

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24289

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. Issue Presented

Whether a CFP[®] professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* (“*Standards*”) when he entered into settlement agreements with clients without his firm’s knowledge.

II. Findings of Fact

In 1998, Respondent began working the Client. In 2001, the Client’s mother also became Respondent’s client. Toward the end of 2001, the value of the Client’s accounts fell significantly. The decline in account value led to sizeable margin calls in the Client’s accounts. Respondent claimed that the Client threatened to contact Respondent’s wife and allege that Respondent and the Client were involved in an extramarital affair if Respondent did not personally satisfy the margin calls on the Client’s accounts.

In response to the threat, Respondent made four payments totaling \$31,000 over a five-year period to Client and Client’s mother. On one occasion, Respondent deposited \$20,000 into Client’s account. Respondent misrepresented this payment as originating from a mutual fund and annuity companies that had agreed to waive their fees. In April 2007, Respondent disclosed the payments to his broker-dealer. In April 2007, the broker-dealer terminated Respondent’s employment.

The Financial Industry Regulatory Authority, Inc. (“FINRA,” f/k/a National Association of Securities Dealers or “NASD”) investigated Respondent’s conduct in 2007. In 2008, Respondent signed a Letter of Acceptance, Waiver and Consent (“AWC”) wherein he consented to violation of NASD Conduct Rule 2110, a \$5,000 fine and suspension from association with any FINRA member for a period of 20 business days.

III. Rule Violations

- A. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

Respondent entered into settlement agreements with two clients without his firm's knowledge. On four separate occasions during this period, Respondent made payments totaling \$31,000 to the clients. On one occasion, Respondent deposited \$20,000 into Client's account. Respondent misrepresented to his broker-dealer that this payment originated from a mutual fund and annuity companies that had agreed to waive their fees. As a result of these activities, Respondent engaged in dishonest and deceitful conduct in his interaction with clients. Respondent also misrepresented, by omission, these activities to his broker-dealer, when he failed to disclose the payments. Therefore, Respondent violated Rule 102.

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

Respondent entered into settlement agreements with two clients without his firm's knowledge. Respondent paid his clients a total of \$31,000 in an attempt to keep them from filing a complaint against him with his broker-dealer. Based on this conduct, Respondent failed to exercise reasonable and prudent professional judgment in providing professional services. Therefore, Respondent violated Rule 201.

- C. *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 the Code of Ethics.*

Respondent entered into settlement agreements with two clients without his firm's knowledge. Respondent paid his clients a total of \$31,000 in an attempt to keep them from filing a complaint against him with his broker-dealer. When Respondent's broker-dealer learned of these activities, his broker-dealer terminated his employment. Based on this conduct, Respondent failed to perform professional services with dedication to the lawful objectives of his employer and in accordance with the *Code of Ethics*. Therefore, Respondent violated Rule 406.

- D. *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 Rule 2110 and was suspended for 20 business days. Therefore, Respondent violated Rule 606(a).

E. 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 comply with the applicable rules, regulations and other established policies of CFP Board when he violated *Code of Ethics* Rules 102, 201, 406, 606(a), and 607. Therefore, Respondent violated Rule 606(b).

F. 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 entered into settlement agreements with two clients without his broker-dealer's knowledge. Respondent paid his clients a total of \$31,000 in an attempt to keep them from filing a complaint against him with his broker-dealer. As a result of these activities, Respondent's broker-dealer terminated his employment and FINRA suspended him from association with any FINRA member in any capacity for 20 business days. This conduct reflects adversely on Respondent's integrity and fitness as a CFP Board designee, upon the marks and upon the profession. Therefore, Respondent violated Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(d) and 3(e) of CFP Board's *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 Article 3(a) grounds for discipline because Respondent violated the above *Code of Ethics* rules. 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 20 business days. Article 3(e) provides grounds for discipline for any act or omission that violates the *Disciplinary Rules*. The Commission found Article 3(e) grounds for discipline because Respondent failed to notify CFP Board within 10 days of his notification of his suspension, as required by Article 12.2 of the *Disciplinary Rules*.

Respondent and CFP Board 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 a four-month suspension to Respondent in accordance with Article 4.3 of the *Disciplinary Rules*.

The Commission considered Respondent's voluntary disclosure of his conduct to his firm and regulators as a mitigating factor.

The Commission considered the extended period of time over which multiple violations occurred as an aggravating factor.