CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 25775

This is a summary of a Settlement Agreement entered into at the June 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 and after January 1, 2009. The Rules in effect for conduct occurring before January 1, 2009 were Rules 101 through 705 of CFP Board's *Code of Ethics and Professional Responsibility* ("*Code of Ethics*"). The Rules in effect for conduct occurring 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) stated an annual income figure for a client on that client's account application which he knew to be inaccurate, causing his firm's books and records to be inaccurate and in violation of NASD Rules 3110 and 2110; 2) recommended to a client that she purchase a variable universal life insurance policy with an annual premium of $10,000 when Respondent knew that the client was unemployed; and 3) was placed on heightened supervision by his firm for violation of the firm's lending policy and for failure to comply with firm policies and procedures relating to following pre-approval restrictions by accepting a trade on a client's account from an unauthorized third party; and 4) was terminated by his firm for violating firm policy regarding use of discretion and accepting a trade from an unauthorized party.

II. Findings of Fact

2008 FINANCIAL FIRM HEIGHTENED SUPERVISION

According to Respondent's December 2010 response to CFP Board's Notice of Investigation, in November 2008, Financial Firm placed Respondent on heightened supervision. The facts relating to Respondent's heightened supervision dated from May 2008 when Respondent sought and obtained approval from Financial Firm to invest in an outside business venture ("Business Venture"). Business Venture was to purchase and manage an indoor sports complex for use by area soccer, hockey, and other sports teams. After Financial Firm gave its approval for Respondent to invest, he planned to commit approximately $100,000 to Business Venture.

In August 2008, Respondent received a call from his Field Supervision Director ("Mr. A"). Mr. A told Respondent that he had been monitoring Respondent's cash transfer activities. Mr. A observed there were several transfers between Respondent's mother's account and Respondent's account, and he asked for an explanation.

Respondent told Mr. A that since 2003, he had occasionally borrowed money from his mother. He also told Mr. A that his mother executed a Financial Firm Letter of Authorization ("LOA") to facilitate these borrowings. During Financial Firm's annual compliance audits, Respondent disclosed these loans from his mother. Until Mr. A's telephone call, Financial Firm had never questioned Respondent about these loans, which had taken place over the last five years. Respondent also told Mr. A of Financial Firm's approval of Respondent's Business Venture investment. Respondent told Mr. A that Respondent planned to fund his Business Venture investment with a loan from his mother and that Mr. A could expect to see a transfer of approximately $100,000 go through in the near future. Respondent stated that Mr. A seemed satisfied with Respondent's response.

In early September 2008, Respondent planned to make the $100,000 investment in Business Venture. Before the planned transfer, Mr. A contacted Respondent again. Mr. A indicated that going forward, Respondent would need to get special approval from Financial Firm's Compliance Department each time Respondent planned to borrow money from his mother, despite the existence of the LOA.

During his call with Mr. A, Respondent became concerned that Mr. A might instruct Respondent not to proceed with his planned transfer. Because Respondent was about to leave the country, he did not have time to arrange for alternate financing. Therefore, while Respondent was still on the phone with Mr. A, Respondent placed the transfer. Later, during the call, Respondent asked Mr. A when the restriction on the transfers would be effective, and Mr. A stated "tomorrow."

Soon after Respondent executed the transfer, Mr. A telephoned Respondent again, upset that Respondent had done the transfer. Mr. A claimed that he told Respondent that the new restriction was effective immediately. Respondent was then called to a compliance hearing to determine whether he violated any compliance procedures.

In November 2008, Financial Firm placed Respondent on heightened supervision. In his email of that same date to Respondent, Financial Firm' Senior Compliance Resolution Investigator ("Mr. B") stated that Respondent violated multiple firm policies, and required him to review the following Financial Firm materials: 1) its lending policy; 2) information on failure to comply with firm policies and procedures; 3) its client signatures policy; and 4) information on branch supervision. Due to Respondent's violation of firm policy and failure to follow supervisory instructions, Financial Firm issued the following disciplinary actions: 1) a letter of warning stating that any future violations of firm policy could result in more serious disciplinary action; 2) a $2,000 fine; 3) special supervision for a period of time to be determined by the Compliance Department; 4) requiring Respondent to liquidate his outside account and keep it in a dormant state; 5) complete the repayment of the loan from his mother's account in the amount of approximately $37,000 by November 2008; 6) complete two Compliance Training Modules by November 2008; and 7) all LOAs allowing transfers to Respondent's single account or his joint account were voided. Respondent was required to submit a new LOA on any transfer of funds into these accounts on each occurrence.

