CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 26612

This is a summary of a Settlement Agreement entered into at the June 2014 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 before and after January 1, 2009. The Rules in effect for conduct occurring before January 1, 2009 were Rules 101 through 705 of CFP Board's *Code of Ethics and Professional Responsibility* ("*Code of Ethics*"). The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board's *Rules of Conduct*.

I. Issue Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he made a series of misrepresentations to financial planning clients related to a loan used to purchase bank stock on behalf of the clients.

II. Findings of Fact

On his May 2011 Renewal Application, Respondent disclosed to CFP Board that he was a defendant in a Federal Deposit Insurance Corporation ("FDIC") civil action ("2010 FDIC Civil Suit"), filed in the United States District Court ("U.S. District Court"), concerning a failed bank in State 1. Respondent also disclosed his involvement in a related civil suit ("2010 Client Civil Suit") filed by husband and wife AT and NT, Respondent's former clients, in State 1 Superior Court. In June 2011, CFP Board mailed a Notice of Investigation ("NOI") to Respondent requesting documents related to the 2010 FDIC Civil Suit and the 2010 Client Civil Suit. Respondent submitted documents in response to CFP Board's NOI in July 2011. CFP Board discovered that Respondent was also a defendant in two other civil suits related to the 2010 FDIC Civil Suit: the 2009 FC Bank Civil Suit and a 2009 Client Civil Suit filed in State 1. In December 2011, Respondent became involved in another civil action when he filed a voluntary petition for Chapter 7 Bankruptcy in the U.S. Bankruptcy Court, District of State 2 ("Bankruptcy Court").

In his July 2011 response to CFP Board's NOI, Respondent requested a stay of the investigation until the civil actions were resolved. Respondent stated that he was asserting his Fifth Amendment privilege against self-incrimination under advice of counsel. In August 2011, CFP Board sent a request for additional information ("RFAI") to Respondent and he responded to the RFAI on the same day. When asked by CFP Board to identify the source of the criminal investigation on which he based his assertion of his Fifth Amendment privilege, Respondent stated that he had no knowledge of any criminal authority investigating him or his actions. In response to the question of why he asserted his Fifth Amendment privilege in the absence of a criminal investigation, Respondent stated that the answer to the question was a matter of privilege, which he could not discuss because any communication with CFP Board was discoverable with regard to the civil litigation.

In July 2013, JH, Esq. of Law Firm forwarded a copy of a July 2013 Bankruptcy Court Order. The July 2013 Order was based on the Clients' amended complaint in Bankruptcy Court seeking a determination that Respondent's debt to them was non-dischargeable pursuant to 11 U.S.C. Section 523(a)(2)(A), (a)(4) and (a)(6). In August 2013, CFP Board sent an email to JH requesting a telephone call to discuss the information contained in the Order. LC, Esq., contacted CFP Board via telephone in response to its August 2013 email to JH. LC is the managing partner of the Law Firm. In August 2013, CFP Board sent a RFAI to LC regarding additional documents mentioned in the July 2013 Order. In his August 2013 response to the RFAI, LC stated that he could not provide CFP Board with any

information that is not a matter of public record on the docket. However, LC stated that most of the information we requested was part of the public record. LC stated that his firm had already provided CFP Board with a copy of an Order from a Federal Court conclusively determining all of the issues. CFP Board was able to download some of the requested documents from the Public Access to Court Electronic Records ("PACER"). Respondent appealed the July 2013 Order to the U.S. District Court for the District of State 2, and that appeal was pending at the time of the hearing.

In October 2013, CFP Board sent an RFAI to Respondent requesting copies of documents referenced in the July 2013 Order. After requesting and receiving an extension of time to respond, Respondent stated that CFP Board should be aware that the U.S. Bankruptcy Court had provided previously inaccessible information in the Court's computer records that indisputably confirmed material perjury by counsel for the FDIC in the underlying case. Respondent provided copies of some of the documents CFP Board requested, but stated that he could not provide copies of the transcript documents because they would cost thousands of dollars to transcribe.

In his response, Respondent requested a stay in CFP Board's investigation pending a final resolution in the underlying case. CFP Board informed Respondent that its responsibility was to refer matters to the Disciplinary and Ethics Commission ("Commission") after a finding of probable cause for discipline. In light of the uncertainty of the length of time it will take to resolve Respondent's litigation, CFP Board determined that it was not feasible to hold the case in abeyance pending final resolution. CFP Board, however, informed Respondent that pursuant to Article 9 of the *Disciplinary Rules*, after he receives CFP Board's Complaint, he may file a motion for a stay directly with the Commission.

