CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 26284

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 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 execute trade orders and executed an unauthorized transaction in a client's account; 2) exercised discretion in a client's account without prior written authorization from the client to exercise discretion in her account; and 3) violated NASD Conduct Rules 2110, 2510(b) and IM-2310-2, which resulted in a three-month suspension from FINRA in any capacity.

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

In October 2005, Respondent recommended to a client that she purchase Stock 1, a penny stock, and open a Roth IRA. The client agreed to the recommendations, but Respondent failed to execute the Stock 1 buy order. In December 2005, after being prompted by the client, Respondent admitted that he had not executed the Stock 1 buy order. Respondent and the client agreed not to purchase Stock 1 at that time. In January 2006, Respondent received an order from the client to sell shares of Stock 2 in order to fund her Roth IRA with $4,000. Respondent failed to execute the Stock 2 sell order until February, after the price of Stock 2 had declined. Therefore, additional cash was needed to reach the $4,000 goal because the delayed sale of Stock 2 resulted in less than $4,000 in proceeds. Respondent sold shares of Stock 3 in the client's account in order to fully fund her Roth IRA with $4,000. Respondent also purchased Stock 1 in the client's account. The client did not authorize either of these transactions.

In September 2007, Respondent exercised discretion in a client's account by changing the sub-account allocation of her variable annuity. Respondent notified the client after the changes were made but failed to obtain prior written authorization from the client to exercise discretion in her account.

In February 2008, FINRA commenced a preliminary inquiry into Respondent's conduct regarding the two clients described previously and two additional clients. CFP Board previously investigated the other two client complaints and cautioned Respondent. In August 2009, Respondent entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA in which he consented to the entry of findings that he failed to execute transactions and engaged in unauthorized transactions in customer accounts. In the AWC, FINRA determined that Respondent violated NASD Conduct Rules 2110, 2510(b) and IM-2310-2 when he: 1) failed to execute trade orders and executed an unauthorized transaction in a client's account; 2) failed to execute orders in clients' accounts; and 3) exercised discretion in a client's account without obtaining prior written authorization. By entering into the AWC, Respondent consented to the imposition of a three-month suspension from association with any FINRA member in any capacity and a $15,000 fine. Respondent's suspension was effective from September through December 2009.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. 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) failed to execute trade orders and executed an unauthorized transaction in a client's account; and 2) exercised discretion in a client's account without prior written authorization from the client to exercise discretion in her account. Thus, Respondent violated *Code of Ethics* Rule 201.

B. 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 did not perform professional services with dedication to the lawful objectives of his employer and in accordance with CFP Board's *Code of Ethics* when he: 1) failed to execute trade orders and executed an unauthorized transaction in a client's account; and 2) exercised discretion in a client's account without prior written authorization from the client to exercise discretion in her account. As a result of this conduct, Respondent received a Letter of Caution from his employer. Thus, Respondent violated *Code of Ethics* Rule 406.

C. 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.

The Commission determined that Respondent failed to perform professional services in accordance with the applicable laws, rules and regulations of governmental agencies and other applicable authorities when he: 1) failed to execute trade orders and executed an unauthorized transaction in a client's account; and 2) exercised discretion in a client's account without prior written authorization from the client to exercise discretion in her account. As a result of this conduct, Respondent violated NASD Conduct Rules 2110, 2510(b) and IM-2310-2. Thus, Respondent violated *Code of Ethics* Rule 606(a).

D. *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.*

The Commission determined that Respondent violated *Code of Ethics* Rules 201, 406, 606(a), 607, 701, and 703, and thus failed to perform professional services in accordance with the applicable rules, regulations and other established policies of CFP Board when he: 1) failed to execute trade orders and executed an unauthorized transaction in a client's account; and 2) exercised discretion in a client's account without prior written authorization from the client to exercise discretion in her account. Thus, Respondent violated *Code of Ethics* Rule 606(b).

E. *Rule 607 – A CFP Board designee shall not engage in conduct which reflects adversely on integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.*

The Commission determined that Respondent engaged in conduct which reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession when he: 1) failed to execute trade orders and executed an unauthorized transaction in a client's account; and 2) exercised discretion in a client's account without prior written authorization from the client to exercise discretion in her account. Thus, Respondent violated *Code of Ethics* Rule 607.

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

The Commission determined that Respondent failed to provide services diligently when he: 1) failed to execute trade orders and executed an unauthorized transaction in a client's account; and 2) exercised discretion in a client's account without prior written authorization from the client to exercise discretion in her account. Thus, Respondent violated *Code of Ethics* Rule 701.

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

The Commission determined that Respondent failed to make recommendations which are suitable for his clients while in a financial planning relationship when he recommended shares of GBVS, an unsuitable penny stock. Thus, Respondent violated *Code of Ethics* Rule 703.

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 that violates the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 201, 406, 606(a), 606(b), 607, 701 and 703 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 Responded received a three-month 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*. Article 3(g) provides grounds for discipline for any false or misleading statement made to CFP Board. The Commission found grounds for discipline under Article 3(g) because Respondent signed the Ethics Profile of his Initial Application for CFP® Certification and answered "No" to the question: "Have you now or have you ever been a defendant or respondent in any governmental agency or self-regulatory organization proceeding or the subject of a governmental agency or self-regulatory organization inquiry or investigation?" despite being the subject of a FINRA inquiry. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact, Rule Violations, and a 3-month suspension of his right to use the CFP® marks.

Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a 3-month suspension.

The Commission considered the following mitigating factors: 1) Respondent was commended by CFP Board staff counsel for not disputing most of the facts and some rule violations; and 2) Respondent believed he was answering truthfully when he said that he had not been a respondent in a regulatory inquiry after consulting with his compliance officer.

The Commission considered the following aggravating factors: 1) Respondent was sloppy in his dealing with clients; 2) Respondent was suspended by FINRA for 3 months; and 3) Respondent was previously cautioned by CFP Board regarding two other customer complaints.