THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF JASON KIRSCH, Respondent.	CFP Board Case No. 2024-66180 April 7, 2025

ORDER

I. PROCEDURAL HISTORY

Certified Financial Planner Board of Standards, Inc. ("CFP Board") granted Respondent the right to use the CFP®, CERTIFIED FINANCIAL PLANNER®, CFP® and CFP™ certification marks ("CFP marks") on August 23, 2016, and he has been certified since that date. (DEC Book at 11.)[1]

Respondent reported his June 20, 2024 Chapter 7 Bankruptcy filing to CFP Board. (DEC Book at 15-16.)

On June 26, 2024, CFP Board Enforcement Counsel issued a Notice of Investigation ("NOI") to Respondent, requesting documents and information relating to his bankruptcy filing. (*Id*. at 127-28.) Respondent responded to the NOI the same day. (*Id*. at 130-31.)

On July 22, 2024, Enforcement Counsel filed a Complaint for Single Bankruptcy ("Complaint") with CFP Board's Disciplinary and Ethics Commission ("Commission") alleging that there are grounds to sanction Respondent for a violation of Standard E.2.c. of the *Code of Ethics and Standards of Conduct* ("*Code and Standards*.") (*Id*. at 5-6.)

The Complaint alleges that CFP Board received credible evidence that Respondent filed for a personal bankruptcy ("Bankruptcy Matter"); that to CFP Board's knowledge, Respondent had no other Bankruptcy Matter; and that there was no probable cause to believe that other grounds for sanction exist. (DEC Book at 5.) The Complaint indicates that CFP Board Enforcement Counsel determined that Respondent's alleged conduct raised the presumption that Respondent had demonstrated an inability to manage responsibly his financial affairs. (*Id.*) The Complaint attaches a copy of Respondent's bankruptcy filing and schedules, as well as other information about his finances that Enforcement Counsel obtained during its investigation. (*Id*. at 5, 65-126; 130-350.)

Respondent filed an Answer to the Complaint on August 6, 2024, admitting to the existence of the Bankruptcy Matter, affirming that he did not have another bankruptcy matter, and denying that the

[1] The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules.*

existence of his Bankruptcy Matter demonstrated his inability to manage his financial affairs responsibly. (*Id.* at 352-54.)

On December 12, 2024, a hearing panel formed under Article 10.6 of the *Procedural Rules* convened by video conference to hear testimony, and to review and consider documents, information, and argument relevant to the Complaint. (Transcript of Hearing of Jason Kirsch, CFP®, December 12, 2024 ("Tr.") at 1.) Enforcement Counsel appeared for CFP Board; DEC Counsel appeared for the Commission and for the hearing panel; Respondent appeared on his own behalf.

II. FINDINGS OF FACT

A. Background

Respondent has been in the financial services industry since 2011 or 2012. (Tr. at 18.) Respondent has passed the following FINRA examinations: (a) Series 7 – General Securities Representative Examination (2015); (b) SIE – Securities Industry Essentials Examination (2016); and (d) Series 66 Uniform Law Examination (2015). (DEC Book at 53.) He holds an insurance license with the state of New York. (Tr. at 50.)

Respondent's advisory firm was first registered in 2017 and is listed as his current employer on his Investment Advisor Public Disclosure report ("IAPD"). (DEC Book at 60.)

Respondent's bankruptcy has been discharged. (Tr. at 106.)

