

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24269

This is a summary of a Settlement Agreement approved at the June 2011 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: 1) conducted business as an investment advisor in the state without being properly registered; 2) failed to properly renew his employee’s investment adviser representative license for one year; 3) failed to timely file an annual amendment to his firm’s Form ADV; and 4) failed to timely amend the firm’s Form ADV after making material changes to the Form ADV Part II.

II. Findings of Fact

Respondent disclosed on his Renewal Application that while employed with his former investment advisory firm (“Firm”), he made an incorrect electronic filing of his Form U-4 in connection with his investment advisory license, which led to a 2007 state securities division (“State”) regulatory action.

According to a statement from Respondent to CFP Board, while acting as Managing Director of the firm, Respondent: 1) failed to properly renew his employee’s investment adviser representative license for one year; 2) failed to timely file an annual amendment to the Firm’s Form ADV; and 3) failed to timely amend the Firm’s Form ADV after making material changes to the Form ADV Part II.

In September 2007, the Firm entered into a consent agreement with the State containing the following findings:

1. From April 2003 until June 2006, Respondent transacted business in the state for the Firm without being properly licensed or exempted, in violation of state law;
2. The Firm neglected to renew Respondent’s employee’s investment adviser representative license in 2005, and as a result, the employee engaged in investment advisory services without being properly licensed or exempted from 2005-2006, in violation of state law; and
3. The Firm neglected to timely file an annual amendment to its Form ADV and to timely amend its Form ADV after making material changes to the Form ADV Part II in November 2006, in violation of state law.

Pursuant to the consent agreement, the Firm paid an administrative penalty in the amount of \$2,500.00 to the State.

III. Rule Violations

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

Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he: 1) conducted business as an investment advisor in the state for three years without being registered, as required by state law; 2) failed to properly renew his employee's investment adviser representative license for one year; 3) failed to timely file an annual amendment to the Firm's Form ADV; and 4) failed to timely amend the Firm's Form ADV after making material changes to the Form ADV Part II. Thus, Respondent violated *Code of Ethics* 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 failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he violated state law and the Investment Advisers Act as a result of the above-mentioned conduct. Thus, Respondent violated *Code of Ethics* Rule 606(a).

- C. *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 failed to perform services in accordance with CFP Board rules, regulations and policies when he violated Rules 201, 606(a), and 607 of CFP Board's *Code of Ethics* as described herein. Thus, Respondent violated *Code of Ethics* Rule 606(b).

- D. *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 or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession when he operated as an unregistered investment advisor in violation of state law for three years. Thus, Respondent violated *Code of Ethics* Rule 607.

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, 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. 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*.

In making its decision, the Commission considered the following mitigating factors:

1. Respondent's conduct was due to negligence and was not intentional;
2. Respondent has since employed a professional firm specializing in registered investment advisory filing and registration matters to avoid a recurrence of the conduct; and
3. Respondent's conduct did not result in any client harm.

The Commission did not cite any aggravating factors.