In February 2014, Respondent sent an emailed request for a continuance of his hearing until June 2014 to CFP Board. Respondent stated that he was unable to attend his February 2014 Commission Hearing because he had a U.S. Department of Homeland Security meeting on the same date at 7:45a.m. In February 2014, CFP Board agreed to grant Respondent a continuance to the June 2014 Commission Hearings provided he returned a signed copy of the letter acknowledging that there would be no more continuances granted. In the letter, CFP Board informed Respondent that if he failed to appear at the June 2014 Hearing for any reason, the Commission would conduct a paper review of the matter with no appearances by Respondent or CFP Board. In February 2014, Respondent returned a signed copy of the letter agreeing to the terms of the continuance.

Respondent's Relationship with the Clients

The Clients met Respondent in 2001 when he served as a groomsman in their daughter's wedding. Respondent was best friends with the Clients' son-in-law, DF. DF informed the Clients that Respondent was a financial planner and recommended him as a trustworthy individual who could assist them in managing their finances and planning for retirement. The Clients subsequently developed a close personal relationship with Respondent and utilized his services in connection with various financial issues including drafting wills, paying monthly bills, creating a non-profit foundation and general retirement and investment planning advice. During his February 2012 Interim Suspension Hearing before the Commission, Respondent testified that the Clients were financial planning clients.

G Bank Stock Deal

In May 2008, Respondent informed the Clients that he had an opportunity to purchase a large block of G Bank stock and was offering the opportunity to his clients. During a May 2008 meeting, Respondent informed the Clients that he had an exclusive opportunity to obtain a limited number of G Bank shares due to his close relationship with GT, Chairman, President and CEO of G Bank. G Bank was a small closely-held bank in State 1.

Respondent informed the Clients that the G Bank stock had just been made available for purchase by a wealthy stockholder. Respondent stated that, in his opinion, the stock would double or triple in value. Respondent recommended that the Clients invest $1 million in G Bank, which represented 20% of their net worth at the time. According to the Clients, Respondent informed them that the investment was safe and would provide them with a substantial profit, but failed to disclose to them any risks associated with the stock purchase.

In Respondent's May 2008 emailed summary to Mr. Client, Respondent stated that the distressed sale of the large block of G Bank stock, valued at $11.2 million, was totally unrelated to the performance of the bank. Respondent also stated that two G Bank board members had already committed to purchase portions of the block of stock in excess of $2 million dollars each.

As the Clients were considering the G Bank stock purchase, they received several emails from Respondent assuring them that it was a wise investment and that such deals were rare. Respondent stated that, in his opinion, there was no better investment opportunity available at the time. Initially, Respondent informed the Clients that the stock would be purchased in their names. However, Respondent later informed them that because of the exclusive access given to him and the limited timeframe within which the stock had to be purchased, Respondent would set up a corporation, I Capital, a single-purpose company, to serve as the purchaser of the stock in one large block purchase.

Respondent informed the Clients that he had several investors that were interested in the G Bank stock purchase opportunity and that, in order to make sure he could purchase the stock before his exclusive access terminated, he was going to obtain a loan from G Bank to purchase a very large block of the stock. Respondent would then distribute shares to the investors upon their providing him with the respective amounts for their individual stock purchases. In order to facilitate the purchase of the stock, I Capital obtained a $5,027,022 loan from G Bank. Mrs. Client stated that, since she and her husband were providing Respondent with $950,000 in cash to purchase their share of the G Bank stock, they understood that they would play no part in the loan arrangement between Respondent, or I Capital and G Bank. Respondent specifically informed the Clients that once the group purchase of the large block of stock was completed, he would provide them with $950,000 worth of G Bank stock. The Clients trusted Respondent as their financial planner and family friend, and did not question the transactional details or the implications of the stock being purchased in I Capital's name instead of theirs.

Although Respondent had informed the Clients that I Capital would obtain the $5,027,022 loan to facilitate the purchase of the G Bank block of shares, I Capital was not the ultimate purchaser of the shares. Instead, Respondent created AGBC, another single-purpose company, for the purpose of purchasing the stock from G Bank.

