

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 23825

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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. Issues Presented

Whether a CFP<sup>®</sup> professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) failed to add a living benefit rider to an annuity as requested by two clients; 2) represented that an annuity had a principal guarantee when the guarantee existed only upon death; and 3) failed to disclose his outside fixed annuity business to his employer.

II. Findings of Fact

In October 2008, Respondent met with Client A to discuss transition from her old annuity to a new annuity. During this meeting, Respondent represented to Client A that the new annuity guaranteed principal investment. Respondent did not inform Client A that the principal was only guaranteed upon Client A’s death. Respondent also represented that he had added the living benefit rider to Client A’s new annuity. Respondent did not add the living benefit rider to Client A’s annuity. Client A filed a customer complaint that was settled by Respondent.

In March 2007, Respondent represented to Client B that he had added a living benefit rider to Client B’s annuity. Respondent did not add the living benefit rider to Client B’s annuity. Client B filed a customer complaint that was settled by Respondent’s firm.

In 2009, Respondent’s firm terminated him due to the complaints filed by Clients A and B, and his failure to disclose the outside fixed annuity business he maintained without his firm’s approval. Respondent’s firm stated that Respondent violated firm policy by failing to disclose his outside business activities.

### III. Rule Violations

#### A. *Rule 201 – Failing to exercise reasonable and prudent professional judgment in providing professional services*

The Commission determined Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he failed to add a living benefit rider to an annuity as requested by two clients. Thus, Respondent violated Rule 201.

#### B. *Rule 406 – Failing to 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 the employer and in accordance with the *Code of Ethics* when he failed to disclose his outside fixed annuity business to his employer, in violation of firm policy. Thus, Respondent violated Rule 406.

#### C. *Rule 606(b) – Failing to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board*

The Commission determined that Respondent failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when he: 1) failed to add the living benefit rider to an annuity, as requested by two clients; 2) misrepresented to a client the principal guarantee of the annuity; and 3) violated firm policy by failing to disclose his outside fixed annuity business to his firm. Based on these findings, Respondent violated Rules 201, 406, 607 and 701. Thus, Respondent also violated Rule 606(b).

#### D. *Rule 607 Violation – Engaging in any conduct reflecting adversely on integrity or fitness as a CFP Board designee, upon the marks, or profession*

The Commission determined that Respondent engaged in conduct reflecting adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he: 1) failed to add the living benefit rider to an annuity, as requested by two clients; 2) misrepresented to a client the principal guarantee of the annuity; and 3) violated firm policy by failing to disclose his outside fixed annuity business to his firm. Thus, Respondent violated Rule 607.

#### E. *Rule 701 – Failing to provide services diligently*

The Commission determined that Respondent failed to provide services diligently because he: 1) failed to add the living benefit rider to an annuity, as requested by two clients; and 2) misrepresented to a client the principal guarantee of the annuity. Thus, Respondent violated Rule 701.

#### 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*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 201, 406, 606(b), 607 and 701 of the *Code of Ethics*. Pursuant to Article 4.1 of the *Disciplinary Rules*, the Commission issued a Private Censure to Respondent.

The Commission considered the following mitigating factors:

1. Respondent was contrite;
2. Respondent took steps to improve his practice and implemented procedures to prevent a recurrence of his misconduct;
3. Respondent contributed to making a client whole; and
4. Respondent attempted to remedy proactively his failure to add the living benefit rider for another client.

The Commission considered the following aggravating factors:

1. Respondent knew or should have known that he was required to disclose his outside business activities to his employer; and
2. Respondent attempted to shift blame to others, while simultaneously admitting fault.