

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 27228

This is a summary of a decision issued following the June 2012 hearings of the Disciplinary and Ethics Commission (“Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The Initial Application for Certification (“Application”) at issue in this case was filed after January 1, 2011. CFP Board’s *Fitness Standards for Candidates and Registrants* (“*Fitness Standards*”) were in effect at that time.

I. Issues Presented

Whether a candidate for CFP® certification (“Respondent”) could be certified when he prepared a financial plan containing several errors and recommended that an elderly client (“Client”) pay surrender charges when surrendering Certificates of Deposit (“CD”) prior to applying for certification.

II. Findings of Fact Relevant to the Commission’s Decision

In 2009, Client filed an arbitration against Respondent. In the Statement of Claim, Client raised allegations of financial exploitation of a vulnerable adult, securities fraud, breach of fiduciary duty, negligence, negligent misrepresentation, fraudulent misrepresentation, fraudulent inducement, and negligent supervision. According to the Statement of Claim, Client, aged 65 at the time she began working with Respondent, was a retired school teacher with multiple sclerosis. Client alleged that Respondent began contacting her soon after the death of her husband in March 2007. After meeting with Client to gather data, Respondent met with Client in her home in May 2007. Respondent learned that Client owned a modest home and had \$27,500 in annual income derived primarily from monthly social security and pension payments. Client also held the following investments:

- \$16,000 in a money market account
- \$604,000 in 22 CDs
- \$160 in savings accounts
- \$15,000 in mutual funds
- \$16,500 in a fixed annuity

Respondent recommended that Client surrender all of her CDs and visited each bank at which Client held a CD to surrender the CDs. According to the Statement of Claim, the bankers at each bank expressed concern regarding Client’s surrender of CDs. Bank A advised Respondent and Client that it was not in Client’s best interest to surrender the CDs and that she would incur \$6,000 in surrender penalties. Bank B also advised Client and Respondent that it was not in Client’s best interest to surrender the CDs and that she would incur surrender penalties. Despite these warnings, Respondent surrendered of all of Client’s CDs during these visits.

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To execute the transactions, Respondent completed Explanation of Transaction Forms (“EOT Forms”) for each CD Client surrendered. The EOT Forms for all CD surrenders stated that the transactions were designed to consolidate funds and for the opportunity for better investments, which were to be determined. Respondent placed all of the proceeds from the CD surrenders in an account at Ameriprise.

In July 2007, Respondent presented a Financial Advisory Proposal (“Proposal”) to Client. In the Proposal, Respondent indicated that Client had approximately \$871,000 in assets held almost solely in cash, \$2,500 in monthly income and \$7,000 in monthly expenses. Respondent noted in the Proposal that Client’s cash flow was a concern and recommended that Client maintain two months of expenses as a cash reserve. Respondent also reviewed Client’s tax liability and determined that she would have an approximate annual tax liability of \$200.

Based on the Proposal, Respondent allocated Client’s investable assets into the following investments:

- \$315,000 into a Variable Annuity
- \$100,000 into a Variable Annuity
- \$90,000 into a Real Estate Investment Trust (“REIT”)
- \$205,000 into mutual funds
- \$11,000 into cash equivalents

Client alleged that Respondent misrepresented the source of the funds for the purchase of the REIT and that the reason for purchasing the REIT was inconsistent with Client’s financial needs and investment objectives. Finally, Client alleged that as a result of the investments recommended by Respondent, she incurred surrender penalties, market losses, adverse tax consequences and paid unjustified financial planning fees.

Respondent’s firm settled the arbitration for \$125,000. Respondent did not contribute to the settlement.

In May 2012, Respondent filed a Petition for Consideration pursuant to CFP Board’s *Fitness Standards*.

I. Discipline Imposed

Under CFP Board’s *Fitness Standards*, a financial plan containing several errors and recommending that a client pay surrender charges when surrendering CDs may reflect adversely on the profession and the CFP® certification marks (“CFP® marks”), and will bar an individual from becoming certified unless the individual petitions the Commission for consideration.

The Commission determined that Respondent’s conduct did not reflect adversely on his fitness as a candidate for CFP® certification, upon the profession and the CFP® marks.

Although the Commission was concerned about the actions taken by Respondent in 2007 with respect to preparing the financial plan and surrendering Client's CDs, the Commission did not feel that its findings warranted a permanent bar from certification.

The Commission cited as mitigating factors:

1. Respondent's conduct occurred only three months into his career and he relied on his superiors to develop the financial plan and investment recommendations;
2. Respondent diversified his business model since the conduct occurred;
3. Respondent provided several strong letters of recommendation;
4. Respondent maintained a clean disciplinary record since the conduct in question occurred;
5. Respondent's former firm and FINRA did not take any adverse action against Respondent after the conduct at issue occurred; and
6. Respondent's firm did not require him to contribute to the settlement.

The Commission cited as aggravating factors:

1. Respondent recommended that Client surrender several of her CDs, which caused her to incur surrender charges;
2. Respondent admitted in testimony that the financial plan he prepared contained numerous errors; and
3. Respondent maintained his belief that financial plan and investment recommendations were sound despite the obvious errors in the plan and the surrender fees incurred by Client.