Respondent informed the Clients that in order to close the stock deal, they would need to sign certain documents. Respondent stated that these documents would allow him to use monies from their investment accounts to purchase the G Bank stock and to authorize him to purchase the G Bank stock on their behalf. The loan was evidenced by a promissory note dated May 2008, payable by I Capital to G Bank in August 2008 ("May Note"). The May Note was secured by personal continuing guaranties purportedly executed by Respondent, the Clients and TF. According to Respondent's June 11th email to the Clients in which he enclosed documents for the Clients to read regarding AGBC, Respondent informed the Clients that he had to close the purchase in the Clients' absence on May 30th, using a G Bank loan, but that they would be billed for their proportionate share. Respondent's June 11th email appears to be evidence that the Clients could not have signed the May Note guaranties because they were still considering the purchase in June 2008. The Clients' purchase payments for the G Bank stock were made with wire transfer authorizations and checks, beginning in June 2008 and ending in September 2008.

Mrs. Client testified she understood that AGBC 2008 was a temporary holding entity for depositing funds from all the investors so the loan, which was temporary, could be paid off. After the loan was paid off, each investor was to receive their proportionate share of G Bank stock. Mrs. Client stated that her understanding was based on Respondent's May 2008 email. She believed she and her husband were buying G Bank stock and would consequently receive G Bank stock certificates in their names. Mr. Client testified that the money they gave Respondent was for the purchase of the G Bank stock.

I Capital Default re G Bank Loan

In July 2009, G Bank sent each of the Clients notices in the mail regarding an approximate $14,000 of interest due on the G Bank loan. Mrs. Client contacted Respondent via email because she did not believe that they had executed a loan with G Bank. Respondent responded that the Clients should not have received the notices and they should not be concerned because he would take care of it. During the bankruptcy adversary hearing, Respondent testified that the mistake he was referring to was that AGBC had not made payment on the loan, not that the Clients should not have received the notices about the missed payment. However, in Respondent's response to Mr. Client's August 2009 email, Respondent stated that the bank had agreed to split up the loan and remove investors from the loan, and Respondent was prepared to be the one ultimately responsible for the loan. In his testimony during the bankruptcy hearing, Respondent testified that, aside from approximately $1,000 that he put into the transaction, the Clients were the only people who invested money in the G Bank transaction.

I Capital did not pay the May Note by the due date and executed another promissory note in August 2008 ("August Note") agreeing to pay G Bank $5,032,049. The August Note was secured by personal continuing guaranties purportedly executed by Respondent, the Clients and TF. The August Note was due in September 2009. I Capital failed to pay all principal and interest owed under the August Note at maturity and FC Bank made a demand for the full amount owed. TF testified in a deposition that he either did not sign or unknowingly signed the commercial guaranty.

In September 2009, Mr. Client emailed Respondent after receiving another bill from G Bank as guarantors of the $5 million loan, and stated that they could survive the loss of their $950,000 investment, but would be bankrupt if they were responsible for the $5 million loan. Mr. Client requested copies of the loan guaranties that they had purportedly signed and asked Respondent about his promise that he would restructure the loan so that the Clients were no longer guarantors. Respondent responded that he was working with the bank to substitute AGBC and ATSF as guarantors of the loan. Respondent also stated that the loan payments were current and the refinance would be completed by the end of September with AGBC and ATSF as guarantors.

In a September 2009 email, Respondent apologized to the Clients for the situation and informed them of his efforts to have them released as guarantors on the loan.

G Bank Failure and FC Bank Acquisition

In September 2009, G Bank was closed by the State 1 Department of Banking and Finance, and the FDIC was named Receiver. On the same date, the FDIC and FC Bank entered into a Purchase and Assumption Agreement whereby FC Bank acquired certain assets and liabilities of G Bank, including the August Note. FC Bank also acquired the guaranties executed by Respondent, the Clients and others.

2009 FC Bank Civil Suit

In October 2009, FC Bank, as successor to G Bank, filed a civil suit against Respondent, the Clients and other defendants in the State 1 Superior Court to recover the amount owed to G Bank under the promissory note. In

November 2009, the Clients filed their answer to the 2009 FC Bank Civil Suit in which they admitted to executing the loan guaranties.

