

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 25939

This is a summary of a decision issued following the June 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 and after January 1, 2009. The Rules in effect at these times under the *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”) were Rules 101 through 705 and under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issue Presented

Whether a CFP[®] professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he failed to disclose outside business activities to his employer.

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

Beginning in April 2008 Respondent made a series of investments totaling approximately \$150,000 in an outside company. In October 2008 Respondent began acting as the company’s President and CEO. Respondent first disclosed his involvement in the company to his employer in October 2008. In March 2009 Respondent’s employer terminated Respondent for participating in private securities transactions without informing or seeking approval from the firm.

In October 2010 Respondent entered into a Letter of Acceptance, Waiver and Consent (“AWC”) with the Financial Industry Regulatory Authority (“FINRA”) wherein he consented to a 10 business day suspension from association with any FINRA member in any capacity and a \$5,000 fine. According to the AWC, Respondent violated NASD Conduct Rules 3030 and 2100 by engaging in outside business activities without providing prompt written notice to his employer. Respondent did not disclose the suspension to CFP Board.

III. Commission’s Analysis and Conclusions Regarding Rule Violations

- A. *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 the Code of Ethics.*

The Commission determined that Respondent failed to perform professional services with dedication to the lawful objectives of his employer when he violated NASD Conduct Rules 3030 and 2100 by engaging in outside business activities from April 2008 to October 2008 without providing prompt written notice to his employer regarding his personal investments in another company. Thus, Respondent violated *Code of Ethics* Rule 406.

ACH 25939

- 1 -

B. 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 failed to disclose to his employer his personal investments in another company from April 2008 to October 2008. Thus, Respondent violated *Code of Ethics* Rule 407(a).

C. Rule 606(a) – In all professional services, 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 and other applicable authorities when he violated NASD Conduct Rules 3030 and 2100 by engaging in outside business activities from April 2008 to October 2008 without providing prompt written notice to his employer regarding his personal investments in another company. Thus, Respondent violated *Code of Ethics* Rule 606(a).

D. Rule 606(b) – In all professional services, 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 violated *Code of Ethics* Rules 406, 407(a), 606(a) and 607. Therefore, he failed to comply with the applicable rules, regulations and other established policies of CFP Board in violation of *Code of Ethics* Rule 606(b).

E. 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 violated NASD Conduct Rules 3030 and 2100 by engaging in outside business activities from April 2008 to October 2008 without providing prompt written notice to his employer regarding his personal investments in another company. Thus, Respondent violated *Code of Ethics* Rule 607.

F. Rule 6.4 – A certificant shall notify CFP Board in writing of any conviction of a crime, except misdemeanor traffic offenses or traffic ordinance violations unless such offense involved the use of alcohol or drugs, or of any professional suspension or bar within ten (10) calendar days after the date on which the certificant is notified of the conviction, suspension or bar.

The Commission determined that Respondent failed to notify CFP Board of his FINRA suspension within 10 calendar days of receiving the Notice of Acceptance of Letter of Acceptance, Waiver and Consent imposing the suspension. Thus, Respondent violated Rule 6.4 of the *Rules of Conduct*.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(d) 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* or the *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 406, 407(a), 606(a), 606(b) and 607 of the *Code of Ethics* and Rule 6.4 of the *Rules of Conduct*. Article 3(d) provides grounds for discipline for any act which is the proper basis for professional suspension. Article 3(d) provides grounds for discipline for any act which is the proper basis for professional suspension. The Commission found grounds for discipline under Article 3(d) because Respondent received a 10 business day suspension from FINRA. Pursuant to Article 4.1 of the *Disciplinary Rules*, the Commission issued a Private Censure to Respondent.

The Commission considered as mitigating factors that: 1) Respondent has worked in the financial planning profession since the 1970s without receiving a client complaint; 2) Respondent's outside business activity involved personal investments totaling \$150,000 in an outside company and did not involve clients; 3) although the disclosure was not timely, Respondent reported his outside business activity to his firm's compliance department seven months after his initial investment; and 4) Respondent's only business development activity for the outside company was recommending key man life insurance.

The Commission did not cite any aggravating factors.