

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 25940

This is a summary of a Settlement Agreement approved at 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 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 ensure that a registered representative under his supervision disclosed his participation in a Stock to Cash program after learning that the representative had ignored his prior instruction to make such disclosure; 2) failed to supervise a registered representative’s performance of the representative’s suitability and due diligence obligations when recommending Stock to Cash to customers; and 3) violated NASD Conduct Rules 3010 and 2110 and was suspended by FINRA from acting in a principal capacity for 15 business days.

II. Findings of Fact

In February 2009, the Financial Industry Regulatory Authority (“FINRA”) initiated an investigation into the participation of a registered representative supervised by Respondent in a program known as Stock to Cash. In October 2010, Respondent signed a FINRA Letter of Acceptance, Waiver and Consent (“AWC”). Respondent accepted and consented, without admitting or denying, to the entry of findings that he violated NASD Conduct Rules 3010 and 2110 by: 1) failing to ensure that the representative disclosed his participation in the Stock to Cash program after learning that the representative had ignored his prior instruction to make such disclosure; and 2) failing to supervise the representative’s performance of the representative’s suitability and due diligence obligations when recommending Stock to Cash to customers. Respondent consented to the imposition of a suspension from association with any FINRA member in a principal capacity for a period of 15 business days and a fine in the amount of \$7,500. Respondent did not notify CFP Board of the suspension. In December 2010, CFP Board discovered Respondent’s FINRA AWC, suspension and fine.

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 ensure that the representative disclosed his

participation in the Stock to Cash program after learning that the representative had ignored his prior instruction to make such disclosure; and 2) failed to supervise the representative's performance of his suitability and due diligence obligations when recommending Stock to Cash to customers. Thus, Respondent violated *Code of Ethics* Rule 201.

B. Rule 606(a) – In all professional activities, a CFP Board designee shall perform professional services in accordance with the 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: 1) failed to ensure that the representative disclosed his participation in the Stock to Cash program after learning that the representative had ignored his prior instruction to make such disclosure; 2) failed to supervise the representative's performance of his suitability and due diligence obligations when recommending Stock to Cash to customers; and 3) violated NASD Conduct Rules 3010 and 2110. Thus, Respondent violated *Code of Ethics* Rule 606(a).

C. Rule 606(b) – In all professional activities, a CFP Board designee shall perform professional services in accordance with the 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 ensure that the representative disclosed his participation in the Stock to Cash program after learning that the representative had ignored his prior instruction to make such disclosure; 2) failed to supervise the representative's performance of his suitability and due diligence obligations when recommending Stock to Cash to customers; and 3) violated Rules 201, 606(a), 607, and 701 of the *Code of Ethics*. Thus, Respondent violated *Code of Ethics* Rule 606(b).

D. Rule 607 – A CFP Board designee shall not engage in any conduct which reflects adversely on 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 ensure that the representative disclosed his participation in the Stock to Cash program after learning that the representative had ignored his prior instruction to make such disclosure; 2) failed to supervise the representative's performance of his suitability and due diligence obligations when recommending Stock to Cash to customers; and 3) violated NASD Conduct Rules 3010 and 2110. Thus, Respondent violated *Code of Ethics* Rule 607.

E. Rule 701 – A CFP Board designee shall provide services diligently.

Respondent failed to provide services diligently when he: 1) failed to ensure that the representative disclosed his participation in the Stock to Cash program after learning that the

representative had ignored his prior instruction to make such disclosure; and 2) failed to supervise the representative's performance of his suitability and due diligence obligations when recommending Stock to Cash to customers. Thus, Respondent violated *Code of Ethics* Rule 701.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(d), and 3(e) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*"). Article 3(a) of CFP Board's *Disciplinary Rules* 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, 606(a), 606(b), 607, and 701 of the *Code of Ethics*. 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 15 business day suspension from FINRA. Article 3(e) provides grounds for discipline for any act or omission which violates the *Disciplinary Rules* or which violates an order of discipline. The Commission found grounds for discipline under Article 3(e) because Respondent failed to notify CFP Board of his professional suspension within 10 calendar days from the time he was notified of the suspension, in violation of Article 12.2 of the *Disciplinary Rules*. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the above Findings of Facts and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a Private Censure, pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered as mitigating factors that Respondent: 1) did not deny that he violated Article 12.2 by failing to timely report the FINRA suspension; 2) has not had any previous complaints as a registered representative or as a supervisor; 3) was not suspended from acting as a registered representative; 4) did not profit from the Stock to Cash program; and 5) pursued this matter as a supervisor but slower than FINRA's standards required.

The Commission considered no aggravating factors.