In December 2010, CFP Board requested additional information and documentation relating to Respondent's heightened supervision. In February 2011, Respondent responded to CFP Board's request. Respondent stated that he requested the supporting documentation from Financial Firm evidencing its approval of his outside business activities, but Financial Firm denied his request. Respondent stated that although he could not provide documentation of Financial Firm's approval, this approval was never called into question. Respondent stated that to the best of his recollection, he was required to submit for prior approval any new outside business activities he was considering, and to annually re-notify Financial Firm of the continuation of approved outside business activities. Respondent stated that his actions regarding Business Venture were consistent with Financial Firm's policies.

While on heightened supervision, Respondent stated that he worked to comply with all the terms outlined in Financial Firm's November 2008 email. He promptly paid his fine, repaid the loans from his mother within the required time, placed his outside account in a dormant state, and completed the Compliance Training Modules within the required time.

In September 2011, CFP Board requested more information on the policies that Financial Firm determined that Respondent violated. Respondent responded in October 2011. Respondent explained that the lending policy related to the borrowing previously identified between his mother's and his account for the Business Venture investment. As to failure to comply with firm policies and procedures, Respondent stated that this related to his failure to follow pre-approval restrictions. One instance concerned the condition of his heightened supervision which required Respondent to obtain an LOA prior to any transfers between Respondent's joint and individual accounts. Respondent stated that without his knowledge and without pre-approval, his sales assistant ("Ms. C") made several small transfers of funds from his joint account to his individual account to pay for household bills.

Financial Firm also found several instances in which it claimed that customers had used margin in the absence of specific pre-approval from the Compliance Department. In several of the situations, Respondent stated that he did not realize that he should have obtained pre-approval for the client transactions, and his errors resulted from his misunderstanding of the pre-approval instructions. In other instances, Respondent stated that without his knowledge, Ms. C utilized margin without first obtaining pre-approval to cover orders that had been placed by customers.

As to client signatures, Respondent stated that a Compliance Department Analyst questioned Respondent's wife's signature on documents they completed when they initially opened accounts in 2000. The Analyst spoke with Respondent's wife who indicated that the signatures were indeed hers. No other signatures were in question.

As to branch supervision, Respondent stated that is related to his failure to comply with firm policies and procedures. As Respondent previously stated, his staff made several errors related to transfers between his personal single account and his joint account as well as some items where margin was used in error. Respondent stated that as soon as he became aware of the issues, he took corrective action.

2010 FINANCIAL FIRM INTERNAL REVIEW AND TERMINATION

In September 2010, Financial Firm discharged Respondent due to allegations that he used discretion in a client's account and accepted a trade from an unauthorized party in another client's account. In December 2010 and October 2011, Respondent provided information on his termination to CFP Board.

Alleged Use of Discretion

According to Respondent's October 2011 response, this allegation related to a client's ("Mr. D") customer complaint described below. Respondent stated that he did not have, nor did he use, discretion over Mr. D's account. He stated that Mr. D lived in another state so all conversations with him were done over the phone and through the mail. Respondent stated that many of these discussions took place with Mr. D's daughter-in-law also on the phone. Mr. D's CPA ("Ms. E") confirmed that Respondent's actions were consistent with Mr. D's needs. Respondent stated that Financial Firm' policy regarding trades was that trade authorizations were to be done orally. Respondent stated that each of the trades he placed was confirmed with Mr. D.

Alleged Acceptance of a Trade from an Unauthorized Party

According to Respondent's December 2010 response, this allegation related to an account that was originally established under the Uniform Gift to Minor Act (UGMA), but was converted to an individual account after the son reached the age of majority. Respondent met with the son and his parents ("Mr. and Mrs. F") to complete the necessary paperwork to convert the account to an individual account. During the meeting, the Mr. and Mrs. F informed Respondent that their son was planning to leave on a two-year church mission trip. Mr. and Mrs. F planned to send their son $400 a month to cover his expenses while on his trip. In return, the son wanted to set up a recurring transfer of $400 from his account into his parents' account to reimburse them for their advances. The son specifically instructed Respondent as to which funds to sell on a monthly basis and in what amounts, in order to fund the transfers. Respondent stated that he was not given specific instructions as to when the transfers should begin.