B. The Circumstances Precipitating the Bankruptcy Matter

In his response to the NOI, Respondent states that "personal and professional challenges significantly impacted his financial stability over the last decade." (DEC Book at 130.) Respondent cites that (i) his now ex-wife was unemployed throughout their marriage and accumulated substantial credit card debt that was unknown to him until the time of their divorce; (ii) he was laid off in 2022 from a job providing $80,000 in annual income to supplement the income from his advisory business, and (iii) he incurred expenses associated with four relocations necessitated by "work and personal issues." (*Id.*) He also points to the economic downturn caused by the COVID-19 pandemic. (*Id.*)

1. <u>Respondent's Ex-wife</u>

Respondent says that his ex-wife was unemployed or underemployed for the entirety of their four-year marriage and exploited him financially. (DEC Book at 130; Tr. at 107-108.) He states that she obtained credit cards and accumulated approximately $15,000 in jointly-titled debt that he first became aware of at the time of their divorce. (DEC Book at 130; Tr. at 107-108.) Respondent states that he assumed all his wife's "secret" debt after the divorce in 2017, and although he avoided legal fees by not hiring a divorce attorney, he chose to pay the rent on his ex-wife's apartment for at least six months after they separated. (Tr. 75-76.)

2. Respondent's Relocations and Employment

In 2015, Respondent worked for a well-established accounting and financial services firm. Respondent testified that, at the firm's request, Respondent and his wife moved from New York to Chicago so that Respondent could manage the firm's planning business in the Chicago office. (Tr. at 52-54.) Respondent testified that the move was abrupt, with only a few days' notice, and that he did not have the opportunity to secure permanent housing before the move, so the couple lived in a hotel for their first month in Chicago and incurred other expenses related to the move. (Tr. at 53.) Respondent testified that he expected he would easily pay off the debt he incurred during the relocation because his career trajectory was positive, and he expected that his income would rise "to six figures in a very short amount of time and then continue going north from there." (Tr. at 54.)[2]

Respondent testified that after one year in Chicago, he resigned from his firm and moved to Los Angeles so that his then-wife could pursue a job with a "YouTube influencer company." (Tr. 55-56.) His wife's influencer job did not materialize, and after the Los Angeles firm that Respondent expected would hire him did not do so, he took employment as an editor while he launched his own advisory firm. (Tr. at 56-57.) His BrokerCheck report indicates that he held his job as an editor from December 2016 to June 2022. (DEC Book at 55.)

In 2022 Respondent and his then-girlfriend moved to the Portland, Oregon metropolitan area because of its lower cost of living. (Tr. at 61.) Shortly after the move, which Respondent testified was expensive, Respondent was laid off from his $80,000-a-year editing job. (Tr. at 61-62) He incurred additional expenses moving from their shared home to the apartment that he currently lives in. (Tr. at 63.) He testified that it took him sixteen months to find employment in the finance industry. (*Id*.)

Respondent testified that his advisory firm has approximately 15 households as financial planning and investment management clients, the majority of whom are in New York and California. (Tr. at 93-94; 109-110.)

3. The COVID-19 Pandemic

Respondent testified that he had anticipated receiving significant income from selling screenplays that he had written, but that this never came to fruition because of the COVID-19 pandemic: "[t]he promises that I had to purchase the screenplays completely fell through, because Hollywood shut down completely." (Tr. at 60.)

[2] Although his testimony was clear that the move was at the firm's request, Respondent did not address why these expenses were not reimbursed by his firm.

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> [W]ithout COVID, I would not be in this situation today. I mean, there were multiple screenplays that were being shot, and there was one that -- it was basically a promise, it would sell for over $200,000. And that would've changed my whole financial life.

(*Id*. at 65.)

> [A]t no point before 2020, before the pandemic, did I ever think that that was a potential outcome. I mean, I saw the credit card balances, but I also saw everything else in my life working so well, in terms of potential, that it was just like, something's going to hit. I mean, it was more probable of something hitting than something not hitting, until the pandemic happened, and the world shifted, especially in the entertainment business. The world shifted completely. In terms of actively looking and buying, versus actively not looking, closing up, and cutting -- not just not buying, but cutting costs.

(*Id*. at 114.)

C. Respondent's Testimony

Respondent's testimony conflicted with his prior written submission to Enforcement Counsel. In responding to the NOI, he claimed to have reduced his debt from $100,000 to $25,000 between 2018 and 2020. (DEC Book at 130.) Examination at his hearing revealed this statement to be misleading. He explained that the $100,000 in 2018 total debt included his student loans, but the $25,000 in 2020 total debt did not. (Tr. at 90-91.) His response to the NOI created the false impression that he had reduced his debt by more than he actually had when taking into account the student debt he still carried at the time he filed for bankruptcy.

