CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24148

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. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) failed to adequately supervise a registered representative's ("Representative") conduct in a private placement offering managed by the Representative; 2) entered into a Financial Industry Regulatory Authority, Inc. ("FINRA," f/k/a National Association of Securities Dealers or "NASD") Letter of Acceptance, Waiver and Consent ("AWC") wherein he consented to a 15-day suspension and a $10,000 fine; and 3) failed to disclose the 15-day suspension to CFP Board within 10 calendar days of receiving notification of the suspension.

II. Findings of Fact

In early 2005, Representative and the president and CEO of a broker-dealer invited Respondent, the President and CEO of another broker-dealer ("Firm"), to join them in forming private placement offering ("PPO") investments in ethanol-producing companies. Respondent agreed with the conditions that Respondent: 1) become a minority owner of the PPO; 2) clearly disclose the Firm's involvement as the broker-dealer managing the PPO; and 3) had no day-to-day role in the management of the PPO. In June 2006, Respondent left his position as the President and CEO of the Firm and sold his interest in the PPO to Representative because of his spouse's health problems.

In April 2007, FINRA began an investigation of the PPO following an audit concerning the manner in which it broke escrow. FINRA concluded that Representative had improperly broken escrow. In October 2008, Representative entered into an AWC and consented to a 20-day suspension and a $10,000 fine.

Without admitting or denying FINRA's findings, Respondent consented to FINRA's findings that he violated NASD Conduct Rules 3010 and 2110 by failing to adequately supervise Representative's conduct in the PPO. Respondent consented to a 15-day suspension from association with any FINRA member in any principal capacity and a $10,000 fine. Respondent failed to disclose the suspension to CFP Board within 10 calendar days of receiving notification of the suspension as required by Article 12.2 of the *Disciplinary Rules and Procedures* ("*Disciplinary Rules*").

The Commission determined that the Firm employed about 500 registered representatives. Due to the firm's size, Respondent relied on his compliance department to review representatives' activities. The Commission determined it was not reasonable to expect Respondent to be aware of every representative's activities.

III. Rule Violations

A. 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 violated NASD Conduct Rules 3010 and 2110. Thus, Respondent violated Rule 606(a).

B. 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 that reflects adversely on his integrity and fitness as a CFP® professional, upon the marks and the profession when he received a suspension and fine from FINRA for violating NASD Conduct Rules 3010 and 2110. Thus, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(d) and 3(e) of the *Disciplinary Rules*. Article 3(a) provides grounds for discipline for any act or omission that violates CFP Board's *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated *Code of Ethics* Rules 606(a) and 607. 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 FINRA suspended Respondent for 15 days. Article 3(e) establishes grounds for discipline for an act or omission that violates the provisions of the *Disciplinary Rules* or an Order of discipline. The Commission found Article 3(e) grounds for discipline because Respondent failed to disclose the suspension of his professional license within 10 calendar days of receiving notification of his suspension as required by Article 12.2 of the *Disciplinary Rules*.

The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findingss of Fact and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a Public Letter of Admonition, pursuant to Article 4.2 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors: 1) Respondent had no prior disciplinary history; and 2) no clients were harmed.

The Commission did not consider any aggravating factors.