

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 24375

---

This is a summary of a decision issued following the June 2012 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<sup>®</sup> professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he solicited investors’ participation in a real estate investment by contacting the investors using the name of a his firm, which was seeking its investment advisor registration.

II. Findings of Fact Relevant to the Commission’s Decision

Respondent learned of a real estate investment firm (“Firm”), from a friend in January 2008. Respondent contacted members of Firm and notified them that he was an aspiring real estate investor and financial planner who was interested in starting his own financial planning practice serving primarily real estate professionals. Respondent indicated to Firm that he would be happy to share any future project information with other investors. By sharing future project information, Respondent could help investors find investment opportunities, Firm could find investors, and Respondent could network with potential clients as he started his financial planning practice.

*March 2008 Solicitation*

Based on his meetings with the Firm, in March 2008, Respondent solicited investors to invest in two daycare properties (collectively, the “Investment”) via an email to other real estate investors and through a posting on a real estate investor forum. In the solicitation, Respondent made the following representations regarding the investment:

- The development company was developing two daycare centers;
- The daycare company had already signed a 15-year lease for each site;
- \$100,000 was needed to secure the land for each site;
- All capital would be returned within 90 days with 10% interest; and
- Any investment would have to be made within seven calendar days.

At the end of the solicitation, Respondent provided his contact information and identified himself and his firm.

### *Investor 1 Civil Suit*

Investor 1 saw Respondent's March 2008 email solicitation for the Investment. After reviewing the email, Investor 1 notified Respondent of his interest in the Investment. In a conference call the next day, Firm's members confirmed the information in Respondent's March 2008 email solicitation. In March 2008, Investor 1 toured the properties with Firm's members and invested \$200,000 in the Investment. Firm and its members failed to pay the \$200,000 principal and 10% interest.

In October 2008, Investor 1 filed a civil suit against the Firm, Respondent's firm and Respondent individually. The Complaint alleged that Respondent had intentionally misrepresented the Investment to Investor 1. The Complaint alleged that Respondent knowingly made the following misrepresentations:

- The \$100,000 was needed to "secure the raw land" for two daycare centers. The Complaint alleges that one parcel of land had already been purchased prior to Investor 1's investment and the other parcel of land was never purchased;
- Firm had already constructed a day care center; and
- Firm was financially successful.

In his Response to Investor 1's Complaint, Respondent denied that he warranted or represented any of the information contained in his March 2008 email. Respondent asserted that he was simply relaying information he received from Firm's members about the Investment to other real estate investors. Further, Respondent asserted that he made it clear that:

- Neither he nor his firm was affiliated in any way with Firm;
- Neither he nor his firm was being compensated in any way by Firm;
- Investor 1 should have contacted Firm directly to confirm the information Respondent provided and to obtain additional information about the investment opportunity;
- Investor 1 should have arranged face-to-face meetings with Firm to assess the investment opportunity;
- Investor 1 should have performed his own due diligence on Firm generally and the investment opportunities described in the email;
- Neither Respondent nor his firm had performed, or had knowledge of, any due diligence on Firm, its projects (including the projects that were the subject of the email), or the financial status of the company or its principals; and
- Respondent was not acting as Investor 1's investment advisor, broker, representative or agent in any capacity.

In August 2009, Respondent settled the civil suit for \$7,500.

### *Investor 2 Civil Suit*

After reading Respondent's posting on a real estate investor forum, Investor 2 contacted Respondent indicating that she was interested in the Investment. In April 2008, Respondent emailed Investor 2 and reiterated the terms of the Investment. Investor 2 met with Firm

ACH 24375

members, who repeated the information provided by Respondent in his March 2008 posting and his April 2008 email. In April 2008, Investor 2 invested \$100,000 with Firm. To memorialize the investment, Firm and Investor 2 executed an investment agreement, in which Firm agreed to repay the \$100,000 principal plus \$10,000 interest within 90 days. Firm also agreed to provide Investor 2 with a small partnership interest as collateral for the loan. Firm and its members failed to pay the \$100,000 principal and the 10% interest due under the investment agreement.

In October 2008, Investor 2 filed a civil suit against Firm, its members, Respondent's firm and Respondent individually. Investor 2's Complaint alleged that Respondent had intentionally misrepresented the Investment to Investor 2. Investor 2's Complaint alleged that Respondent knowingly made the following misrepresentations:

- The \$100,000 was needed to "secure the raw land" for two daycare centers. The Complaint alleges that one parcel of land had already been purchased prior to Investor 2's investment and the other parcel of land was never purchased;
- Firm had already constructed a day care center; and
- Firm was financially successful.

In his Response to Investor 2's Complaint, Respondent denied that he warranted or represented any of the information contained in his March 2008 forum posting. Respondent asserted that he was simply relaying information he received from Firm's members about the Investment to other real estate investors. Further, Respondent asserted that he made it clear that:

- Neither he nor his firm was affiliated in any way with Firm;
- Neither he nor his firm was being compensated in any way by Firm;
- Investor 2 should have contacted Firm directly to confirm the information Respondent provided and to obtain additional information about the investment opportunity;
- Investor 2 should have arranged face-to-face meetings with Firm to assess the investment opportunity;
- Investor 2 should have performed his own due diligence on Firm generally and the investment opportunities described in the email;
- Neither Respondent nor his firm had performed, or had knowledge of, any due diligence on Firm, its projects (including the projects that were the subject of the email), or the financial status of the company or its principals; and
- Respondent was not acting as Investor 2's investment advisor, broker, representative or agent in any capacity.

In August 2009, Respondent settled the civil suit for \$7,500.

### 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*

The Commission determined that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he solicited investors'

participation in the Investment by creating the false impression that he and his firm had performed due diligence on the Investment. Thus, Respondent violated *Code of Ethics* Rule 201.

*B. Rule 606(b) – A CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board*

The Commission determined that Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board when he: 1) solicited investors' participation in the Investment by creating the false impression that he and his firm had performed due diligence on the Investment; and 2) violated Rules 201 and 607 of the *Code of Ethics*. Thus, Respondent violated *Code of Ethics* Rule 606(b).

*C. Rule 607 – A CFP Board designee shall not engage in conduct which reflects adversely on integrity or fitness as a CFP Board designee, upon the marks, or upon the profession*

The Commission determined that Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he: 1) solicited investors' participation in the Investment by creating the false impression that he and his firm had performed due diligence on the Investment; and 2) violated Rules 201 and 606(b) of the *Code of Ethics*. 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(b) and 607 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 as mitigating factors that Respondent: 1) admitted his conduct violated CFP Board's *Code of Ethics*; 2) had no intent to commit fraud, nor any knowledge of the fraud perpetuated by Firm; 3) expressed remorse for his misconduct; 4) personally paid a settlement to the investors; and 5) closed his registered investment adviser firm and now works as a call center employee.

The Commission considered as aggravating factors that: 1) the investors Respondent solicited incurred \$300,000 in monetary damages; and 2) Respondent was not licensed or incorporated under any entity approved to provide investment advice or referrals as was evidenced by the fact that his registered investment adviser application was pending and he was not affiliated with a broker/dealer.