

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 24019

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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 and after January 1, 2009. The Rules in effect for conduct occurring prior to January 1, 2009 were Rules 101 through 705 of CFP Board’s *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”). The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s *Rules of Conduct*.

I. Issues Presented

Whether a CFP<sup>®</sup> professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) failed to file the required documentation regarding brief remarks at a cocktail party (“Presentation”); and 2) failed to disclose to his firm and a state regulator that he conducted the Presentation.

II. Findings of Fact

In 2008, Respondent was approached by an acquaintance who asked if he could hold certain promissory notes from a real estate funding company (“Company”) in his Individual Retirement Account (“IRA”). Respondent checked with the IRA department at his Firm and determined that the Firm could act as a custodian for the notes, but could not sell or recommend the notes. During the remainder of 2008, more Company notes holders were referred to Respondent so that they could hold their notes in their IRAs. Respondent asserts that in each case he repeated that these were unregistered notes and that he could not recommend or endorse them. In November 2008, Respondent made some brief remarks (“Presentation”) at a small cocktail party. Respondent did not notify the Firm he would be making the Presentation.

In 2009, a state regulator (“Regulator”) initiated an investigation into Respondent’s Presentation. The Regulator ultimately alleged that Respondent: 1) failed to disclose to his employer that he conducted the Presentation; and 2) failed to file the required documentation regarding the Presentation. Respondent entered into a settlement with the Regulator under which he was required to pay a fine and cease and desist from any future violations of state law.

Around the same time, the Firm began an internal review of Respondent’s activities. The Firm believed Respondent was less than forthright with the Firm relating to the Presentation. In material provided to CFP Board, Respondent admitted that he failed to acknowledge to the Regulator and the Firm that he knew in advance that he was to speak at the November 2008 cocktail party. Respondent later acknowledged to the Regulator that he omitted this information.

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As a result of Respondent's failure to be truthful with the Firm and the Regulator, the Firm permitted him to resign.

Later in 2009, the Financial Industry Regulatory Authority, Inc. ("FINRA") began an investigation into the circumstances of Respondent's resignation from the Firm. The investigation resulted in a Cautionary Action Letter ("Letter"). The Letter stated that FINRA staff determined Respondent violated FINRA Conduct Rule 2110 when he failed to be forthright when requested to provide information to the Firm and the Regulator about the November 2008 presentation.

### III. Commission's Analysis and Conclusions Regarding Rule Violations

#### A. *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) failed to file the required documentation regarding the Presentation; and 2) failed to disclose to the Firm that he conducted the Presentation. Therefore, Respondent violated *Code of Ethics* Rule 201.

#### B. *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 failed to perform professional services with dedication to the lawful objectives of his employer and in accordance with the *Code of Ethics* when he: 1) failed to file the required documentation regarding the Presentation; and 2) failed to disclose to the Firm that he conducted the Presentation. As a result, Respondent was permitted to resign from the Firm. Therefore, Respondent violated *Code of Ethics* Rule 406.

#### C. *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 professional services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he violated state regulations by failing to comply with National Association of Securities Dealers ("NASD", now known as FINRA) Rules 2210(a)(2) and 3040(b) when he: 1) failed to file the required documentation regarding the Presentation; and 2) failed to disclose to the Firm that he conducted the Presentation. FINRA issued a Cautionary Action Letter to Respondent for violation of Conduct Rule 2110 in relation to his omissions regarding the Presentation. Thus, Respondent violated *Code of Ethics* Rule 606(a).

*D. 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.*

Respondent violated *Code of Ethics* Rules 201, 406, 606(a) and 607. Therefore, he failed to comply with the applicable rules, regulations and other established policies of CFP Board. Thus, Respondent violated Rule 606(b).

*E. 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 engaged in conduct which reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he violated state law and NASD rules when he: 1) failed to file the required documentation regarding the Presentation; and 2) failed to disclose to the Firm that he conducted the Presentation. Thus, Respondent violated *Code of Ethics* Rule 607.

*F. Rule 6.5 – A certificiant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificiant, upon the CFP® marks, or upon the profession.*

Respondent engaged in conduct which reflects adversely on his integrity and fitness as a CFP® professional, upon the CFP® marks, and upon the profession when he failed to fully disclose to the Firm and the Regulator that he knew in advance that he was to make the Presentation. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

#### 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* or *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 201, 406, 606(a), 606(b) and 607 of the *Code of Ethics* and Rule 6.5 of the *Rules of Conduct*. 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 did not cite any mitigating or aggravating factors.