

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 25123

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

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) transacted business in the State without being properly registered as an agent of the issuer; 2) offered and sold unregistered securities of the issuer; and 3) entered into a Letter of Engagement with Controlling Company, in violation of his broker-dealer’s internal policy.

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

In 2001, Respondent met the president of Issuer and the creator and controller of Controlling Company, the primary owner of Issuer. Respondent signed a Letter of Engagement with Controlling Company. Respondent agreed to help Controlling Company raise \$500,000, and to prepare an executive summary, a private placement memorandum, and other documents. His compensation would amount to 6% of the funds raised in cash and 2% in equity. In his response to CFP Board, Respondent acknowledged that he signed the Letter of Engagement but asserted that he never prepared offering documents for Issuer and was never compensated for any work he performed behalf of Issuer. Respondent did not disclose the Letter of Engagement to his employer.

In mid-2001, Respondent introduced his client to the president of Issuer. The client acquired 100,000 shares of Issuer stock with funds drawn from her account. Respondent stated that he was aware of the investment and advised against the investment.

According to Respondent, the client brought a civil suit against Issuer. In early 2008, Respondent advised the client to file a complaint against Issuer with a state regulator. Within the next month, Respondent received a telephone call from an investigator with the state regulator and provided information about the matter to the investigator.

In 2008, Respondent received an investigation conclusion letter from the state regulator outlining its allegations against him. The state regulator alleged that Respondent solicited the client to invest in Issuer while he was associated with his employer, but without his employer’s knowledge that he was soliciting investments in Issuer. Respondent also failed to report his connection with Issuer’s President, Controlling Company, and Issuer to the state regulator or to file an application for registration as an agent of Controlling Company prior to selling Issuer

stock to the client. By transacting business in the State without being properly registered as an agent, Respondent violated the State securities act. Further, the securities were not registered or exempted as required by the Act. By offering and selling unregistered securities, Respondent violated the State securities act.

Respondent admitted that he violated the State securities act and his employer's internal procedures by introducing the client to Issuer's president and acknowledged that he should not have entered into any agreements with Issuer. He stated that he was not aware at the time that his actions violated the Act. He further stated that his lack of regulatory background and enthusiasm for the product may have influenced the care with which he approached the matter, that he understood Issuer to be a duly registered company, and that he was unaware that Issuer, Controlling Company, or he was in violation of the State securities act until he received the letter from the state regulator.

Respondent signed a Settlement Order in which he neither admitted nor denied the allegations made by the state regulator but agreed to pay a \$20,000 penalty plus \$1,300 to defray costs of the investigation and to refrain from violating the State securities act in the future.

III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

The Commission determined that Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation when, after entering into the Letter of Engagement with Controlling Company, he failed to: 1) acknowledge that he entered into an agreement with Controlling Company to the state regulator; and 2) disclose the existence of the Letter of Engagement to his employer. In making this determination, the Commission noted that Respondent acknowledged in his pleadings and testimony that he improperly entered into the letter of engagement and failed to disclose that fact to the state regulator and his employer. Thus, Respondent violated Rule 102.

- B. *Rule 201 – 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 in providing professional services when he: 1) transacted business in the State without being properly registered as an agent; 2) offered and sold unregistered securities; and 3) entered into a Letter of Engagement with Controlling Company, in violation of his employer's internal policy. In making this determination, the Commission noted that Respondent acknowledged in his pleadings and testimony that he improperly entered into the letter of engagement and failed to disclose that fact to the state regulator and his employer. Thus, Respondent violated Rule 201.

C. 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

The Commission determined that Respondent failed to perform professional services with dedication to the lawful objectives of his employer and in accordance with the *Code of Ethics* when he: 1) transacted business in the State without being properly registered as an agent; 2) offered and sold unregistered securities; and 3) entered into a Letter of Engagement with Controlling Company, in violation of his employer's internal policy. As a result of his actions, he was fined \$20,000 by the state regulator. In making this determination, the Commission noted that Respondent acknowledged in his pleadings and testimony that he improperly entered into the letter of engagement and failed to disclose that fact to the state regulator and his employer. Thus, Respondent violated Rule 406.

