CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 27927

This is a summary of a Settlement Agreement entered into at the March 2013 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 after 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. Issue Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he executed 14 exchange-traded fund ("ETF") transactions without the knowledge or consent of the customer.

II. Findings of Fact

In April 2012, Respondent disclosed in his Renewal Application that he was a respondent in a Financial Industry Regulatory Authority, Inc. ("FINRA") investigation. Respondent stated that the FINRA investigation arose after he left Firm 1 to join Firm 2.

In June 2012, Respondent entered into a Letter of Acceptance, Waiver and Consent ("AWC") with FINRA. In the AWC, Respondent consented to findings that in June 2008, he executed 14 ETF transactions totaling approximately $55,000 for the account of a customer, without the knowledge or consent of the customer and in the absence of written or oral authorization to exercise discretion in the account, in violation of NASD Conduct Rule 2110. Respondent also consented to the imposition of a 20-business day suspension from association with any FINRA registered firm in any capacity and a $10,000 fine.

Respondent stated that the client never filed a complaint with FINRA or suffer any financial loss, and that Firm 1 immediately reversed the transactions when the client voiced her concern about the number of trades. Respondent stated to CFP Board that he believes that he and the client spoke prior to the execution of the trades but that because he does not have access to Firm 1 phone records, and his cell phone records failed to support his recollection, he decided to accept the AWC.

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 executed 14 ETF transactions without the knowledge or consent of a customer. Thus, Respondent violated *Code of Ethics* Rule 201.

B. *Rule 401(b) – In rendering professional services, a CFP Board designee shall disclose to the client the information required by all laws applicable to the relationship in a manner complying with such laws*

Respondent failed to disclose information required by all laws applicable to the relationship when he failed to inform the customer that Respondent had executed 14 ETF transactions for the customer's account in violation of NASD Conduct Rule 2110. Thus, Respondent violated *Code of Ethics* Rule 401(b).

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

Respondent failed to perform professional services with dedication to the lawful objectives of the employer and in accordance with CFP Board's *Code of Ethics* when he executed 14 ETF transactions without the knowledge or consent of the customer in violation of NASD Conduct Rule 2110. Thus, Respondent violated *Code of Ethics* Rule 406.

D. *Rule 607 – A CFP Board designee shall not engage in any conduct which reflects adversely on integrity or fitness, 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 executed 14 ETF transactions without the knowledge or consent of the customer. Thus, Respondent violated *Code of Ethics* Rule 607.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(d) 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, 401(b), 406, 607 of the *Code of Ethics.* Article 3(d) the *Disciplinary Rules* provides grounds for any act that is the proper basis for professional discipline. The Commission found grounds for discipline under Article 3(d) because FINRA suspended Respondent from association with any FINRA registered firm in any capacity for 20 business days. 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 30-day suspension pursuant to Article 4.3 of the *Disciplinary Rules*.

In deciding to issue a 30-day suspension, the Commission consulted Anonymous Case Histories 23335, 26184 and 26856. The Commission also considered *Sanction Guidelines* 12 (Employer Policies Violation), 30 (Securities Law Violation) and 32 (Professional Discipline Involving a Suspension for up to One Calendar Month).

The Commission considered as mitigating factors that there was no loss to Respondent's client and that Respondent has no prior misconduct.

The Commission considered no aggravating factors.