

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 24716

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This is a summary of a decision issued following the June 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. Issues Presented

Whether a candidate for CFP® certification (“Respondent”) could be certified when he was suspended from association with any member of the National Association of Securities Dealers (“NASD”, now known as the Financial Industry Regulatory Authority, Inc. or “FINRA”) in any capacity for five months in 2003 and issued a Desist and Refrain Order by the State Department of Corporations.

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

The Commission determined that in July 2003, Respondent entered into an Offer of Settlement with NASD in which Respondent was fined approximately \$39,000 and suspended from association with any member of NASD in any capacity for five months. In the settlement, Respondent agreed to the entry of findings that he engaged in outside business activity without promptly notifying his employer in writing. The suspension was effective from August 2003 through January 2004.

In September 2003, the State Department of Corporations issued a Desist and Refrain Order against Respondent. In the Order, the Corporations Commissioner found that Respondent offered and sold unregistered investment instruments in the form of promissory notes, real estate investment agreements and/or investment contracts in the State without the approval of any broker-dealer. The Order required Respondent to refrain from selling, buying, offering to sell, or offering to buy any security in the state, including but not limited to promissory notes, real estate investment agreements and/or investment contracts, by means of any written or oral communication that includes an untrue statement of material fact or omits to state a material fact necessary in order to make the statements not misleading. In August 2004, the State Department of Insurance revoked Respondent’s insurance licenses and issued Respondent a restricted insurance license to act as a life agent and fire and casualty broker-agent.

### III. Commission's Determination of Candidate's Fitness

Under CFP Board's *Candidate Fitness Standards*, the suspension of a financial professional license is presumed to be unacceptable, and will bar an individual from becoming certified unless the individual petitions the Commission for reconsideration.

The Commission determined that Respondent's conduct reflected adversely on his fitness as a candidate for CFP® certification, upon the profession and the CFP® certification marks. Respondent failed to rebut the presumptive bar and the Commission denied Respondent's Petition for Reconsideration.

The Commission considered as a mitigating factor that Respondent did attempt to help clients who had been affected by his sales of unregistered securities.

The Commission considered as aggravating factors that:

1. Respondent's behavior involved breach of fiduciary duty;
2. Respondent violated his employer's policies;
3. Respondent's behavior involved dishonesty to his employer;
4. Respondent's behavior demonstrated a lack of due diligence; and
5. Respondent's behavior involved a conflict of interest.