

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 26505

This is a summary of a Settlement Agreement entered into at the March 2013 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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he effectuated a series of withdrawals totaling approximately \$22,000 from Client’s 401(k) account based solely on the oral instructions of her husband, despite Respondent’s previous assurances to Client that her husband had no access to the account, resulting in surrender penalties of almost \$500, as well as income taxes on the withdrawals and a 10% early withdrawal penalty.

II. Findings of Fact

Client filed a Statement of Claim against Respondent alleging that Respondent executed a series of unauthorized withdrawals from her 401(k) account in 2007 and 2008. The Statement of Claim and Respondent’s Answer generally agree that, based on oral instructions from Client’s husband, Respondent made the following transfers:

1. In December 2007, Respondent transferred approximately \$6,500 out of Client’s 401(k) account;
2. In January 2008, Respondent transferred approximately \$7,400 out of Client’s 401(k) account;
3. In February 2008, Respondent transferred approximately \$3,900 out of Client’s 401(k) account;
4. In March 2008, Respondent transferred approximately \$2,800 out of Client’s 401(k) account; and
5. In April 2008, Respondent transferred approximately \$1,500 out of Client’s 401(k) account.

In total, Respondent transferred approximately \$22,000 out of the account at Client’s husband’s request. The withdrawals resulted in surrender penalties of almost \$500, as well as income taxes on the withdrawals and a 10% early withdrawal penalty. Respondent maintained that the withdrawals did not harm Client because the funds were transferred from her 401(k) account to her solely owned checking account, so she received and had access to the funds after the transfers.

Respondent stated that he made the transfers based on Client’s husband’s representation that Client was hospitalized and in need of funds to cover her current expenses. After the first request from Client’s husband, Respondent attempted to contact Client to confirm the instruction but was unable to reach her. He then executed the transfer based solely on Client’s husband’s instruction. According to Client’s Statement of Claim, Respondent executed the four subsequent transfers based solely on voicemail messages from Client’s husband and did not speak with either Client or her husband after the first

transfer. Client's husband intercepted all correspondence regarding the transfers until April 2008, when Client received a confirmation letter from Firm and discovered the withdrawals.

Client stated that she had previously discussed with Respondent her husband's inability to control credit card spending and had sought assurances that no one other than herself, including her husband, had access to her account. In his statement to CFP Board, Respondent acknowledged that Client had previously expressed concerns about her husband accessing her funds. Respondent stated that Client's husband informed him that the 401(k) funds were the only funds available to cover the medical expenses. Respondent had previously discussed with Client her lack of a cash reserve and was aware that her lack of savings was a problem.

In February 2012, the FINRA arbitrator issued an award denying Client's claim and finding Respondent not liable. Respondent stated that the Securities and Exchange Commission also reviewed Client's complaint and made no findings. Respondent did not provide a copy of any documents reflecting the final disposition of the inquiry, as requested in CFP Board's September 2012 request.

In his Answer to the Statement of Claim, Respondent described Client and her husband as a "long-term clients" and represented that his role was "to meet the financial needs of Client and her husband." According to an April 2007 summary letter Respondent mailed to Client and husband, in just one meeting in April 2007, they discussed the following areas: Client and her husband's current financial situation and goals; a review of their accounts; the sale of their house and the use of the proceeds to pay a mortgage on another property and to pay various bills; a change in Client's husband's employment status; retirement savings; account performance and rebalancing of their investment portfolio; and the need to create wills, possibly including a spendthrift clause related to Client's son. Respondent confirmed to CFP Board that he provided advice on investment planning, life insurance, protection planning, retirement planning and estate planning during his relationship with Client and her husband. Based on the breadth of subjects Respondent discussed with Client and husband the length of their relationship, Client likely placed her trust in him as a financial planning practitioner capable of providing advice on virtually all areas of their financial life. Thus, Respondent acted as a financial planning practitioner during this engagement.

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 effectuated a series of five unauthorized withdrawals totaling approximately \$22,000 from Client's 401(k) account based solely on the oral instructions of her husband, despite Respondent's previous assurances to Client that her husband had no access to the account, resulting in surrender penalties of almost \$500, as well as income taxes on the withdrawals and a 10% early withdrawal penalty. Respondent failed to confirm Client's authorization at any time during the five months over which he effectuated the withdrawals. Thus, Respondent violated *Code of Ethics* Rule 201.

B. *Rule 202 – A financial planning practitioner shall act in the interest of the client*

While acting as a financial planning practitioner, Respondent failed to act in the interest of Client when he effectuated a series of five unauthorized withdrawals totaling approximately \$22,000 from Client's 401(k) account based solely on the oral instructions of her husband, despite Respondent's previous assurances to Client that her husband had no access to the account, resulting in surrender penalties of almost \$500, as well as income taxes on the withdrawals and a 10% early withdrawal penalty. Respondent failed to

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confirm Client's authorization at any time during the five months over which he effectuated the withdrawals. Thus, Respondent violated *Code of Ethics* Rule 202.

C. Rule 606(b) – 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 rules, regulations and other established policies of CFP Board when he violated Rules 201, 202, 607 and 701 of the *Code of Ethics* by effectuating a series of five unauthorized withdrawals totaling approximately \$22,000 from Client's 401(k) account based solely on the oral instructions of her husband, despite Respondent's previous assurances to Client that her husband had no access to the account, resulting in surrender penalties of almost \$500, as well as income taxes on the withdrawals and a 10% early withdrawal penalty. Respondent failed to confirm Client's authorization at any time during the five months over which he effectuated the withdrawals. Thus, Respondent violated *Code of Ethics* Rule 606(b).

D. Rule 607 – A CFP Board designee shall not engage in conduct which reflects adversely on his or her 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 CFP® marks and upon the profession when he effectuated a series of five unauthorized withdrawals totaling approximately \$22,000 from Client's 401(k) account based solely on the oral instructions of her husband, despite Respondent's previous assurances to Client that her husband had no access to the account, resulting in surrender penalties of almost \$500, as well as income taxes on the withdrawals and a 10% early withdrawal penalty. Respondent failed to confirm Client's authorization at any time during the five months over which he effectuated the withdrawals. 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 failed to confirm Client's authorization at any time during the five months over which he effectuated a series of five unauthorized withdrawals totaling approximately \$22,000 from Client's 401(k) account based solely on the oral instructions of her husband, despite Respondent's previous assurances to Client that her husband had no access to the account, resulting in surrender penalties of almost \$500, as well as income taxes on the withdrawals and a 10% early withdrawal penalty. Thus, Respondent violated *Code of Ethics* Rule 701.

IV. Discipline Imposed

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, 202, 606(b), 607 and 701 of the *Code of Ethics*. 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 Public Letter of Admonition pursuant to Article 4.3 of the *Disciplinary Rules*. The Commission also assessed six hours of Continuing Education credits in Ethics.

The Commission consulted Anonymous Case History 21403 and considered *Sanction Guidelines* 11 (Diligence), 12 (Employer Policy Violation) and 30 (Securities Law Violation).

The Commission considered that funds were negligently, not intentionally, transferred to Client's individual and not joint account as a mitigating factor.

The Commission considered Client's caution to Respondent about her husband's overspending, Client's reasonable expectation that she was in a financial planning relationship and the FINRA letter of caution as aggravating factors.