CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 26856

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) exercised unauthorized discretion in client accounts by failing to confirm clients' authorization of trades on the dates the trades were executed; 2) exercised unauthorized discretion in client accounts by executing trades without written authorization to exercise discretion and acceptance of the accounts as discretionary by his firm; and 3) failed to execute a trade in a client's account after being directed to do so by the client.

II. Findings of Fact

In June 2011, CFP Board conducted a review of recent public sanctions issued by the Financial Industry Regulatory Authority, Inc. ("FINRA", formerly known as the National Association of Securities Dealers or "NASD") and discovered that Respondent was suspended from association with any FINRA member in any capacity for 20 business days. CFP Board reviewed Respondent's Central Registration Depository Record and discovered that he was the subject of three customer complaints, all of which resulted in monetary settlements. In July 2011, CFP Board mailed a Notice of Investigation ("NOI") to Respondent requesting information and documentation regarding the customer complaints and the Letter of Acceptance, Waiver and Consent ("AWC") Respondent entered into with FINRA. In August 2011, Respondent responded to the NOI with: a statement; complaints, responses, and settlement agreements for the customer complaints; a Letter of Reprimand; Respondent's Wells submission to FINRA; the AWC; and Respondent's response to the state securities board. The facts and findings herein are derived from Respondent's response.

Customer Complaints

In November 2008, Client 1 filed a complaint against Respondent alleging that Respondent failed to execute a trade in May 2008, and exercised discretion in Client 1's account without authorization in November 2008. Respondent admitted in his July 2010 Wells submission letter to FINRA that he exercised time and price discretion in six customers' accounts and failed to execute buy and sell orders that a client requested. Respondent claimed that he obtained verbal authorization for the transactions but did not execute the trades on the dates he obtained the authorization. In January 2009, Respondent's firm offered Client 1 $15,000 as a settlement and offered to cancel the improper trades executed in November 2008. In January 2009, Respondent's firm and Client 1 entered into a settlement agreement and release for $15,000.

In January 2009, Client 2, Client 1's mother, filed a complaint against Respondent alleging that Respondent recommended unsuitable investments and exercised discretion in her account without authorization. In February 2009, Respondent's firm offered to reimburse Client 2 for trades executed by Respondent in May 2008, which Client2 claimed were unauthorized trades. In April 2009, Respondent's firm offered Client 2 additional reimbursement for losses from trades executed in May 2008 in Client 2's second account. In April 2009, Respondent's firm and Client 2 entered into a settlement agreement and release for $10,000.

In March 2010, Client 3 filed a complaint against Respondent alleging that Respondent mismanaged his account. Respondent denied any wrongdoing in his response to CFP Board's NOI. In April 2010, Respondent's firm offered to reimburse Client 3 $1,500 in management fees and $50 for the market loss incurred from a stock purchase. In April 2010, Respondent's firm and Client 3 entered into a settlement agreement and release for $1,550.

Firm Letter of Reprimand and Heightened Supervision

In April 2009, Respondent's firm issued a Letter of Reprimand to Respondent ("Letter"). The Letter stated that Respondent placed trades in clients' advisory accounts without client authorization, in violation of the firm's written supervisory procedures. Respondent's firm also fined him $1,500. In September 2010, Respondent's firm placed him on heightened supervision for a period of two years.

Regulatory Action

In March 2011, FINRA's National Adjudicatory Council accepted the AWC. In the AWC, Respondent consented to the entry of findings that he exercised discretion in client accounts without obtaining written authorization from the clients and acceptance of the accounts by his FINRA member firm as discretionary, in violation of NASD Conduct Rules 2510(b) and 2110. Between May 2008 and November 2008, Respondent used discretion when entering 39 orders for six clients in their fee-based accounts. With respect to four clients, Respondent discussed the transactions with the clients but failed to confirm the clients' authorization on the dates the trades were executed. Respondent further failed to obtain written authorization to exercise discretion from the six clients and acceptance of the accounts as discretionary from his firm. Finally, Respondent failed to follow a client's directions to purchase a security position in violation of NASD Conduct Rule 2110.