In July 2010, the Clients amended their answer to the 2009 FC Bank Civil Suit to deny executing the guaranties. In July 2010, the Clients filed a Statement of Material Facts in the 2009 FC Bank Civil Suit. According to the Clients' Statement of Material Facts, during Respondent's deposition, when asked about the theft of the Clients' funds that were to be used to fund the G Bank stock purchase, Respondent asserted his Fifth Amendment privilege against self-incrimination.

In June 2010, FC Bank conveyed its interest in the promissory note and the guaranties to the FDIC and, in August 2010, the Superior Court judge issued an order substituting the FDIC as the plaintiff in place of FC Bank. In August 2010, the FDIC, as assignee of FC Bank, removed the case from the State 1 Superior Court to the U.S. District Court. In September 2010, the U.S. District Court judge issued an order granting the FDIC's motion to stay the 2009 FC Bank Civil Suit in the State 1 Superior Court. The action in the U.S. District Court became the 2010 FDIC Civil Suit. In November 2011, the Clients were dismissed without prejudice from the FDIC action.

2009 Client Civil Suit

In October 2009, the Clients retained LC as their legal counsel and began investigating Respondent and considering legal action. In October 2009, Respondent sent emails to the Clients expressing concerns about LC's investigation and describing Respondent's efforts to resolve the loan situation. In October 2009, the Clients filed suit against Respondent and others in State 1 ("2009 Client Civil Suit"). In October 2009, Respondent sent an email to the Clients entitled, "The Latest from LC – Stop it or I Quit." Respondent, concerned about LC's discovery efforts, threatened the Clients that if they did not withdraw the 2009 suit, he would stop all his efforts to have them removed as guarantors on the G Bank loan. Respondent stated that he would help the bank to go after the Clients because LC was destroying any ability he had to raise money by requesting all bank information for which Respondent has signatory authority.

In November 2009, the Clients voluntarily dismissed the 2009 Client Civil Suit without prejudice. Mrs. Client testified that they dismissed the 2009 Client Civil Suit because she felt overwhelmed and because Respondent wanted the lawsuit out of the equation before he would continue his efforts to resolve the situation through other means.

2010 Client Civil Suit

In April 2010, after Respondent failed to keep his promise to the Clients to have them removed as guarantors on the G Bank loan, the Clients filed the 2010 Client Civil Suit against Respondent and other corporate and individual defendants. The Clients alleged that their signatures on the guaranties were forged. In an affidavit in support of his request to withdraw his admission, Mr. Client stated that, at the time he made the admissions, he mistakenly assumed that he had executed the guaranties based on the multiple documents he signed at Respondent's request and based on Respondent's representations to him. Mr. Client stated that he had not examined the signatures prior to making the admissions because he trusted Respondent and never doubted Respondent's affirmations that he had executed the guaranties. Mr. Client also stated that he was unaware that there were two sets of guaranties allegedly executed on two different dates. Respondent was out of the country when the second guaranty was signed. The Clients stated that they did not know what a commercial guaranty was, never discussed any guaranties with Respondent and did not recall signing any guaranty in connection with the I Capital loan from G Bank. The Clients' expert witness testified during a deposition that Mr. Client's signatures on the guaranties are "simulations" and Mrs. Client's signatures are forgeries.

Respondent's 2011 Bankruptcy Filing

After the Clients filed the 2010 civil suit against Respondent, he subsequently moved to State 2 where he filed a Chapter 7 Bankruptcy petition in December 2011. Respondent's bankruptcy filing stayed the 2010 Client Civil Suit. Respondent stated that, after the Clients began alleging that he forged documents, he essentially quit working and closed his businesses because they were illiquid.

In October 2012, Respondent filed a civil suit against the Clients and LC in the United States District Court in State 2 and alleged $25 million in damages for defamation, slander and libel.

Bankruptcy Court Order Denying Dischargeability of Respondent's Debt to the Clients

As mentioned above, Respondent filed for Chapter 7 Bankruptcy in State 2 in December 2011. The Bankruptcy Court discharged Respondent's bankruptcy in October 2012, but the discharge did not apply to debts the Bankruptcy Court determined were excepted from discharge.

The U.S. Bankruptcy Code states that debts obtained by false pretenses, false representations or actual fraud, other than a statement respecting the debtor's financial condition, are not dischargeable. The Bankruptcy Court found that the debt Respondent owes to the Clients is non-dischargeable under section 523(a)(2)(A) based both on a false representation and a false pretense.

