CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24933

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 on or after January 1, 2009. The Rules in effect for conduct occurring on and after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board's *Rules of Conduct*.

I. Issues Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he: 1) made unauthorized trades by liquidating a deceased client's trust account causing the trust to incur commissions; 2) was unaware that the bank trustee could have contacted the broker-dealer directly to avoid transaction costs; and 3) agreed to accept $200,000 as a beneficiary of the client's trust account, while maintaining his role advisor to the trust.

II. Findings of Fact

Respondent's client was 79-years old and trustee of a marital trust and a personal trust. Respondent stated that his client's estate was worth approximately $5 million. Respondent also stated that he was a close friend of his client and, as a result, she named Respondent as a beneficiary of a $200,000 portion of the trust. Respondent's client died in February 2010 and a bank became the successor trustee of the trusts.

Respondent was notified of his client's death by her family. Respondent immediately liquidated the client's accounts without authorization from the bank who was the acting trustee. In April 2010, the trust officer at the bank sent Respondent a letter, which alerted Respondent that the sale of the equities in the client's account were unauthorized. The trust officer's letter requested reimbursement of the approximately $6,700 in fees and commissions that resulted from the transaction. Respondent said that he subsequently learned that the bank could contact his broker-dealer directly to execute the trades in the trusts without incurring transaction costs. Respondent also acknowledged in his July 2010 letter to CFP Board that he made unauthorized trades in the trust's accounts.

Respondent's broker-dealer amended his Form U4 to reflect the unauthorized transaction mentioned in the trust officer's letter. In April 2010, a Senior Vice President at the bank sent a letter to Respondent's broker-dealer stating that the bank would not pursue a complaint against Respondent. Respondent's broker-dealer amended Respondent's Form U4 to reflect that the customer complaint was withdrawn. Respondent accepted the $200,000 distribution from the client's trust minus the $6,700 he received in commission.

III. Rule Violations

A. Rule 2.2(b) – A certificant shall disclose to a prospective client or client a general summary of likely conflicts of interest between the client and the certificant, the certificant's employer or any affiliates or third parties.

Respondent failed to disclose a conflict of interest when he agreed to accept $200,000 as a beneficiary of the client's trust account while maintaining an advisory role over the principal of the trust. Thus, Respondent violated Rule 2.2(b).

B. Rule 4.4 – A certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

Respondent did not exercise reasonable and prudent professional judgment when he: 1) made unauthorized trades by liquidating a deceased client's trust account causing the trust to incur commissions; and 2) was unaware that the bank trustee could have contacted the broker-dealer directly to avoid transaction costs. Thus, Respondent violated Rule 4.4.

C. 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 CFP® professional, upon the CFP® marks, and upon the profession when he: 1) made unauthorized trades by liquidating a deceased client's trust account causing the trust to incur commissions; 2) was unaware that the bank trustee could have contacted the broker-dealer directly to avoid transaction costs; and 3) agreed to accept $200,000 as a beneficiary of the client's trust account, while maintaining his role advisor to the trust. Thus, Respondent violated Rule 6.5.

IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act or omission that violates the *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 2.2(b), 4.4, and 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 as mitigating factors:

1. Respondent attempted to resolve the issue by restoring the trades but the trustee decided not to restore the trades.
2. There is no evidence that Respondent conducted any inappropriate trades in the account prior to the trade at issue.
3. Respondent has no prior disciplinary history.

The Commission considered as aggravating factors:

1. Respondent failed to recognize an obvious conflict of interest and failed to disclose it to the client.
2. Respondent exercised discretion in a nondiscretionary account to process an unauthorized trade.
3. Respondent's conduct impeded the ability of the duly recognized trustee from fulfilling his fiduciary obligation under the law.