CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24675

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, and after, January 1, 2009. The Rules in effect for conduct occurring prior to January 1, 2009 were Rules 101 through 705 of CFP Board's *Code of Ethics and Professional Responsibility* ("*Code of Ethics*"). The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board's *Rules of Conduct*.

I. Issue Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he recommended that an elderly client with a low net worth and a moderate-aggressive risk tolerance engage in futures contracts trading.

II. Findings of Fact

Client A filed a written customer complaint against Respondent. In the customer complaint, Client A alleged that she was a 71-year-old widow with a net worth of $1 million, all of which Respondent managed. Client A asserted that Respondent invested a majority of her net worth in unsuitable alternative investments. Among other investment recommendations, Respondent recommended that Client A invest $75,000 in Fund A. Client A alleged that she incurred a $4,500 loss of principal invested in her Fund A shares. Finally, Client A alleged that Respondent deposited $4,500 in Client A's account to cover her loss of principal.

Respondent's firm fined Respondent for violating his firm's written supervisory procedures when he paid Client A $4,500 to cover a loss in her Fund A investment. The supervisory procedures prohibited a registered representative from negotiating a complaint without the knowledge and consent of the firm.

In addition to covering Client A's loss in her Fund A investment, Respondent entered into a settlement agreement with Client A to resolve the complaints addressed in her customer complaint. In the agreement, Respondent agreed to pay a total sum of $60,000. To satisfy his payment obligations, Respondent entered into a promissory note. Respondent made the first two installment payments due on the promissory note. Respondent failed to pay, however, the remaining installment payments.

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 paid Client A $4,500 to cover a loss in her Fund A investment, without the knowledge and consent of his firm, in violation of his firm's policy. Thus, Respondent violated Rule 201.

B. 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 this Code of Ethics.

Respondent failed to perform services with dedication to the lawful objectives of the employer and in accordance with the *Code of Ethics* when he paid Client A $4,500 to cover a loss in her Fund A investment, without the knowledge and consent of his firm, in violation of his firm's policy, resulting in a fine. Thus, Respondent violated Rule 406.

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 professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when he: 1) paid Client A $4,500 to cover a loss in her Fund A investment, without the knowledge and consent of his firm, in violation of his firm's policy, resulting in a fine; and 2) violated Rules 201, 406 and 607 of CFP Board's *Code of Ethics*. Thus, Respondent violated 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 integrity and fitness as a CFP Board designee, upon the marks and upon the profession when he paid Client A $4,500 to cover a loss in her Fund A investment, without the knowledge and consent of his firm, in violation of his firm's policy, resulting in a fine. Thus, Respondent violated Rule 607.

E. Rule 6.5 – A certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.

Respondent engaged in conduct that reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks and upon the profession when he defaulted on his payment obligations pursuant to the promissory note he signed with Client A. Thus, Respondent violated Rule 6.5.

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, 406, 606(b) and 607 of the *Code of Ethics* and Rule 6.5 of the *Rules of Conduct.* 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*.

The Commission considered no mitigating factors.

The Commission considered as an aggravating factor that Respondent had an outstanding promissory note due to the client that was in default.