With regard to the false representation, the Bankruptcy Court cited Respondent's June 11th email in which he stated:

> We had to go ahead and close the purchase on May 30th (using a loan from the bank in order to close it fast as you know), so we will end up having to "bill" folks a small/proportional share of their interest calculated from 5/30 to the time they deposit their purchase price into the account so we can pay down the loan. We are also asking people to sign (with us) for their portion of the note as a sign of good faith.

The Bankruptcy Court stated that Respondent knew the statement he made was false. Respondent testified that he appeared on behalf of the Clients when obtaining the loan from G Bank and provided the Clients' financial information to obtain the loan. Respondent did this although the Clients never gave him express authorization to obtain the loan. Respondent also testified that it was his idea to obtain the loan to purchase the G Bank stock and he was the only person who approached G Bank about the loan. Therefore, Respondent knew that he and the Clients were signing guaranties for the whole $5 million loan as part of the May 2008 note. However, he stated in the June 11th email that the Clients were signing only for their portion of the note as a sign of good faith.

According to the Bankruptcy Court, Respondent also made additional misrepresentations regarding billing the Clients for a proportional share of their interest when the evidence clearly showed that Respondent used approximately $250,000 of the $950,000 provided by the Clients to pay interest on the entire $5 million loan, not just the Clients' portion of the loan. Furthermore, the remaining $700,000 was commingled in Respondent's personal accounts and used for his business or personal expenses. The Bankruptcy Court determined that Respondent knowingly made false statements in his June 11th email about the Clients' liability on the loan and his intended use the Clients' money.

The Bankruptcy Court determined that Respondent defrauded the Clients: 1) by using their funds for his personal expenses, his businesses and interest on the entire $5 million loan; 2) by misrepresenting their potential liability on the loan, which he structured less than two weeks before the June 11th email; and 3) because out of the four people who purportedly guaranteed the May 2008 note, the Clients were the only ones with assets sufficient to pay a $5 million loan. After Respondent informed the Clients of the $5 million loan, the Clients believed their

liability on the loan was restricted to their $1 million investment. Respondent structured the $5 million loan to have the Clients serve as guarantors for the full amount. Although Respondent was one of the biggest beneficiaries of the G Bank shares and loan, his investment was limited to $1,000.

With regard to false pretense, the Bankruptcy Court stated that a false representation is an express misrepresentation, while a false pretense refers to an implied misrepresentation or conduct intended to create and foster a false impression. According to the Bankruptcy Court, Respondent was required to act in a fiduciary capacity to the Clients during the events in question because: 1) Respondent prepared a will for the Clients while he was employed at his previous firm, S Advisors; 2) the A Companies had access to the Clients' financial accounts and could pay bills from those accounts with the Clients' authorization; 3) A Companies also had access to the Clients' IRA accounts and could withdraw fees for A Companies' services from those accounts with the Clients' authorization; 4) the Clients repeatedly testified they trusted Respondent's recommendation to invest in the G Bank, including trusting statements that Respondent made in his May 2008 email; and 5) Respondent testified that he appeared on the Clients' behalf when obtaining the loan from G Bank and provided the Clients' financial information without the Clients' express authorization to use a loan to purchase the stock.

The Bankruptcy Court found that: 1) Respondent created a false impression with intent to deceive for the same reasons discussed in connection with the false representations Respondent made in the June 11th email, and based on the inconsistency between the June 11th email and Respondent's testimony that the guaranties were taken to the Clients for their signatures; and 2) the Clients were justified in believing Respondent would disclose important details of the transaction to them, including that they would be guarantors of a $5 million loan.

The Bankruptcy Court further found that the debt owed to the Clients is non-dischargeable under section 523(a)(4) based on embezzlement. The Clients entrusted $950,000 to Defendant with the understanding that it would go towards paying down the loan used to purchase the Clients' share of the G Bank stock. Respondent used the Clients' funds to pay interest on the entire $5 million loan, for his businesses and for personal expenses. Additionally, the circumstances under which the Clients agreed to participate in the G Bank stock purchase and transfer $950,000 to AGBC 2008 indicated fraud. Therefore, each element of embezzlement is met, and the debt is excepted from discharge under section 523(a)(4).

The Bankruptcy Court determined that Respondent owed the Clients a debt that is non-dischargeable under 11 U.S.C. §§ 523(a)(2)(A), (a)(4), and (a)(6).

