

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 27166

This is a summary of a Settlement Agreement entered into at the March 2012 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) failed to ensure a subordinate provided supporting documentation related to his subordinate’s valuation of the subordinate’s hedge fund (“Fund”); 2) failed to ensure that his subordinate obtained an independent financial audit of the Fund; and 3) failed to ensure that the Fund’s quarterly statements and newsletters were reviewed and approved.

II. Findings of Fact

In August 2010, the Financial Industry Regulatory Authority, Inc. (“FINRA”, formerly known as the National Association of Securities Dealers or “NASD”) sent an inquiry letter to Respondent regarding its investigation of Respondent’s subordinate. The subordinate was a registered representative at Respondent’s firm and ran a hedge fund. From 2007 to 2008, the subordinate reported incorrect account valuations in account statements to each of the Fund’s investors. Respondent was the Chief Compliance Officer of the firm and the person responsible for supervision of the Fund.

In June 2011, FINRA’s National Adjudicatory Council accepted Respondent’s Letter of Acceptance, Waiver and Consent (“AWC”). In the AWC, Respondent consented to the entry of findings that he: 1) failed to ensure that the subordinate provided supporting documentation related to the subordinate’s valuation of the Fund; 2) failed to ensure that the subordinate obtain an independent financial audit of the Fund; and 3) failed to ensure that the Fund’s quarterly statements and newsletters were reviewed and approved. Respondent consented to the entry of findings that his conduct violated NASD Rules 3010 and 2110 and FINRA Rule 2010. In the AWC, Respondent consented to a \$5,000 fine and a suspension of Respondent’s association with any FINRA member in any principal capacity for 10 business days.

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) failed to ensure that the subordinate provided supporting documentation related to the subordinate's valuation of the Fund; 2) failed to ensure that the subordinate obtain an independent financial audit of the Fund; and 3) failed to ensure that the Fund's quarterly statements and newsletters were reviewed and approved. Thus, Respondent violated *Code of Ethics* Rule 201.

- B. *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 services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he: 1) failed to ensure that the subordinate provided supporting documentation related to the subordinate's valuation of the Fund; 2) failed to ensure that the subordinate obtain an independent financial audit of the Fund; and 3) failed to ensure that the Fund's quarterly statements and newsletters were reviewed and approved, in violation of NASD Rules 3010 and 2110 and FINRA Rule 2010. Thus, Respondent violated *Code of Ethics* Rule 606(a).

- C. *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 services in accordance with applicable rules, regulations and other established policies of CFP Board when he violated Rules 201, 606(a), 607 and 701. 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[®] professional, upon the CFP[®] marks, and upon the profession when he: 1) failed to ensure that the subordinate provided supporting documentation related to the subordinate's valuation of the Fund; 2) failed to ensure that the subordinate obtain an independent financial audit of the Fund; and 3) failed to ensure that the Fund's quarterly statements and newsletters were reviewed and approved. 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: 1) failed to ensure that the subordinate provided supporting documentation related to the subordinate's valuation of the Fund; 2) failed to ensure that the subordinate obtain an independent financial audit of the Fund; and 3) failed to ensure that the Fund's quarterly statements and newsletters were reviewed and approved. Thus, Respondent violated *Code of Ethics* Rule 701.

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), 607 and 701 of the *Code of Ethics*. Article 3(d) provides grounds for discipline for any act which is the proper basis for professional suspension. The Commission found grounds for discipline under Article 3(d) because Respondent received a ten-business-day suspension from FINRA. Article 3(e) provides grounds for discipline for any act or omission that violates the *Disciplinary Rules* or an order of discipline. The Commission found grounds for discipline under Article 3(e) because Respondent failed to notify CFP Board of his professional suspension within 10 calendar days from the time he was notified of the suspension, in violation of 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 six-month suspension of his right to use the CFP® marks, pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors: 1) Respondent increased his compliance staff while he was absent due to poor health; 2) Respondent's firm had written supervisory procedures in place, but the registered representative deliberately evaded compliance with the procedures; and 3) Respondent's failure to supervise the subordinate did not result in investor losses.

The Commission considered as an aggravating factor that Respondent had already been cautioned by CFP Board with respect to FINRA discipline.