CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 27321

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 disclose that he was selling unregistered securities, in violation of State law; 2) failed to disclose that he would be compensated for the sale of securities, in violation of State law; 3) sold unregistered, nonexempt securities to 13 clients, in violation of State law; 4) sold an unsuitable promissory note to his client; and 5) failed to adhere to the principles of good business practice when he failed to execute his client's sell orders in a timely manner.

II. Findings of Fact

In July 2010, the State Securities Division issued a Notice of Intent to Suspend or Revoke Investment Advisor Representative License and Notice of Opportunity for Hearing (collectively "Notice"). The Notice alleged that Respondent sold unregistered securities in the form of promissory notes to 13 clients. The notes provided capital to the note issuer and were distributed by Respondent's company. Respondent stated that the notes provided for loans from his company and the lenders (Respondent's clients) to the issuer in an amount of $250,000 or less and bearing an annual rate of interest of 35%. Neither the issuer nor Respondent's company registered with the Division to issue and sell securities or had an exemption filed with the Division. In August 2005, Respondent sold a $25,000 promissory note to his client. The Division alleged that the client did not receive a return of her principal or interest in her investment in the issuer. The Division also alleged that the investment was unsuitable for the client because it was a high-risk investment with a 35% rate of return. Finally, the Division alleged that Respondent failed to place a sell order of nine stocks for the client in a timely manner and, as a result, the client suffered a loss in her portfolio.

In May 2011, Respondent entered into an Order with the Division. In the Order, the Division found that Respondent: 1) failed to disclose that he was selling unregistered securities, in violation of State law; 2) failed to disclose that he would be compensated for the sale of securities, in violation of State law; 3) sold unregistered, nonexempt securities to 13 clients, in violation of State law; 4) sold an unsuitable promissory note to his client; and 5) failed to adhere to the principles of good business practice when he failed to execute the client's sell orders in a timely manner. State law provides that no person, in purchasing or selling securities, shall knowingly engage in any act or practice that is declared illegal, defined as fraudulent, or prohibited. The Order suspended Respondent's investment advisor representative license for 14 days. Respondent served the suspension from May 30, 2011 through June 12, 2011.

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

Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation to a client when he: 1) failed to disclose that he was selling unregistered securities, in violation of State law; and 2) failed to disclose that he would be compensated for the sale of securities, in violation of State law. Thus, Respondent violated *Code of Ethics* Rule 102.

B. *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 when he: 1) failed to disclose that he was selling unregistered securities, in violation of State law; 2) failed to disclose that he would be compensated for the sale of securities, in violation of State law; 3) sold unregistered, nonexempt securities to 13 clients, in violation of State law; 4) sold an unsuitable promissory note to his client; and 5) failed to adhere to the principles of good business practice when he failed to execute his client's sell orders in a timely manner. Thus, Respondent violated *Code of Ethics* Rule 201.

C. *Rule 401(a) – 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.*

Respondent failed to disclose material information relevant to the professional relationship when he: 1) failed to disclose that he was selling unregistered securities, in violation of State law; and 2) failed to disclose that he would be compensated for the sale of securities, in violation of State law. Thus, Respondent violated *Code of Ethics* Rule 401(a).

D. *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 disclose that he was selling unregistered securities, in violation of State law; 2) failed to disclose that he would be compensated for the sale of securities, in violation of State law; 3) sold unregistered, nonexempt securities to 13 clients, in violation of State law; 4) sold an unsuitable promissory note to his client; and 5) failed to adhere to the principles of good business practice when he failed to execute his client's sell orders in a timely manner. Thus, Respondent violated *Code of Ethics* Rule 606(a).

E. *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 102, 201, 401(a), 606(a), 607 and 701. Thus, Respondent violated *Code of Ethics* Rule 606(b).

F. *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 disclose that he was selling unregistered securities, in violation of State law; 2) failed to disclose that he would be compensated for the sale of securities, in violation of State law; 3) sold unregistered, nonexempt securities to 13 clients, in violation of State law; 4) sold an unsuitable promissory note to his client; and 5) failed to adhere to the principles of good business practice when he failed to execute his client's sell orders in a timely manner. Thus, Respondent violated *Code of Ethics* Rule 607.

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

Respondent failed to provide services diligently when he: 1) failed to disclose that he was selling unregistered securities, in violation of State law; 2) failed to disclose that he would be compensated for the sale of securities, in violation of State law; and 3) failed to adhere to the principles of good business practice when he failed to execute his client's sell orders in a timely manner. 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 102, 201, 401(a), 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 Responded received a 14-day suspension of his investment advisor license from a state. 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 14-days suspension of Respondent's right to use the CFP® marks, pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission did not consider any mitigating factors.

The Commission considered the following aggravating factors: 1) Respondent failed to disclose to clients that the promissory notes were not registered; and 2) Respondent's recommendation of investing in a promissory note was not consistent with the client's risk profile.