CFP Board's Interim Suspension Hearing and Order

In December 2011, pursuant to Article 5 of its *Disciplinary Rules*, CFP Board staff counsel directed Respondent to show cause why his right to use the CFP® marks should not be placed on Interim Suspension pending the completion of CFP Board's investigation. Respondent acknowledged receipt of the Order to Show Cause in January 2012 by filing a response as required under Article 5.3 of the *Disciplinary Rules*. In February 2012, the Commission conducted a Show Cause Hearing.

During Respondent's testimony before the Commission at the Order to Show Cause hearing, panel members asked Respondent whether he signed the Clients' names on any of the G Bank loan documents and Respondent asserted his Fifth Amendment privilege against self-incrimination. When asked whether anyone in his employ signed the Clients' names to any of the documents, Respondent asserted his Fifth Amendment privilege against self-incrimination. When asked what happened to the Clients' $950,000 investment, Respondent asserted his Fifth Amendment privilege against self-incrimination and stated that he could not answer beyond what was in the record. Respondent had previously asserted his Fifth Amendment privilege against self-incrimination during his December 2011 deposition in the FDIC Action.

After considering the evidence presented during the show cause hearing, the hearing panel determined that Respondent failed to meet his burden of proof to demonstrate that he does not pose an immediate threat to the public and that the gravity of the nature of his conduct does not impinge upon the stature and reputation of the CFP® marks. The Commission based its determination on Respondent's assertion of his Fifth Amendment privilege against self-incrimination when responding to direct questions from the hearing panel concerning the allegations in the Order to Show Cause.

Therefore, pursuant to Article 5.6 of the *Disciplinary Rules*, the Commission ordered an Interim Suspension because it found that Respondent posed an immediate threat to the public and the gravity of the nature of Respondent's conduct impinged upon the stature and reputation of the CFP® marks. Respondent's right to use the marks was suspended pending the outcome of CFP Board's investigation. Pursuant to Article 13.4 of the *Disciplinary Rules*, the fact of Respondent's interim suspension was published in a press release.

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 make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.

The Commission found that Respondent engaged in conduct involving dishonesty, fraud, deceit and misrepresentation, and knowingly made false and misleading statements to his clients when he: 1) told the Clients that they were purchasing G Bank stock and failed to tell them about their $5 million liability on a commercial guaranty; and 2) told the Clients their $950,000 was being used to purchase G Bank stock when Respondent used it to pay interest on the loan and for business and personal expenses. Thus, Respondent violated *Code of Ethics* Rule 102.

B. Rule 103(d) – A CFP Board designee shall not commingle client funds or other property with a CFP Board designee's personal funds and/or other property or the funds and/or other property of a CFP Board designee's firm.

The Commission found that Respondent commingled the Clients' funds with his personal and business funds when he: 1) used approximately $250,000 of the $950,000 provided by the Clients to pay interest on the entire $5 million loan, not just the Clients' portion of the loan; and 2) placed the remaining $700,000 in his personal and business accounts, and used it for his personal and personal expenses. Thus, Respondent violated *Code of Ethics* Rule 103(d).

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

The Commission found that Respondent failed to act in the interest of the Clients when he: 1) told the Clients that they were purchasing G Bank stock and failed to tell them about their $5 million liability on a commercial guaranty; and 2) told the Clients their $950,000 was being used to purchase G Bank stock when Respondent used it to pay interest on the loan and for business and personal expenses. Thus, Respondent violated *Code of Ethics* Rule 202.

D. Rule 401(a) – In rendering professional services, a CFP Board designee shall disclose to the client material information relevant to the professional relationship, including, conflict(s) of interest, the CFP Board designee's business affiliation, address, telephone number, credentials, qualifications, licenses, compensation structure and any agency relationships, and the scope of the CFP Board designee's authority in that capacity.

The Commission found that Respondent failed to disclose to the clients material information relevant to the professional relationship when he: 1) told the Clients that they were purchasing G Bank stock and failed to tell them about their $5 million liability on a commercial guaranty; and 2) told the Clients their $950,000 was being used to purchase G Bank stock when Respondent used it to pay interest on the loan and for business and personal expenses. Thus, Respondent violated *Code of Ethics* Rule 401(a).

E. Rule 501 – A CFP Board designee shall not reveal, or use for his or her own benefit, without the client's consent, any personally identifiable information relating to the client relationship or the affairs of the client.

