

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 25732

This is a summary of a Settlement Agreement entered into at the March 2013 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) failed to present the client with a comprehensive financial plan designed to achieve the client’s goals and objectives; 2) recommended an unsuitably risky asset allocation for the client; and 3) advised the client to make a loan to Respondent’s acquaintance.

II. Findings of Fact

Client’s Goals and Objectives

In April 2007, Client was a 77-year-old business owner. He planned to sell his business and retire so he sought financial advice from Respondent. The first meeting between Respondent and Client took place in April 2007. In July 2007, an Engagement Letter was completed and Client indicated that his goals for the planning process were to: 1) sell his business; 2) transfer approximately \$15-20 million to his son; 3) build a new house and transfer approximately \$5 million to his wife; 4) set up a trust to provide for his daughter; and 5) go fishing.

In a Personal Wealth Questionnaire, Client’s Planning Concerns and Objects were listed as: 1) Positioning as many assets for my family as I can while minimizing the Estate & Gift Tax; 2) Ensuring that family members with special needs are well cared for; 3) Minimizing Income Tax & Capital Gains Tax; and 4) Protecting my family’s assets from creditors and litigation. Notably, Client did not select “Doubling my net worth at least every 6 years” or “Protecting the value of my assets using hedging techniques.”

The Liabilities section contained a note indicating that Client planned to purchase an approximately \$5 to \$6 million airplane after the sale of his business. According to the Estate & Charitable Planning Information section, Respondent was not gifting to children or grandchildren or making contributions to charity.

In August 2007, Respondent prepared a Preliminary Assumptions document. According to the document, Client’s net worth was approximately \$118 million and included seven properties worth approximately \$8.6 million and a business worth approximately \$110 million. The document contained Projected Cash Flow Details from 2007 to 2012, an Estate Tax Scenario, and Plan Data Summary. Respondent stated that he did not have a formal financial planning agreement with Client.

Financial Plan

In October 2007, Respondent presented a financial plan entitled “Personal Wealth Analysis” to Client. This financial plan contained general information on transfer taxes, a Net Worth Statement, Estate Planning Flowchart, and a Summary of Suggested Planning Options. The Summary of Suggested Planning Options consisted of 28 bullet-pointed possibilities and was followed by Additional Resource Material. The Additional Resource Material provided additional general information for some of the ideas listed.

The Personal Wealth Analysis was an insufficient financial plan. It was not specifically tailored for Client. It contained a similar Net Worth Statement, Estate Scenario, and Plan Data Summary to those in the Preliminary Assumptions that Client had already received. The Summary of Suggested Planning Options was a broad array of options. For example, the Personal Wealth Analysis listed charitable planning options and a charitable lead trust “to satisfy [Client’s] charitable giving objectives.” However, Client had not indicated any charitable giving objectives. The Additional Resource Material provided the general advantages and disadvantages for many different types of trusts but did not make a specific, actionable recommendation.

Respondent did not provide Client with a comprehensive plan developed to meet Client’s goals. The specific goals that Client listed in the Engagement Letter and Personal Wealth Questionnaire are not addressed in the Personal Wealth Analysis. The Personal Wealth Analysis did not address Client’s transfer of approximately \$15-20 million to his son, construction of a new house, transfer of \$5 million to his wife, construction of the trust to provide for his daughter, or purchase of an airplane. Respondent provided generic options but did not make any recommendations for a comprehensive financial course of action.

Asset Allocation Tools

In November 2007, Respondent prepared a Specialized Portfolio Analysis Asset Allocation Tool for Client to invest an approximately \$60 million account that was in 95% cash and 5% leveraged buyouts. The tool provided recommendations of portfolio asset allocations based on expected risk and return. In December 2007, Respondent prepared a second Specialized Portfolio Analysis Asset Allocation Tool for Client. Client and Respondent apparently selected an asset allocation that included 2.4% bonds, 48.6% equities, 19% hedge funds, 10% structured credit, and 20% illiquid alternatives. Client was 77 years old and indicated that his goals and objectives were to preserve his assets for his family, not growth. Nevertheless, under Respondent’s guidance, Client purchased a portfolio consisting of 32% global managed account, 13.3% International ETF, 14.4% managed futures, 9.6% hedge funds, and 1.93% private equity (with total commitments of approximately \$9.2 million).

Other Purchases and Investments

Client purchased the airplane through an equity line of credit from Respondent’s broker-dealer (“Broker-Dealer”), and also purchased an approximately \$4 million ranch using the equity line of credit. The purchases or loans were not addressed in a financial plan.