Respondent consented to the entry of findings that he violated NASD Conduct Rules 2510(b) and 2110. The AWC resulted in a 20 business-day suspension from association with any FINRA member in any capacity and a $7,500 fine. Respondent served the suspension from April 2011 to May 2011.

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: 1) exercised unauthorized discretion in client accounts by failing to confirm clients' authorization of trades on the dates the trades were executed; 2) exercised unauthorized discretion in client accounts by executing trades without written authorization to exercise discretion and acceptance of the accounts as discretionary by his firm; and 3) failed to execute a trade in a client's account after being directed to do so by the client. Thus, Respondent violated *Code of Ethics* Rule 201.

B. Rule 406 – A CFP Board designee shall perform professional services with dedication to the lawful objectives of the employer and in accordance with this Code of Ethics.

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) exercised unauthorized discretion in client accounts by failing to confirm clients' authorization of trades on the dates the trades were executed; 2) exercised unauthorized discretion in client accounts by executing trades without written authorization to exercise discretion and acceptance of the accounts as discretionary by his firm; and 3) failed to execute a trade in a client's account after being directed to do so by the client. As a result of this conduct, Respondent received a Letter of Reprimand 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 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: 1) exercised unauthorized discretion in client accounts by failing to confirm customers' authorization of trades on the dates the trades were executed; 2) exercised unauthorized discretion in client accounts by executing trades without written authorization to exercise discretion and acceptance of the accounts as discretionary by his firm; and 3) failed to execute a trade in a client's account after being directed to do so by the client, in violation of NASD Conduct Rules 2510(b) and 2110. Thus, Respondent violated *Code of Ethics* Rule 606(a).

D. *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 201, 406, 606(a), 607 and 701. 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.*

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: 1) exercised unauthorized discretion in client accounts by failing to confirm clients' authorization of trades on the dates the trades were executed; 2) exercised unauthorized discretion in client accounts by executing trades without written authorization to exercise discretion and acceptance of the accounts as discretionary by his firm; and 3) failed to execute a trade in a client's account after being directed to do so by the client. This conduct violated NASD Conduct Rules 2510(b) and 2110 and resulted in a 20 business-day suspension from association with any FINRA member in any capacity and a $7,500 fine. Thus, Respondent violated *Code of Ethics* Rule 607.

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

Respondent failed to provide services diligently when he: 1) exercised unauthorized discretion in client accounts by failing to confirm clients' authorization of trades on the dates the trades were executed; 2) exercised unauthorized discretion in client accounts by executing trades without written authorization to exercise discretion and acceptance of the accounts as discretionary by his firm; and 3) failed to execute a trade in a client's account after being directed to do so by the client. Respondent's conduct violated NASD Conduct Rules 2510(b) and 2110 and resulted in a 20 business-day suspension from association with any FINRA member in any capacity and a $7,500 fine. Thus, Respondent violated *Code of Ethics* Rule 701.

IV. <u>Discipline Imposed</u>

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*. Respondent consented to CFP Board's findings that there were grounds for discipline under Article 3(a) because he violated Rules 201, 406, 606(a), 606(b), 607 and 701 of the *Code of Ethics.* Article 3(d) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act that is the proper basis for a professional suspension. Respondent consented to CFP Board's findings that there were grounds for discipline under Article 3(d) because FINRA suspended Respondent for 20 business days. Article 3(e) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act or omission that violated the *Disciplinary Rules* or that violated an order of discipline. Respondent consented that there were grounds for discipline under Article 3(e) because he failed to report his suspension within 10 calendar days of being notified of the suspension. 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 a 180 day suspension of Respondent's right to use the CFP® marks, pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission considered no mitigating or aggravating factors.