

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 28190

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This is a summary of a decision issued following 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 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) allowed an individual to sign roster sheets indicating that he had attended insurance CE class sessions taught by Respondent, when the individual had not; and 2) provided the same individual with State Insurance Department course completion certificates for courses the individual had not completed.

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

*Previous CFP Board Case*

In September 2004, Respondent disclosed his involvement in a 2003 State Insurance Department (“State Insurance Department”) Investigation and a 2003 National Association of Securities Dealers (“NASD”) Investigation. Respondent explained that in 2003, he served as an investment wholesaler for Financial Services Firm 1 (“Firm 1”) and Financial Services Firm 2 (“Firm 2”), working primarily with financial institutions. Respondent was also employed as an instructor of continuing education (“CE”) courses in insurance for Firm 1. One of the accounts that Respondent serviced was Bank 1. Respondent had provided insurance CE classes to Bank 1’s brokers in 2003.

The national sales manager for an Bank 1 called Respondent in May 2003, and asked if they could meet separately because the manager’s schedule prevented him from attending any of Respondent’s scheduled classes with Bank 1’s employees. Respondent stated that he met with the manager in 2003 and they discussed a number of different topics related to their business. Respondent gave the manager CE credits for the time they spent together. The manager’s assistant notified Bank 1’s legal department that Respondent and the manager did not spend enough time together to justify the CE credits. Bank 1 performed an internal investigation and notified the State Insurance Department and NASD of the matter.

Respondent stated that his attorney contacted him in July 2004 to ask whether he would accept a State Insurance Department fine and he agreed that he would, but the matter was still pending. Respondent also stated that the NASD matter was still pending. In November 2004, CFP Board dismissed the case based on the information in its possession at the time, but reserved the right to reopen the investigation should either the State Insurance Department or NASD take disciplinary action against Respondent in the future.

### ***2004 State Insurance Department Investigation***

To resolve the State Insurance Department Investigation, Respondent consented to a \$5,000 fine. Respondent's attorney contacted the State Insurance Department on several occasions regarding the payment procedure, but never received a response regarding payment of the fine.

### ***2004 NASD Letter of Acceptance, Waiver and Consent ("AWC")***

In August 2003, NASD notified Respondent that he had been scheduled for a September 2003 on-the-record interview ("OTR") concerning the CE credits he awarded to the manager. Respondent subsequently proposed to settle the matter with NASD through an AWC. In December 2004, NASD sent Respondent and his attorney a revised AWC, and the NASD Office of Disciplinary Action ("ODA") accepted the AWC.

Pursuant to the AWC, NASD made the following findings:

1. An article of State's Insurance Laws requires that persons licensed to sell insurance in that State satisfactorily complete CE courses approved by the State Superintendent of Insurance on a biennial basis. The courses must be equivalent to 15 credit hours of instruction and licensed persons could enter information concerning completed courses on State's Insurance Department Web site.
2. State's Insurance Department certifies CE providers, instructors and courses. Respondent provided CE to registered representatives on approximately 15 occasions during the period March through May 2003.
3. In May 2003, shortly before the deadline for obtaining the 15 credit hours, Respondent allowed an individual to sign roster sheets indicating that he had attended insurance CE class sessions taught by Respondent, when the individual had not. Respondent also provided the same individual with State Insurance Department course completion certificates for courses the individual had not completed.
4. Respondent's conduct violated NASD Conduct Rule 2110.

Respondent consented to a 45-day suspension and a \$10,000 fine. Pursuant to NASD Rule 8310, Respondent could not associate with any NASD member in any capacity during the suspension period.

In January 2005, NASD issued a notice of the Acceptance of the AWC by the NASD's National Adjudicatory Council ("NAC") Subcommittee to Respondent. NASD notified Respondent via certified mail that his suspension period would commence in February 2005 and end in April 2005. Pursuant to Article 12.2 of the *Disciplinary Rules*, Respondent was required to notify CFP Board of his suspension in writing within 10 calendar days after NASD notified him of the suspension. Respondent did not notify CFP Board of the 2005 NASD suspension until September 2012, over seven years later.

### III. Commission's Analysis and Conclusions Regarding 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*

The Commission determined that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly made a false or misleading statement to a regulatory body when he: 1) allowed an individual to sign roster sheets indicating that he had attended insurance CE class sessions taught by Respondent, when the individual had not; and 2) provided the same individual with State Insurance Department course completion certificates for courses the individual had not completed. 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*

The Commission determined that Respondent failed to exercise reasonable and prudent professional judgment in providing professional services when he: 1) allowed an individual to sign roster sheets indicating that he had attended insurance CE class sessions taught by Respondent, when the individual had not; and 2) provided the same individual with State Insurance Department course completion certificates for courses the individual had not completed, in violation of NASD Conduct Rule 2110. Thus, Respondent violated *Code of Ethics* Rule 201.

- C. *Rule 606(a) – A CFP Board designee shall perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities*

The Commission determined that Respondent failed to perform services in accordance with applicable laws, rules and regulations of governmental agencies and other applicable authorities when he: 1) allowed an individual to sign roster sheets indicating that he had attended insurance CE class sessions taught by Respondent, when the individual had not; and 2) provided the same individual with State Insurance Department course completion certificates for courses the individual had not completed, in violation of NASD Conduct Rule 2110. Thus, Respondent violated *Code of Ethics* Rule 606(a).

- D. *Rule 606(b) – A CFP Board designee shall perform services in accordance with applicable rules, regulations and other established policies of CFP Board*

The Commission determined that Respondent failed to perform services in accordance with applicable rules, regulations and other established policies of CFP Board when he: 1) allowed an individual to sign roster sheets indicating that he had attended insurance CE class sessions taught by Respondent, when the individual had not; and 2) provided the same individual with State Insurance Department course completion certificates for courses the individual had not completed, in violation of NASD Conduct Rule 2110 and *Code of Ethics* Rules 102, 201, 606(a) and 607. 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*

The Commission determined that 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) allowed an

individual to sign roster sheets indicating that he had attended insurance CE class sessions taught by Respondent, when the individual had not; 2) provided the same individual with State Insurance Department course completion certificates for courses the individual had not completed, in violation of NASD Conduct Rule 2110; and 3) was suspended by NASD for 45 days. Thus, Respondent violated *Code of Ethics* Rule 607.

#### IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("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, 606(a), 606(b) and 607 of the *Code of Ethics*. Pursuant to Article 4.2 of the *Disciplinary Rules*, the Commission issued the Respondent a Public Letter of Admonition.

In imposing this discipline, the Commission consulted Anonymous Case Histories 26436, 25306 and 23408 and *Sanction Guidelines* 14(a) (Failure to Disclose to CFP Board) and 33 (Professional Discipline for at Least 30 Days but Less than 90 Days).

The Commission considered the following mitigating factors:

1. The underlying conduct occurred almost 10 years ago and Respondent has maintained a clean disciplinary history since the conduct occurred;
2. Respondent's employer did not sanction him as a result of the incident and Respondent was still employed in good standing with the employer through 2012;
3. Respondent's conduct did not harm any clients;
4. Respondent was extremely contrite and forthright about the matter. He was sincere in his apology and took full responsibility for his actions; and
5. A confusing letter from CFP Board instructed Respondent not to report this issue in the future. Respondent did not use the letter as an excuse, but the Commission understood how the letter may have led to confusion on his part.

The Commission cited as an aggravating factor that Respondent did not disclose the NASD AWC to CFP Board, which resulted in a fine and suspension, within 10 days as required, nor did he disclose it to CFP Board on three subsequent Renewal Applications in 2006, 2008 and 2010.