D. Rule 407(a) – A CFP Board designee shall advise his/her employer of outside affiliations which reasonably may compromise service to an employer

The Commission determined that Respondent failed to advise his employer of outside affiliations which reasonably may compromise service to an employer when he signed a Letter of Engagement in which he agreed to help Controlling Company raise funds and to prepare documents for the company, for which he would receive compensation in the amount of 6% of the funds raised in cash and 2% in equity, thereby violating his employer's internal procedures. In making this determination, the Commission noted that Respondent acknowledged in his pleadings and testimony that he improperly entered into the letter of engagement and failed to disclose that fact to his employer. Thus, Respondent violated Rule 407(a).

E. Rule 408 – A CFP Board designee shall inform his/her employer, partners, co-owners of compensation of other benefit arrangements in connection with his or her services to clients, which are in addition to compensation from the employer, partners or co-owners for such services.

The Commission determined that Respondent failed to inform his employer of compensation or other benefit arrangements in connection with his services to clients, which are in addition to compensation from the employer for such services when he signed a Letter of Engagement in which he agreed to help Controlling Company raise funds and to prepare documents for the company, for which he would receive compensation in the amount of 6% of the funds raised in cash and 2% in equity, thereby violating his employer's internal procedures. In making this determination, the Commission noted that Respondent acknowledged in his pleadings and testimony that he improperly entered into the letter of engagement and failed to disclose that fact to his employer. Thus, Respondent violated Rule 408.

F. Rule 606(a) – 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 determined that Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies when he: 1) transacted business in the State without being properly registered as an agent of the Issuer; 2) offered and sold

unregistered securities; and 3) entered into a Letter of Engagement with Controlling Company, in violation of his employer's internal policy, thereby violating the State securities act. As a result of his actions, he was fined \$20,000 by the State regulator. In making this determination, the Commission noted that Respondent acknowledged in his pleadings and testimony that he improperly entered into the letter of engagement and failed to disclose that fact to the State regulator and his employer. Thus, Respondent violated Rule 606(a).

G. 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.

The Commission determined that Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board when he: 1) transacted business in the State without being properly registered as an agent of Issuer; 2) offered and sold unregistered securities; 3) entered into a Letter of Engagement with Controlling Company, in violation of his employer's internal policy; and 4) violated Rules 102, 201, 406, 407(a), 408, 606(a) and 607 of the *Code of Ethics*. In making this determination, the Commission noted that Respondent acknowledged in his pleadings and testimony that he improperly entered into the letter of engagement and failed to disclose that fact to the State regulator and his employer. Thus, Respondent violated Rule 606(b).

H. 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.

The Commission determined that 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: 1) transacted business in the State without being properly registered as an agent of Issuer; 2) offered and sold unregistered securities; and 3) entered into a Letter of Engagement with Controlling Company, in violation of his employer's internal policy. In making this determination, the Commission noted that Respondent acknowledged in his pleadings and testimony that he improperly entered into the letter of engagement and failed to disclose that fact to the State regulator and his employer. 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 which violates the provisions of the *Rules of Conduct*. The Commission found Article 3(a) grounds for discipline because Respondent violated Rules 102, 201, 406, 407(a), 408, 606(a), 606(b) and 607 of the *Code of Ethics*. Pursuant to Article 4.1 of the *Disciplinary Rules*, the Commission issued a Private Censure to Respondent.

The Commission considered the following mitigating factors:

1. The conduct in question occurred 10 years ago;
2. Respondent has made significant professional and personal changes since the conduct in question occurred, including undertaking his CFP® studies;
3. Respondent accepted full responsibility for his actions; and

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4. Respondent had no prior disciplinary history.

The Commission did not consider any aggravating factors.