After the son left on his mission trip, Mr. F called Respondent to advise him of the date that the transfers should begin. Mr. F also told Respondent that they had intended to start the transfers earlier, and therefore needed a catch up transfer to reimburse the parents for an advance they had already made to their son. Respondent then accepted an order from Mr. F to sell approximately $600 of one of their son's mutual funds, which would provide sufficient cash for the current and catch up amounts due to Mr. and Mrs. F. When Respondent accepted Mr. F's order, he mistakenly believed that their son had executed a trading authorization for Mr. F at the time the account was converted to an individual account. No such trading authorization was ever executed. Respondent stated that the transactions were consistent with the directions given to him by the son before he left on his trip. Nevertheless, Respondent acknowledged that he should have ensured that a written letter of trading authorization was completed by the son permitting his father to place an order in his account. Respondent also stated that Mr. and Mrs. F nor their son ever filed a customer complaint and that they all transferred their accounts to Investment Firm so Respondent could continue to advise them. Respondent's statement did not provide any dates as to when the matter with Mr. and Mrs. F occurred. However, Respondent's meeting notes indicated that the meeting with Mr. and Mrs. F and subsequent trades took place in the June-July 2010 time frame.

Sometime in 2010, after Respondent's termination, Financial Firm filed a FINRA Arbitration Statement of Claim against Respondent. Financial Firm alleged that Respondent violated his non-solicitation agreement. In December 2010, Respondent filed his Answer and a Counterclaim against Financial Firm. In his Counterclaim, Respondent alleged defamation and unfair competition. In October 2011, Respondent entered into a Settlement Agreement with Financial Firm wherein Financial Firm agreed to pay Respondent $15,000.

2010 GRIEVANCE AND CUSTOMER COMPLAINT

In October 2010, a client ("Ms. G") filed a customer complaint against Respondent with Financial Firm, Respondent's former firm. On the same day, Ms. G filed a grievance against Respondent with CFP Board. In her grievance, Ms. G alleged that in November 2008, Respondent sold her a variable universal life insurance policy from an insurance company ("Insurance Company") that was unsuitable for her, and that Respondent made numerous misrepresentations about the policy.

In her grievance, Ms. G stated that she opened an account with Financial Firm in late 2007. In November 2008, Ms. G met with Respondent to discuss estate planning. According to Ms. G, the only estate planning option that Respondent presented to her was the Insurance Company Policy. Respondent then allegedly told her that the policy would earn an 8% return and she could borrow against the policy, and if she couldn't afford a premium in any one year, she could pay less and the policy's value would be adjusted. Ms. G alleged the following: 1) Respondent never told her that the policy could lose value; 2) Respondent never told her that she couldn't surrender the investment without penalty; and 3) Respondent never informed Ms. G of the tax implications of using profits or sale of other assets to pay the premiums.

Ms. G was a 55-year-old single female when she applied for the policy. The application stated her net worth was approximately $300,000 and her annual income was approximately $52,000. However, Ms. G was actually unemployed at the time, having been caregiver to her both her elderly parents for well over one year.

As a result of the meeting, Respondent recommended that Ms. G exchange her small ($2,000) Mass Mutual Policy for the Insurance Company Variable Universal Life Policy. In November 2008, a 1035

Exchange was processed. The Insurance Company Policy had a face value of approximately $867,000 and the annual premium was $10,000. The Policy had a 10-year surrender period. Respondent then made the following sub-allocations to her Policy:

Fund 1 Balanced Wealth Strategy Portfolio: 20%
Fund 2 Bond Fund: 10%
Fund 3 Growth-Income Fund: 20%
Fund 4 Contrafund Portfolio: 15%
Fund 5 HLS Fund: 15%
Fund 6 Bond-Debenture Portfolio: 5%
Fund 7 Total Return Series: 15%

According to Respondent's December 2010 NOI response, Ms. G's grievance did not accurately describe their discussions or Respondent's advice. Respondent contended that the Insurance Company Policy was suitable for Ms. G considering her investment objectives, financial circumstances and risk tolerance.

After Ms. G's mother passed away, she sought advice from Respondent with respect to the investment of additional funds ($280,000) that she received from her mother's estate. Therefore, it was natural that they discuss estate planning issues. Respondent stated that Ms. G made it clear that her primary goal was to leave a legacy for her children and grandchildren. Respondent asserted that they discussed various types of insurance products and how they could be used in different situations, including term life policies, variable universal life policies, universal life policies and whole life policies.

They discussed the Insurance Company Policy as an option for funds that Ms. G would not need to live on or for retirement, but which she would rely on to leave to her children and grandchildren. According to Respondent, they discussed the overall purpose and goal of the product, the risks and costs associated with the product, and the time horizon involved. They discussed the fact that the policy was not intended to be a place to put money for the short or intermediate term, but rather was a long-term investment that would require the lifetime payment of premiums. Respondent stated that they also discussed the tax-free growth benefits, the penalties for early withdrawal, and the flexible nature of the premium payments.