In 2008, Respondent recommended an investment opportunity outside of Broker-Dealer to Client. Respondent introduced Client to an individual who renovated and sold single-family homes and Client loaned Respondent’s acquaintance approximately \$150,000. Respondent did not provide Client with any

ACH 25732

- 2 -

written disclosures regarding this investment. According to Client, Respondent's acquaintance defaulted on the loan. This loan was not addressed in a financial plan.

FINRA Arbitration

In September 2009, Client filed a Statement of Claim against Broker-Dealer in FINRA arbitration. Client alleged that Respondent's investment recommendations were unsuitable given Client's age, retirement status, investment objectives, and risk tolerance. In December 2009, Broker-Dealer filed its Answer and claimed that the investments Respondent recommended were in line with Client's objectives and losses were caused by the global credit crisis. In February 2011, the parties entered into a settlement agreement in which Broker-Dealer agreed to pay Client approximately \$7,000,000.

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: 1) failed to present the client with a comprehensive financial plan designed to achieve the client's goals and objectives; 2) recommended an unsuitably risky asset allocation for the client; and 3) advised the client to make a loan to Respondent's acquaintance. Thus, Respondent violated *Code of Ethics* Rule 201.

B. Rule 202 – A financial planning practitioner shall act in the interest of the client

Respondent failed to act in the interest of the client when he: 1) failed to present the client with a comprehensive financial plan designed to achieve the client's goals and objectives; 2) recommended an unsuitably risky asset allocation for the client; and 3) advised the client to make a loan to Respondent's acquaintance. Thus, Respondent violated *Code of Ethics* Rule 202.

C. Rule 606(b) – A CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board

Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board when he: 1) failed to present the client with a comprehensive financial plan designed to achieve the client's goals and objectives; 2) recommended an unsuitably risky asset allocation for the client; and 3) advised the client to make a loan to Respondent's acquaintance, in violation of Rules 201, 202, 607 and 703. Thus, Respondent violated *Code of Ethics* Rule 606(b).

D. Rule 607 – A CFP Board designee shall not engage in 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: 1) failed to present the client with a comprehensive financial plan designed to achieve the client's goals and objectives; 2) recommended an unsuitably risky asset allocation for the client; and 3) advised the client to make a loan to Respondent's acquaintance. Thus, Respondent violated *Code of Ethics* Rule 607.

E. Rule 703 – A financial planning practitioner shall make and/or implement only recommendations which are suitable for the client

Respondent failed to make and/or implement only recommendations that are suitable for the client when he: 1) recommended an unsuitably risky asset allocation for the client; and 2) advised the client to make a loan to Respondent's acquaintance. Thus, Respondent violated *Code of Ethics* Rule 703.

F. Practice Standard 400-2 – Developing the financial planning recommendations

Respondent failed to develop recommendations in an effort to reasonably meet the client's goals, needs and priorities because he did not develop a comprehensive plan that was able to be implemented by the client and would achieve the client's objectives. Thus, Respondent violated *Practice Standard 400-2*.

G. Practice Standard 400-3 – Presenting the financial planning recommendations

Respondent failed to communicate his recommendations in a manner and to an extent reasonably necessary to assist the client in making an informed decision because he failed to present the client with a comprehensive plan that was able to be implemented by the client and would achieve the client's objectives. Respondent also failed to provide the client with any written disclosures regarding Respondent's recommendation to loan money to Respondent's acquaintance. Thus, Respondent violated *Practice Standard 400-3*.

H. Practice Standard 500-2 – Selecting products and services for implementation

Respondent failed to select appropriate products and services that are consistent the client's goals, needs and priorities when he: 1) recommended an unsuitably risky asset allocation for the client; and 2) advised the client to make a loan to Respondent's acquaintance. Thus, Respondent violated *Practice Standard 500-2*.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(b) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules"). Article 3(a) 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, 202, 606(b), 607 and 703 of the *Code of Ethics*. Article 3(b) provides grounds for discipline for any act or omission that violates the Practice Standards. The Commission found grounds for discipline under Article 3(b) because Respondent violated *Practice Standards* 400-2, 400-3 and 500-2. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a three-year suspension, pursuant to Article 4.3 of the *Disciplinary Rules*.

In arriving at its decision, the Commission reviewed Anonymous Case History 20996, 22866 and 23352. The Commission also consulted *Sanction Guideline* 31 (Suitability).

The Commission considered that Respondent had no other client complaints in 22 years as a mitigating factor.

The Commission considered that Respondent did not grasp the importance of the financial planning process or ignored it and that it took four attempts for Respondent to reply to CFP Board as aggravating factors.