Respondent's bankruptcy petition also reflects $5,000 in gambling losses in the preceding 12 months. (DEC Book at 107.) Respondent testified that he had played poker his whole life, but in the 18 months preceding the bankruptcy filing he had "probably been more desperate than previously" which accounted for the losses (Tr. at 93.)

Respondent charged nearly all his living expenses to his credit cards, and although he made more than the minimum monthly payments, he still carried significant balances. (Tr. 73, 77, 89-90; *see also* DEC Book at 89-94 (bankruptcy petition reflecting more than $130,000 in credit card and consumer loan balances).) He testified that some of the debt discharged in the bankruptcy dates to 2011. (Tr at 89.) The credit card balances listed in the bankruptcy petition would have been at least $30,000 higher if Respondent had not used the proceeds of lower-interest student loans to pay down his higher-interest consumer debt. (Tr. at 68; *see also* DEC Book at 92-93 (cumulative pre-petition student loan balances listed as $30,776).) Respondent's credit card balances, in his own words "didn't become a problem until [they] did." (Tr. at 89-90.) He testified that the accrued interest on his balances went from "almost nothing to thousands of dollars a year" when the credit card accounts lost their low or zero-percent interest rates. (Tr. 63-64.)

Respondent's response to the NOI states that he had invested approximately 15% of his assets in various entrepreneurial ventures including a trailer for a film that he hopes will be distributed. (DEC Book at 130.) He testified that $30,000 of the debt discharged in bankruptcy was attributable to his filmmaking activities; the $10,000 to $12,000 that he spent producing a trailer for his film was the last of his assets. (Tr. at 88-89.) When asked where his professional focus lies, he testified that he would continue to pursue the same types of entrepreneurial projects that he has in the past.

> I mean, just because, objectively, there's a low probability of success, like in filmmaking, for instance, doesn't mean that, to you, there's a low probability of success. It doesn't mean, to you, it's a risky decision. . .. What's my future going to be like? Maybe financially, I'll have money in the bank, but I'll be miserable. You know?

(Tr. at 113.)

Respondent maintains that his management of his own finances has been "extraordinary" and "creative":

> I'm sorry, but what I've been through in my life, financially, and getting through it, has been unreal and extraordinary. What I had through my financial planning is that literally, I had no better options than the options that I took at that time. Clearly. And that was not just good financial planning. It was extraordinary financial planning, because it took a creativity that 99 percent of financial planners don't have. And I have that creativity, because I've worked at that creative muscle my whole life, in pursuit of storytelling.

(Tr. at 125.)

> Have I -- maybe could've done some things better, looking back? Sure. But that's in every case. But I still believe that I did engage in prudent financial planning of my own accord, even though the outcome did not work out as I would've hoped.

(Tr. at 128.)

III. DISCUSSION

To impose a sanction on Respondent, the Commission must find grounds for sanction. Under Article 12 of the *Procedural Rules*, the Commission found grounds for sanction based on Respondent's violation of CFP Board's *Code and Standards*.

First Grounds for Sanction

Respondent was a CFP® professional at all times relevant to these first grounds for sanction.

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Standard E.2.c. of the *Code and Standards* provides that a CFP® professional may not engage in conduct that reflects adversely on his or her integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession. Such conduct includes, but is not limited to, conduct that results in a personal bankruptcy, unless the CFP® professional can rebut the presumption that the bankruptcy demonstrates an inability to manage the CFP® professional's financial affairs responsibly by a preponderance of the evidence (meaning "more likely than not"). If the CFP® professional meets their burden of proof and successfully rebuts the presumption, the single bankruptcy as stated in the Complaint does not violate or provide a ground for sanction under Section E.2.c. of the *Code and Standards*. If the CFP® professional does not meet their burden of proof and successfully rebut the presumption, the Single Bankruptcy Matter violates Section E.2.c. and provides a ground for sanction.