Respondent did not understand Ms. G's statement that she had absolutely no idea that the policy was a risky investment. Respondent allegedly told Ms. G that the rate of return was variable and that there were risks involved as the premiums would be placed in mutual funds within the policy. Respondent also stated that after she purchased the policy in 2008 they reviewed her portfolio several times and discussed the policy's value fluctuations and reviewed the mutual fund sub-allocations.

As to the commission Respondent received for the recommendation and sale of the Insurance Company Policy to Ms. G, Respondent stated that he never made an investment recommendation based upon the commission he would receive. In his February 2011 response to CFP Board, Respondent estimated his commission to have been approximately $3,200. In this same statement, Respondent stated that he had not established any discretionary accounts for Ms. G. He spoke with Ms. G on a regular basis, and she pre-approved every trade that was made. Ms. G authorized rebalancing transactions on occasion, but Respondent did not place trades without her authorization. Many of these rebalancing trades would include no commission or fee exchanges.

Respondent also confirmed that he did not provide Ms. G with a financial plan because that service was not one of the "tools" provided by Financial Firm. Respondent also provided CFP Board with a copy of a February 2011 email to Respondent from the Director of Compliance Resolution at Financial Firm which denied Respondent's request for Ms. G's personal financial information, such as new account forms, documentation on investment objectives, risk tolerance, investment experience and net worth, despite

CFP Board providing Respondent with Ms. G's signed privacy waiver. In April 2013, CFP Board requested the same information, with Ms. G's privacy waiver, directly from Financial Firm and is awaiting its response. Respondent's BrokerCheck record indicated that in March 2011, Insurance Company allowed Ms. G out of the Insurance Company Policy and returned her proceeds of approximately $21,000.

2010 FINRA INVESTIGATION AND CAUTIONARY ACTION LETTER

In November 2010, FINRA began an investigation of Respondent related to his Financial Firm heightened supervision, Internal Review and Termination. In November 2011, Respondent received a letter from his FINRA Investigator ("Investigator"). Investigator advised Respondent that FINRA's Investigations Unit had completed its review and determined to refer Respondent's matter to FINRA's Enforcement Department. In March 2012, a Senior Paralegal with FINRA's Enforcement Department ("Paralegal") sent a detailed request to Respondent. Paralegal requested information and documentation related to the customer complaints, as well as other matters which do not appear on Respondent's BrokerCheck record. In April 2012, Respondent's attorney ("Attorney") responded on Respondent's behalf. Attorney provided a detailed statement to Paralegal. Attorney stated that all the matters that FINRA inquired about related to "Financial Firm's pre-textual termination of Respondent and its subsequent enabling of its financial advisor ("Advisor") to solicit complaints from customers concerning Respondent; reporting such on Respondent's license; and directing customers to BrokerCheck to view such report to impugn Respondent's integrity." Attorney also provided Paralegal with substantial documentation on the customer complaints, as well as documentation on the other matters, and a state investigation.

On February 5, 2013, FINRA issued a Wells Notice to Respondent. The Wells Notice concerned the G customer complaint and alleged that Respondent made an unsuitable recommendation to Ms. G to purchase a variable life product. The Wells Notice also alleged that Respondent caused Financial Firm to create and maintain inaccurate books and records and that Respondent made misstatements to Financial Firm concerning the sale of the variable life product.

In February 2013, Attorney responded to FINRA's Wells Notice. Attorney's response was a 45-page letter, including a detailed discussion as to why the variable universal life policy that Respondent sold to Ms. G was suitable. Attorney pointed out that the objective of the policy was leveraged gifting. Ms. G wanted to take $10,000 per year and leverage it into money that her children and grandchildren would receive tax-free at her passing. Attorney also stated that the policy application truthfully disclosed that Ms. G was between jobs, a fact known by both Financial Firm and Insurance Company, who both approved of the transaction. Attorney also indicated that Ms. G inherited approximately $220,000 in January 2008 after her father passed away, and in October 2008, she inherited an additional $280,000 when her mother passed away.

In March 2013, FINRA concluded its investigation of Respondent by issuing a Cautionary Action letter to him. FINRA made the following findings:

> "…you entered, or caused to be entered, in the Firm's systems, an annual income figure for a customer that you knew to be inaccurate. At the time the customer opened accounts at the Firm, you were aware that she was unemployed and had no source of income. By causing the Firm to maintain inaccurate customer information in its books and records, you violated NASD Rules 3110 and 2110. Moreover, your misstatement to the Firm concerning the customer's annual income constitutes a separate and distinct violation of NASD Rule 2110."

