CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24453

This is a summary of a Settlement Agreement entered into at the February 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* ("*Standards*") when he recommended that an elderly client with a low net worth, minimal investment experience and a moderate-aggressive risk tolerance engage in futures contracts trading.

II. Findings of Fact

Client A signed an investment advisory contract with Respondent and completed an Investment Profile Questionnaire ("Questionnaire") in which he indicated the following:

- He expected to begin withdrawing money from his portfolio in less than one year;
- He expected the withdrawals to last for 11 or more years;
- He would prefer a portfolio that would most likely exceed long-term inflation by a moderate margin and has a high to moderate degree of risk;
- His investment goals were moderate levels of risk with moderate levels of return;
- He would wait at least three months after incurring losses before changing to investment options that are more conservative;
- He was comfortable with investments that may frequently experience large declines in values if there is potential for higher returns; and
- He had an annual income of $25,000 - $50,000, a liquid net worth of $500,000 - $1,000,000, no experience with futures contracts, commodity options, or commodity funds, and 20 years of experience with stocks and bonds.

Based on this information, Client A was scored as moderate aggressive with an intermediate to long investment time horizon and a monthly income need of $2,300.

Respondent recommended futures contracts in response to Client A's continuing expressed desire and goal for higher returns on his portfolio. Respondent asserts that he explained the potential risks of the futures contracts strategy, including that it may take four to five years to recover from a 20% loss in his portfolio. Based on Respondent's recommendation, Client A authorized the transfer of $50,000 into a futures contracts trading account. After investing in the strategy for six weeks, Client A lost $32,000.

III. 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 recommended an inappropriate future contracts investment to his client who: 1) was retired; 2) sought $2,300 per month in income on portfolio valued at approximately $300,000, despite the statement in the Futures Policy indicating an investor should "avoid over emphasis on current income" in his futures contracts account; 3) indicated that he needed income from his portfolio almost immediately and for in excess of 11 years; 4) reported an annual income below $50,000; and 5) had no prior experience investing in futures contracts. Thus, Respondent violated Rule 201.

B. 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 the applicable rules, regulations and other established policies of CFP Board when he recommended an inappropriate future contracts investment to his client who: 1) was retired; 2) sought $2,300 per month in income on portfolio valued at approximately $300,000, despite the statement in the Futures Policy indicating an investor should "avoid over emphasis on current income" in his futures contracts account; 3) indicated that he needed income from his portfolio almost immediately and for in excess of 11 years; 4) reported an annual income below $50,000; and 5) had no prior experience investing in futures contracts. Thus, Respondent violated Rule 606(b).

C. 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 upon the profession when he recommended an inappropriate future contracts investment to his client who: 1) was retired; 2) sought $2,300 per month in income on portfolio valued at approximately $300,000, despite the statement in the Futures Policy indicating an investor should "avoid over emphasis on current income" in his futures contracts account; 3) indicated that he needed income from his portfolio almost immediately and for in excess of 11 years; 4) reported an annual income below $50,000; and 5) had no prior experience investing in futures contracts. Thus, Respondent violated 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.* The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the 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*.

The Commission considered no mitigating factors.

The Commission considered as aggravating factors that:

1. Respondent failed to reconcile conflicting suitability and risk tolerance responses from the client and failed to adequately counsel the client on the risks of futures contracts, leading to a substantial monetary loss by the client;
2. Respondent failed to act in the client's best interests when he provided a credit against fees for annuity surrender costs and by recommending unsuitable futures contracts; and
3. Respondent's prior regulatory discipline and CFP Board caution should have increased his awareness of complying with CFP Board's *Standards.*