CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28392

This is a summary of a Settlement Agreement entered into at the October 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 *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issue Presented

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when he forged his clients' signatures in letters to a bank in order to misappropriated his clients' assets for his own personal use by transferring the clients' assets to his personal account.

II. Findings of Fact

Respondent was engaged by Mr. and Mrs. S for financial and accounting services. Mr. and Mrs. S were Respondent's in-laws. The Grievant alleged that Respondent forged the name of Mr. S on checks in order to withdraw funds for Respondent's own personal use. The Grievant alleged that Respondent created an electronic banking password in the Mr. and Mrs. S's Bank checking account so Respondent could transfer money out of the Mr. and Mrs. S's account into his own account.

The Grievant also alleged that Respondent forged the names of Mr. and Mrs. S and Mrs. G (Respondent's wife and the Mr. and Mrs. S' daughter) on two letters. The letters, dated May 2011, instructed Bank not to renew the Mr. and Mrs. S Certificates of Deposit ("CDs") and to send the proceeds to Respondent's address instead of Mr. and Mrs. S's address. Respondent then deposited the proceeds into the Mr. and Mrs. S's Bank checking account. Finally, Respondent transferred the proceeds of the CDs from Mr. and Mrs. S's account to his own personal account. The Grievant stated that Respondent did not explain where the money went but admitted that it may have been lost through poor investments or used to pay back the lost assets of other clients.

Statements from Mr. and Mrs. S's Bank checking account indicate that Respondent initiated 28 electronic withdrawals from the account to Respondent's account from February 2011 to October 2011. The withdrawals totaled approximately $455,000. Five large deposits totaling $567,000 were made into Mr. and Mrs. S's account from February 2011 to October 2011. The Grievant alleged that the deposits came from Respondent's unauthorized redemption of Mr. and Mrs. S's CDs.

Finally, the Grievant alleged that Respondent forged Mr. and Mrs. S's names on documents sent to the Internal Revenue Service. The Grievant provided a Form 4506 T-EZ that he claimed Respondent forged. The Grievant stated that he and his wife discovered Respondent's misconduct and confronted Respondent about it. The Grievant provided CFP Board with a letter and email chain from November 2011 through December 2011 in which Respondent and his wife acknowledged that Respondent owed The Living Trust of Mrs. S approximately $444,000.

In April 2013, CFP Board sent a Notice of Investigation to Respondent specifically asking whether Respondent forged the signatures on the May 2011 letters to Bank. In addition, the Notice of Investigation specifically asked Respondent what happened to the proceeds of the CDs and how Respondent came to owe the Mrs. S Living Trust approximately $444,000. Respondent possessed the knowledge and/or documents necessary to answer these questions. However, Respondent refused to provide either testimonial or documentary evidence to CFP Board.

III. Rule Violations

A. Rule 1.4 – A certificant shall at all times place the interest of the client ahead of his or her own when the certificant provides financial planning or material elements of financial planning, the certificant owes to the client the duty of care of a fiduciary as defined by CFP Board.

Respondent forged his clients' signatures in letters to a bank in order to gain access to their assets. Respondent then stole and/or misappropriated his clients' assets for his own personal use. By stealing or misappropriating his clients' assets, Respondent failed to place the interest of his clients ahead of his own and failed to provide services with the duty of care of a fiduciary. Thus, Respondent violated *Rules of Conduct* Rule 1.4.

B. Rule 3.4 – A certificant shall clearly identify the assets over which the certificant will take custody, exercise investment discretion, or exercise supervision.

By forging clients' signatures and taking custody of clients' assets without their knowledge or approval, Respondent failed to clearly identify the assets over which he would take custody, exercise investment discretion, or exercise supervision. Thus, Respondent violated *Rules of Conduct* Rule 3.4.

C. Rule 3.5 – A certificant shall identify and keep complete records of all funds or other property of a client in the custody, or under the discretionary authority, of the certificant.

Respondent did not provide an accounting of the money he stole or misappropriated from his clients when asked by the Grievant. Respondent did not provide information relating to the location of the assets after being asked by CFP Board and despite having access to this information. Therefore, Respondent failed to keep complete records of all funds or other property of a client in his custody or under his discretionary authority. Thus, Respondent violated *Rules of Conduct* Rule 3.5.

D. Rule 3.8 – A certificant shall not commingle a client's property with the property of the certificant or certificant's employer.

Respondent stole or misappropriated clients' assets by transferring clients' assets to his own personal account. By transferring clients' assets to his own account, Respondent commingled a client's property with his own or that of his employer. Thus, Respondent violated *Rules of Conduct* Rule 3.8.

E. Rule 4.1 – A certificant shall treat prospective clients and clients fairly and provide professional services with integrity and objectivity.

Respondent forged his clients' signatures in letters to a bank in order to gain access to their assets. Respondent then stole and/or misappropriated his clients' assets for his own personal use by transferring the clients' assets to his personal account. By stealing or misappropriating his clients' assets, Respondent failed to treat clients fairly and provide services with integrity and objectivity. Thus, Respondent violated *Rules of Conduct* Rule 4.1.

F. Rule 4.4 – A certificant shall exercise reasonable and prudent professional judgment in providing professional services to clients.

Respondent forged his clients' signatures in letters to a bank in order to gain access to their assets. Respondent then stole and/or misappropriated his clients' assets for his own personal use by transferring the clients' assets to his personal account. By stealing or misappropriating his clients' assets, Respondent failed to exercise reasonable and prudent professional judgment in providing professional services to clients. Thus, Respondent violated *Rules of Conduct* Rule 4.4.

G. *Rule 6.5 – A certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.*

Respondent forged his clients' signatures in letters to a bank in order to gain access to the clients' assets. Respondent then stole and/or misappropriated his clients' assets for his own personal use by transferring the clients' assets to his personal account. By forging his clients' signatures and stealing or misappropriating their assets, Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP® professional, upon the CFP® marks, and upon the profession. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(f) 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 *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 1.4, 3.4, 3.5, 3.8, 4.1, 4.4, and 6.5 of the *Rules of Conduct.* Article 3(f) provides grounds for discipline for obstruction of CFP Board staff in the performance of their duties. The Commission found grounds for discipline under Article 3(f) because Respondent failed to respond to a request by CFP Board staff. 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 Revocation of his right to use the CFP® marks, pursuant to Article 4.4 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors:

1. Respondent admitted to stealing money from his clients', who were also his in-laws: and
2. Respondent repaid the money his stole from the clients, which the clients' representative agreed to accept to satisfy any obligation his may have had to client due to stealing the client's money.

The Commission considered as aggravating factors that:

1. Respondent refused to cooperate with CFP Board's investigation;
2. Respondent took advantage of clients who had a close family relationship (parents of his spouse);
3. Respondent took advantage of clients who were unable to protect themselves - one had suffered a stroke and the other had Alzheimer's disease;
4. Respondent's conduct involved numerous (at least 28) separate instances of theft through fraud; and
5. Respondent forged his clients' signatures numerous times.

In arriving at its decision, the Commission consulted Anonymous Case History 21744 and *Sanction Guidelines* 5 (Breach of Fiduciary Duty), 6 (Commingling), 7 (Conflict of Interest), 13 (Failure to Act in Client's Interest Outside of a Financial Planning Relationship), 14 (Failure to Disclose), 17 (Failure to Respond to a CFP Board Request for Information or Notice of Investigation), 19 (Forgery), 20 (Fraud, Misrepresentation and Deceit) and 20(a) (Fraud Involving Professional Activities).