FINRA Enforcement also considered that Respondent's misconduct was isolated in nature, the customer was ultimately unharmed, that Respondent had indicated on other Firm documentation that the customer was unemployed, and Respondent had no prior disciplinary history with any securities regulator during his 13 years in the securities industry.

III. Rule Violations

A. *Rule 102 Violation – 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.*

Respondent engaged in conduct involving misrepresentation when he stated an annual income figure for a client on that client's account application that he knew to be inaccurate, causing his firm's books and records to be inaccurate. Thus, Respondent violated Rule 102.

B. *Rule 201 Violation – 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) stated an annual income figure for a client on that client's account application that he knew to be inaccurate, causing his firm's books and records to be inaccurate; and 2) recommended to a client that she purchase a variable universal life insurance policy with an annual premium of $10,000 when Respondent knew that the client was unemployed. Thus, Respondent violated Rule 201.

C. *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.*

Respondent failed to perform professional services with dedication to the lawful objectives of the employer and/or in accordance with the *Code of Ethics* when he was placed on heightened supervision by his firm for violation of the firm's lending policy and for failure to comply with firm policies and procedures relating to following pre-approval restrictions. Thus, Respondent violated Rule 406.

D. *Rule 606(a) Violation – A CFP Board designee shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities.*

Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he stated an annual income figure for a client on that client's account application that he knew to be inaccurate, causing his firm's books and records to be inaccurate. This misconduct violated NASD Rules 3110 and 2110. Thus, Respondent violated Rule 606(a).

E. *Rule 606(b) Violation – 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) stated an annual income figure for a client on that client's account application that he knew to be inaccurate, causing his firm's books and records to be inaccurate, violating NASD Rules 3110 and 2110; 2) recommended to a client that she purchase a variable universal life insurance policy with an annual premium of $10,000 when Respondent knew that the client was unemployed; and 3) was placed on heightened supervision by his firm for violation of the firm's lending policy and for failure to comply with firm policies and procedures relating to following pre-approval restrictions, violating Rules 102, 201, 406, 606(a), 607 and 704. Thus, Respondent violated Rule 606(b).

F. *Rule 607 Violation – 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.*

Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and the profession when he: 1) stated an annual income figure for a client on that client's account application that he knew to be inaccurate, causing his firm's books and records to be inaccurate, violating NASD Rules 3110 and 2110; 2) recommended to a client that she purchase a variable universal life insurance policy with an annual premium of $10,000 when Respondent knew that the client was unemployed; and 3) was placed on heightened supervision by his firm for violation of the firm's lending policy and for failure to comply with firm policies and procedures relating to following pre-approval restrictions. Thus, Respondent violated Rule 607.

G. *Rule 704 Violation – A CFP Board designee shall make a reasonable investigation regarding the financial products recommended to clients.*

Respondent failed to make a reasonable investigation regarding the financial products recommended to clients when he recommended to a client that she purchase a variable universal life insurance policy with an annual premium of $10,000 when Respondent knew that the client was unemployed. Thus, Respondent violated Rule 704.

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

Respondent failed to exercise reasonable and prudent professional judgment in providing professional services to clients when he accepted a trade on a client's account from an unauthorized third party. Thus, Respondent violated Rule 4.4.

I. *Rule 5.1 Violation – A certificant shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's Code of ethics*

Respondent failed to perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics* when he was terminated by his firm for violating firm policy regarding use of discretion and accepting a trade from an unauthorized party. Thus, Respondent violated *Rules of Conduct* Rule 5.1.

J. *Rule 6.5 Violation – 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 certificant, upon the CFP® marks, and upon the profession when he: 1) accepted a trade on a client's account from an unauthorized third party; and 2) was terminated by his firm for violating firm policy regarding use of discretion and accepting a trade from an unauthorized party. 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 *Code of Ethics or Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 102, 201, 406, 606(a), 606(b), 607 and 704 of the *Code of Ethics* and Rules 4.4, 5.1 and 6.5 of the *Rules of Conduct.* 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 Public Letter of Admonition, pursuant to Article 4.2 of the *Disciplinary Rules*.

The Commission consulted Anonymous Case Histories 21403 and 16502 as well as *Sanction Guideline* 12 (Employer Policy Violation) in arriving at its decision.