The Commission found that Respondent revealed or used for his own benefit, without the clients consent, the clients' personally identifiable information when he provided the Clients' financial information to G Bank without the Clients' express authorization to use a loan to purchase the stock. Thus, Respondent violated *Code of Ethics* Rule 501.

F. Rule 606(b) – A CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board.

The Commission found that Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board when he violated Rules 102, 103(d), 202, 401(a), 501 and 607. Thus, Respondent violated *Code of Ethics* Rule 606(b).

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

The Commission found that 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: 1) told the Clients that they were purchasing G Bank stock and failed to tell them about their $5 million liability on a commercial guaranty; and 2) told the Clients their $950,000 was being used to purchase G Bank stock when Respondent used it to pay interest on the loan and for business and personal expenses. Thus, Respondent violated *Code of Ethics* Rule 607.

H. Rule 1.4 – A certificant shall at all times place the interest of the client ahead of his or her own. When the certificant provides financial planning or material elements of financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board.

The Commission found that Respondent failed to place the interest of the clients ahead of his own and act as a fiduciary when he: 1) informed the Clients that the loan payments were current, when they were not; and 2) filed Chapter 7 Bankruptcy after promising to have the Clients released as guarantors on the $5 million loan. Thus, Respondent violated *Rules of Conduct* Rule 1.4.

I. Rule 6.5 – A certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.

The Commission found that Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP® professional, upon the CFP® marks and upon the profession when he: 1) informed the Clients that he was working with G Bank to substitute AGBC and ATSF as guarantors of the loan, when he was not; 2) informed the Clients that the loan payments were current, when they were not; and 3) filed Chapter 7 Bankruptcy after promising to have the Clients released as guarantors on the $5 million loan. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

J. *Practice Standard 400-3 – The financial planning practitioner shall communicate the recommendation(s) in a manner and to an extent reasonably necessary to assist the client in making an informed decision.*

The Commission found that Respondent failed to make a reasonable effort to assist the client in understanding the client's current situation, the recommendation itself, and its impact on the ability to meet the clients' goals, needs and priorities, and failed to communicate factors critical to the clients' understanding of the recommendations when he failed to inform the Clients that: 1) the guaranties they purportedly signed were for the entire $5 million loan, yet he stated in his June 11th email that the Clients were only signing for their portion of the note; 2) the $5 million loan benefited himself and others, but Clients were guarantors for the full amount of the loan; and 3) out of the four people who purportedly guaranteed the May 2008 note, the Clients were the only ones with assets sufficient to pay a $5 million loan. Thus, Respondent violated *Practice Standard* 400-3.

K. *Practice Standard 500-2 – The financial planning practitioner shall select appropriate products and services that are consistent with the client's goals, needs and priorities.*

The Commission found that Respondent failed to select appropriate products and services that were consistent with the Clients' retirement needs when he: 1) recommended that the clients invest in G Bank stock that failed to reasonably address the clients' needs and 2) failed to investigate the viability of the bank itself, which went into receivership shortly after the Clients purchased the stock. Thus, Respondent violated *Practice Standard* 500-2.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(b) 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* and/or *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated *Code of Ethics* Rules 102, 103(d), 202, 401(a), 501, 606(b) and 607, and Rules 1.4 and 6.5 of the *Rules of Conduct.* Article 3(b) establishes grounds for discipline for any act or omission that fails to comply with the *Practice Standards*. The Commission found grounds for discipline under Article 3(b) because Respondent violated *Practice Standards* 400-3 and 500-2. CFP Board 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 Permanent Revocation of Respondent's CFP® Certification, pursuant to Article 4.4 of the *Disciplinary Rules*.

The Commission noted the record clearly established that Respondent was in a financial planning relationship with his client, yet failed to act with the level of care of a fiduciary. Respondent also admitted, under oath, that he borrowed money from a client. Based on the evidence contained in the record, Respondent did not act in the best interest of his clients, did not hold to the fiduciary duty required in a financial planning relationship, acted with a conflict of interest, and did not disclose to clients the ramifications of their actions in signing loan agreements.

The Commission identified as an aggravating factor that Respondent borrowed money from a client, commingled client funds with his personal funds, failed to disclose conflicts of interest and other material information to the client, violated the securities laws, and breached his fiduciary duty to his clients. These constitute multiple violations of CFP Board's *Standards of Professional Conduct.*

The Commission did not identify any mitigating factors.

The Commission consulted Anonymous Case Histories 21725 and 21787.