Respondent filed for bankruptcy on June 20, 2024. Respondent has no other bankruptcy matter, and CFP Board stated that it has no probable cause to believe that other grounds for sanction exist.

Respondent did not meet his burden to successfully rebut the presumption that the bankruptcy demonstrates an inability to manage his financial affairs responsibly. By his own admission, Respondent's financial stability has been an issue for the past decade, during which time he has over-relied on consumer credit. Although he asserts that the pandemic affected his ability to sell his screenplay, the potential for a sale is speculative, and Respondent's testimony on this is not corroborated. Respondent's 2022 layoff was unforeseen, but he knowingly chose to put his money into entrepreneurial entertainment ventures rather than an emergency fund. His six-figure debt burden, the material cause of his bankruptcy, had been accruing since 2011 and was a matter squarely within Respondent's control that predates both the 2020 pandemic and his 2022 layoff.

IV. THE COMMISSION'S DECISION

Under Article 12.3 of CFP Board's *Procedural Rules*, the Commission's final order must impose a sanction if the Commission finds a violation that warrants a sanction. The Commission has discretion to order a sanction among those applicable sanctions set forth in Article 11.1.

CFP Board has issued non-binding *Sanction Guidelines* intended to serve as guidance for determining appropriate sanctions. The Commission considered the following conduct (and recommended sanction) from the *Sanction Guidelines*:

> Conduct 1(a): One Personal or Business Bankruptcy (Public Censure)

The Commission also considered whether there were any material aggravating or mitigating factors in this case, and what weight those factors may have in its decision.

The Commission cited as a mitigating factor that there is no evidence of client harm.

The Commission cited the following factors as aggravating:

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1. Respondent does not acknowledge that his poor management of his finances led to his precarious financial position, contending instead that the factors leading to his bankruptcy were outside of his control when his credit card debt was not.

2. Respondent has displayed a pattern of similar misconduct. He has been in the financial services industry since 2011 or 2012 and twice has accumulated debt of over $100,000 without maintaining appropriate savings or cash flow.

3. Respondent has displayed a pattern of poor judgment with his personal finances as evidenced by his gambling losses and his choice to invest his last liquid assets in speculative entrepreneurial ventures. He pursued an investment with a low probability of success that eliminated his ability to have emergency savings and address his debt. He has confirmed that he will continue to pursue these entertainment projects in the future, potentially at the expense of his financial stability.

4. Respondent made misleading statements to Enforcement Counsel about the reduction of his debt between 2018 and 2020.

The Commission also consulted Case Histories[3] for persuasive non-binding precedent. CH40161 and CH42626 both emphasize that a showing that a bankruptcy was caused by matters outside of a CFP® professional's control—such as others' misconduct, illness and resulting medical debt, or spousal financial abuse—can rebut the presumption the CFP® professional cannot responsibly manage their financial affairs. Respondent's assertions that his ex-wife took financial advantage of him from 2013 to 2017 are not corroborated and do not account for his conduct in the two years preceding their marriage or the seven years following their divorce.

In consideration of the violation found, the aggravating and mitigating factors, and the Case Histories, the Commission issues this Order imposing on Respondent a **Suspension of One Year and One Day**.

Under Article 14.1 of the *Procedural Rules*, a CFP® professional who has been suspended for a period longer than one year must petition the Commission for reinstatement. The Commission notes that if Respondent determines to seek reinstatement, Respondent will be required to prove by clear and convincing evidence, among other things noted in Article 14, his rehabilitation and fitness for CFP® certification and compliance with the terms of this Order.

Ordered by:

Disciplinary and Ethics Commission
CFP Board

[3] Case Histories (referred to as "ACHs" or "CHs") are available on CFP Board's website at https://www.cfp.net/ethics/enforcement/case-history