CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 26288

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) sent email correspondence from his personal email account to clients on two separate occasions in which he guaranteed their account against loss, in violation of National Association of Securities Dealers ("NASD", now known as the Financial Industry Regulatory Authority, Inc. or "FINRA") Conduct Rules 2330(e) and 2110; 2) signed a FINRA Letter of Acceptance Waiver and Consent ("AWC") wherein he consented to a fine and a 10-day suspension; 3) was barred from applying for registration as a sales person for a period of two years by the State of Illinois; and 4) failed to disclose the suspension to CFP Board within 10 calendar days.

II. Findings of Fact

In March 2011, while conducting a routine search of the FINRA Disciplinary Action and Other FINRA Actions Report, CFP Board discovered that Respondent entered into an AWC in which he was fined and suspended from association with any FINRA member in any capacity for 10 business days. According to Respondent's written response to CFP Board and the FINRA AWC, Respondent's clients began experiencing financial losses on their accounts due to the widespread market collapse in 2008. Respondent sent an email to the clients from Respondent's personal account in which he guaranteed the clients against any further loss. Respondent sent a second email from his personal account reiterating the guarantee.

In November 2010, Respondent entered into a FINRA AWC consenting to a $2,500 fine and a 10-day suspension. FINRA determined that Respondent's conduct violated NASD Conduct Rules 2330(e) and 2110. NASD Conduct Rule 2330(e) provides that no member or personal association with a member shall guarantee a customer against loss in any securities account or in any securities transaction effected by the member with or for such customer. NASD Conduct Rule 2110 requires that registered representatives "observe high standards of commercial honor and just and equitable principles of trade." Respondent did not disclose the suspension to CFP Board within 10 calendar days.

Additionally, in March 2011, the State commenced an investigation into Respondent's conduct relating to the FINRA AWC. On May 16, 2011, the State barred Respondent from applying for registration as a sales person for a period of two years.

III. Rule Violations

A. 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 sent email correspondence from his personal account to clients guaranteeing their account against loss, in violation of NASD Conduct Rules 2330(e) and 2110. Thus, Respondent violated *Code of Ethics* Rule 201.

B. 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 sent email correspondence from his personal account to clients guaranteeing their account against loss, in violation of NASD Conduct Rules 2330(e) and 2110. As a result of his actions, Respondent entered into a FINRA AWC wherein he consented to a $2,500 fine and a l0-day suspension. The State commenced an investigation into Respondent's conduct relating to the FINRA AWC and barred Respondent from applying for registration as a sales person for a period of two years. Thus, Respondent violated *Code of Ethics* Rule 606(a).

C. 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 laws, rules and regulations of governmental agencies and other applicable authorities when he sent email correspondence from his personal account to clients guaranteeing their account against loss, in violation of NASD Conduct Rules 2330(e) and 2110. As a result of his actions, Respondent entered into a FINRA AWC wherein he consented to a $2,500 fine and a l0-day suspension. The State commenced an investigation into Respondent's conduct relating to the FINRA AWC and barred Respondent from applying for registration as a sales person for a period of two years. Thus, Respondent violated *Code of Ethics* Rule 606(a).

D. *Rule 607 Violation – 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*

Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP® professional, upon the marks and upon the profession when he: 1) sent email correspondence from his personal email account to clients on two separate occasions in which he guaranteed their account against loss, in violation of NASD Conduct Rules 2330(e) and 2110; 2) signed a FINRA AWC wherein he consented to a $2,500 fine and a 10-day suspension; 3) was barred from applying for registration as a sales person for a period of two years by the State. Thus, Respondent violated *Code of Ethics* Rule 607.

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) and 607 of the *Code of Ethics.* Article 3(d) provides grounds for discipline for any act that is the proper basis for a professional suspension. The Commission found Article 3(d) grounds for discipline because FINRA suspended Respondent from association with any member for a period of 10-days. Article 3(e) provides grounds for discipline for any act or omission that violates the *Disciplinary Rules*. The Commission found Article 3(e) grounds for discipline because Respondent failed to notify CFP Board within 10 days of his notification of his suspension, as required by Article 12.2 of the *Disciplinary Rules*. 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 one-year suspension pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission considered as an aggravating factor that Respondent's decision making with regard to this matter was imprudent given his level of experience in the industry.

The Commission cited no mitigating factors.