income to the clients, they were not taking the allowable withdrawals from their existing annuities, which could have provided them with the income they desired. Without admitting or denying the accusations, Respondent consented to the findings that he made an unsuitable recommendation by over-concentrating clients' assets in annuities, in violation of state law. By violating state law, Respondent did not perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities. Thus, Respondent violated Rule 606(a).

C. *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 recommended that his clients sell stock and buy a variable annuity to obtain the income they desired. This recommendation resulted in 70% of the clients' assets being invested in annuities. The clients were not taking the allowable withdrawals from their existing annuities, which could have provided them with the income they desired. Without admitting or denying the accusations, Respondent consented to the findings that he made an unsuitable recommendation by over-concentrating clients' assets in annuities, in violation of state law. As a result, Respondent violated *Code of Ethics* Rules 201, 606(a), and 607 and thus failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board. Thus, Respondent violated Rule 606(b).

D. *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 recommended that his clients sell stock and buy a variable annuity to obtain the income they desired. This recommendation resulted in 70% of the clients' assets being invested in annuities. Although Respondent stated that the annuity purchase was meant to provide income to the clients, they were not taking the allowable withdrawals from their existing annuities, which could have provided them with the income they desired. Without admitting or denying the accusations, Respondent consented to the findings that he made an unsuitable recommendation by over-concentrating clients' assets in annuities, in violation of state law. As a result, Respondent engaged in conduct which reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* 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 201, 606(a), 606(b) and 607 of the *Code of Ethics*. The Commission and Respondent 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 to Respondent a Private Censure.

The Commission considered as mitigating factors that:

1. Respondent had no prior history of discipline.
2. Respondent provided the pros and cons of the annuity purchase, and incorporated estate and tax issues of the sale of the stock and annuity purchase.

The Commission considered as an aggravating factor that there was no evidence that Respondent discussed alternatives to the annuity purchase with the clients.