

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24874

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

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) violated National Association of Securities Dealers (“NASD”, now known as the Financial Industry Regulatory Authority, Inc. or “FINRA”) Conduct Rules 2510(b) and 2110; 2) signed a Letter of Acceptance, Waiver and Consent (“AWC”) wherein he accepted the findings of the NASD Rule violations; and 3) consented to a \$10,000 fine and suspension from association with any FINRA member for a period of 20 business days.

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

2008 Customer Complaint

In 2002, a client opened a taxable account with Respondent through his broker-dealer. Between 2002 and 2008, the client made multiple cash withdrawals from the account. Unbeknownst to either Respondent or the client, the withdrawals were creating a margin interest balance. In 2008, Respondent became aware of the margin interest balance and contacted the client to discuss the margin balance. The client instructed Respondent to liquidate a portion of the remaining account balance in order to satisfy the margin interest balance. After satisfying the margin interest balance, Respondent met with the client to review her account. During the meeting, Respondent offered to personally compensate the client for the losses she incurred due to the liquidation. Shortly after meeting with Respondent, the client filed a formal complaint with Respondent’s broker-dealer.

2008 Internal Review and Termination

In November 2008, Respondent’s broker-dealer conducted an internal audit of Respondent’s office. The auditors questioned Respondent regarding the margin matter as well as activity in various clients’ accounts related to the purchase of shares of stock. The auditors determined that Respondent entered purchase orders in 150 client accounts for 130 clients without written authorization from the clients or acceptance of the accounts by the broker-dealer as discretionary. In December 2008, the broker-dealer informed Respondent that, due to the margin matter

reported in the 2008 Customer Complaint and the unauthorized transactions, the broker-dealer would be terminating Respondent's registration.

2009 FINRA Investigation

FINRA initiated an investigation as a result of Respondent's conduct relating to the 2008 Customer Complaint, 2008 Internal Review and Termination. Respondent entered into an AWC in which he consented to the facts and findings relating to the 2008 Customer Complaint, 2008 Internal Review and Termination, violations of NASD Conduct Rules 2510(b) and 2110, a \$10,000 fine and a suspension from association with any FINRA member or representative for a period of 20 business days.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. *Rule 201 Violation – 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 while providing professional services when he: 1) offered to personally reimburse a client for the losses she incurred due to liquidating a portion of her account to satisfy her margin balances; and 2) entered orders in 150 client accounts for 130 clients without written authorization from the clients or acceptance of the accounts by his broker-dealer as discretionary. Thus, Respondent violated *Code of Ethics* Rule 201.

B. *Rule 406 Violation– A CFP Board designee shall perform professional services with dedication to the lawful objectives of the employer and/or in accordance with the Code of Ethics.*

The Commission determined that Respondent failed to perform professional services with the dedication to the lawful objective of his employer and in accordance with the *Code of Ethics* when he: 1) offered to personally reimburse a client for the losses she incurred due to liquidating a portion of her account to satisfy her margin balances; and 2) entered orders in 150 client accounts for 130 clients without written authorization from the clients or acceptance of the accounts by his broker-dealer as discretionary. Respondent's broker-dealer terminated him for his actions. Thus, Respondent violated *Code of Ethics* Rule 406.

C. *Rule 606(a) Violation – 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.*

The Commission found that 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 Rules 2510(b) and 2110 by: 1) offering to personally reimburse a client for the losses she incurred due to liquidating a portion of her account to satisfy her margin balances; and 2) entering orders in 150 client accounts for 130 clients without written

authorization from the clients or acceptance of the accounts by his broker-dealer as discretionary. Respondent's broker-dealer terminated him for his actions relating to reimbursing a client for losses and the unauthorized purchases. Respondent entered into an AWC in which he consented to the facts and findings relating to the 2008 Customer Complaint, 2008 Internal Review and Termination, violations of NASD Conduct Rules 2510(b) and 2110, a \$10,000 fine and a suspension from association with any FINRA member or representative for a period of 20 business days. Thus, Respondent violated *Code of Ethics* Rule 606(a).

D. Rule 606(b) Violation – In all professional activities 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 violated NASD Conduct Rules 2510(b) and 2110 by: 1) offering to personally reimburse a client for the losses she incurred due to liquidating a portion of her account to satisfy her margin balances; and 2) entering orders in 150 client accounts for 130 clients without written authorization from the clients or acceptance of the accounts by his broker-dealer as discretionary. Respondent's broker-dealer terminated him for his actions relating to reimbursing a client for losses and the unauthorized purchases. Respondent entered into an AWC in which he consented to the facts and findings relating to the 2008 Customer Complaint, 2008 Internal Review and Termination, violations of NASD Conduct Rules 2510(b) and 2110, a \$10,000 fine and a suspension from association with any FINRA member or representative for a period of 20 business days. Respondent's conduct violated Rules, 201, 406, 606(a), and 607 of the *Code of Ethics*. Thus, Respondent violated *Code of Ethics* Rule 606(b).

E. Rule 607 Violation – 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 mark and upon the profession when he violated NASD Conduct Rules 2510(b) and 2110 by: 1) offering to personally reimburse a client for the losses she incurred due to liquidating a portion of her account to satisfy her margin balances; and 2) entering orders in 150 client accounts for 130 clients without written authorization from the clients or acceptance of the accounts by his broker-dealer as discretionary. Respondent's broker-dealer terminated him for his actions relating to reimbursing a client for losses and the unauthorized purchases. Respondent entered into an AWC in which he consented to the facts and findings relating to the 2008 Customer Complaint, 2008 Internal Review and Termination, violations of NASD Conduct Rules 2510(b) and 2110, a \$10,000 fine and a suspension from association with any FINRA member or representative for a period of 20 business days. 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, 406, 606(a), 606(b), and 607 of the *Code of Ethics*. Pursuant to Article 4.2 of the *Disciplinary Rules*, the Commission issued the Respondent a Public Letter of Admonition.

In mitigation, the Commission considered the following factors: 1) Respondent had no prior disciplinary history; 2) Respondent did not benefit personally from the purchases for client accounts; and 3) Respondent did not intend to harm or defraud clients.

The Commission cited as aggravating factors that: 1) Respondent admitted to knowing that he had limited discretion on the accounts but purchased the stock regardless; 2) Respondent did not consider the suitability of the purchases across multiple accounts; and 3) Despite monthly account reviews and meeting with the client, Respondent failed to notice margin the margin balance in the client's account.