

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 26286

This is a summary of a Settlement Agreement entered into at the November 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) falsely denied that he acted in a fiduciary capacity for firm customers and had a financial interest in any customer accounts on his firm’s compliance questionnaires on seven occasions; and 2) entered into a settlement with the Financial Industry Regulatory Authority, Inc. (“FINRA,” formerly known as the National Association of Securities Dealers or “NASD”) in which he consented to the entry of findings that he violated NASD Conduct Rule 2110, a one-year suspension from association with any FINRA member in any capacity, and a \$10,000 fine.

II. Findings of Fact

In March 2011, Respondent disclosed on his Renewal Application for CFP® Certification that he was the subject of a FINRA disciplinary proceeding scheduled for a hearing in May 2011. In April 2011, FINRA issued an Order Accepting Offer of Settlement. In the Settlement, Respondent consented to the entry of findings that he submitted at least seven false compliance questionnaires to his employer. In the compliance questionnaires, Respondent denied that he acted in a fiduciary capacity for firm customers and had a financial interest in any firm customer accounts. Respondent, however, acted in a fiduciary capacity and had a financial interest in connection with the accounts of four firm customers: 1) Customer A’s trust, will, and variable annuity list Respondent as a beneficiary; 2) Customer B’s Durable General Power of Attorney grants Respondent authority to handle financial transactions and Customer B’s will lists Respondent as a beneficiary of Customer B’s real property and her residuary estate; 3) Customer C’s trust, which maintained an account at Respondent’s firm, lists Respondent a co-successor trustee; and 4) Customer D’s trust, which maintained an account at Respondent’s firm, lists Respondent as successor trustee and the residual beneficiary of the trust.

Respondent agreed to the entry of findings that he answered “No” to the question, “Do you have any accounts for which you acted in a fiduciary capacity (e.g. trustee, executor, etc.)?” in compliance questionnaires he submitted in March 2003, January 2004, August 2004, June 2005, February 2006, December 2006 and December 2007 when he had acted in a fiduciary capacity during those time periods. Respondent also agreed to the entry of findings that he answered

“No” to the question, “Do you service any accounts other than your personal account and those of your immediate family for which you have financial interest?” in compliance questionnaires he submitted in March 2003, January 2004, August 2004, June 2005, February 2006, December 2006 and December 2007 when he had a financial interest in one or more accounts.

Respondent consented to the entry of findings that he violated NASD Conduct Rule 2110. The Order Accepting Offer of Settlement resulted in a one-year suspension from association with any FINRA member in any capacity and a \$10,000 fine.

III. Rule Violations

- A. *Rule 102 – In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly making a false or misleading statement to the client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly making a false or misleading statement to his employer when he denied that he acted in a fiduciary capacity for firm customers and had a financial interest in any customer accounts on his firm’s compliance questionnaires on seven occasions. Respondent, however, acted in a fiduciary capacity and had a financial interest in several clients’ accounts. Thus, Respondent violated *Code of Ethics* Rule 102.

- B. *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 submitted false information on his firm’s compliance questionnaires on seven occasions. Thus, Respondent violated *Code of Ethics* Rule 201.

- C. *Rule 408 – A CFP Board designee shall inform his employer, partners or co-owners of compensation or other benefit arrangements in connection with one’s services to clients, which are in addition to compensation from the employer, partners or co-owners for such services.*

Respondent failed to inform his employer, partners or co-owners of compensation or other benefit arrangements in connection with his services to clients, which were in addition to compensation from the employer, partners or co-owners for such services when he denied that he had a financial interest in firm customer accounts on compliance questionnaires, which was false given that Respondent, as a beneficiary or residual beneficiary, had a financial interest in one or more of the accounts of his clients. Thus, Respondent violated *Code of Ethics* Rule 408.

D. Rule 606(a) – In all professional activities, 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 professional services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he entered false information on his firm's compliance questionnaires, in violation of NASD Conduct Rule 2110. Thus, Respondent violated *Code of Ethics* Rule 606(a).

E. Rule 606(b) – In all professional activities, a CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board.

Respondent failed to perform professional services in accordance with applicable rules, regulations and other established policies of CFP Board when he violated *Code of Ethics* Rules 102, 201, 408, 606(a) and 607. Thus, Respondent violated *Code of Ethics* Rule 606(b).

F. Rule 607 – A CFP Board designee shall not engage in conduct which reflects adversely on his 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 submitted false information on his firm's compliance questionnaires. This conduct violated NASD Conduct Rule 2110 and resulted in a one-year suspension from association with any FINRA member in any capacity and a \$10,000 fine. Thus, Respondent violated *Code of Ethics* Rule 607.

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) of the *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 102, 201, 408, 606(a), 606(b) and 607 of the *Code of Ethics*. Article 3(d) of the *Disciplinary Rules* provides grounds for discipline for any act that is the proper basis for professional suspension. The Commission found grounds for discipline under Article 3(d) because FINRA suspended Respondent for association with an FINRA member in any capacity for one year. 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 suspended Respondent's right to use the CFP® marks for five years, pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission considered Respondent's potential for rehabilitation from unacceptable business practices as a mitigating factor.

The Commission considered as aggravating factors: 1) Respondent's misstatements to his firm a pattern of conduct of engaging in relationships that presented a conflict of interest and violated securities laws; and 2) Respondent's conduct demonstrated his disregard for the ethics that must exist in a financial planning and advisory relationship.