

THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF

Kenneth L. Rapp, CFP®  
(CFP Board ID No. 97038),



Respondent.

CFP Board Case No. 2019-52059

October 20, 2021

**ORDER**

**I. Procedural Background**

CFP Board granted Respondent the right to use the CFP®, CERTIFIED FINANCIAL PLANNER™,  and  certification marks (“CFP® marks”) on February 8, 2005. (DEC Book at 14.) Respondent has maintained his certification since that date. (*Id.*)

On April 3, 2020, Respondent responded to a Notice of Investigation (“NOI”) sent by CFP Board on February 20, 2020. (*Id.* at 93.) On May 21, 2020, Respondent responded to a Request for Additional Information (“RAI”) sent by CFP Board on May 20, 2020. (*Id.* at 101.)

On May 13, 2021, CFP Board served a Complaint upon Respondent pursuant to Article 3.1 of CFP Board’s *Procedural Rules* for alleged violations of the *Rules of Conduct*. (*Id.* at 7-12.) In accordance with Article 3.1, the Complaint set forth the alleged grounds for sanction, a detailed factual description of the conduct at issue and a specific statement of the alleged violations. (*Id.*) Respondent filed an Answer to CFP Board’s Complaint and requested a hearing before the Disciplinary and Ethics Commission (“Commission”). (*Id.* at 232-241.)

On August 12, 2021, a Hearing Panel of the Commission convened by video conference to review the above-described CFP Board Complaint. (Transcript of Hearing of Kenneth Rapp, CFP, August 12, 2021 (“Rapp Tr.”) at 1.) The Commission considered the Hearing Panel’s recommendation and issued its final order on October 20, 2021.

**II. Findings of Fact**

**A. Background**

Respondent has passed the following FINRA examinations: (a) SIE Securities Industry Essentials Examination (2018); (b) Series 7 General Securities Representative Examination (1996); (c) Series 65 Uniform Investment Adviser Law Examination (2003); Series 63 Uniform Securities Agent State Law Examination (1996). (*Id.* at 23.)

Respondent is currently registered as a broker and as an investment adviser representative with Ameriprise Financial Services, LLC (“Ameriprise”) and has been registered with the firm since February 13, 1996. (*Id.* at 20.)

IN THE MATTER OF KENNETH L. RAPP, CFP®

CFP Board ID No. 97038

CFP Board Case No. 2019-52059

October 20, 2021

B. Change in Business Model in 2000

In 2000, Respondent and nine other junior advisors formed an independent franchise under Ameriprise. (Rapp Tr. at 43.) Respondent testified that only three out of the group generated income from clients while the rest of the group wanted to be staff. (*Id.*) In the beginning, the group had \$15 million of assets under management. (*Id.*) Respondent testified that one person with a Master of Business Administration degree self-appointed himself as the Chief Operating Officer and promised the seven supporting personnel each a salary of \$30,000. (*Id.*) Respondent admitted that the venture was a “mistake” because he “didn’t know enough about running a business.” (*Id.* at 72.)

Although this business model did not generate enough revenue to cover the salaries in the outset, Respondent was hopeful in making it work instead of dissolving the venture after a year. (DEC Book at 95; *see* Rapp Tr. at 43, 75.) For seven years, Respondent waited for a deal with a tin company to materialize despite a lack of formal documentation or negotiation in the interim. (Rapp Tr. at 76-77.) From 2001 to 2008, Respondent repeatedly borrowed against his American Express credit card and his AT&T 401(k) to pay salaries and did not terminate any personnel. (*Id.* at 43-44, 78.) Respondent finally left the franchise in 2008. (*Id.* at 43.)

In 2015, Respondent joined a different Ameriprise practice (Turner Wealth Advisors) and began to receive a steady income. (DEC Book at 101, 141.)

C. Federal Tax Liens from Tax Years 2008 to 2013 and 2015 to 2016

Respondent failed to pay his full tax obligations for Tax Years 2008-2011, causing the Internal Revenue Service (“IRS”) to issue a federal tax lien. On December 30, 2014, the IRS imposed a federal tax lien against Respondent for **Tax Years 2008-2011** asserting Respondent owed a total of \$58,231.35 in unpaid taxes. (*Id.* at 46.) To date, Respondent has not paid the outstanding balance, and therefore, the lien remains outstanding. (*Id.*)

Respondent failed to pay his full tax obligations for Tax Years 2012-2013, causing the IRS to issue a federal tax lien. On July 21, 2014, the IRS imposed a federal tax lien against Respondent for **Tax Years 2012-2013** asserting Respondent owed a total of \$63,984.45 in unpaid taxes. (*Id.* at 42.) To date, Respondent has not paid the outstanding balance, and therefore, the lien remains outstanding. (*Id.*)

Respondent failed to pay his full tax obligations for Tax Years 2015-2016, causing the IRS to issue a federal tax lien. On July 26, 2017, the IRS imposed a federal tax lien against Respondent for **Tax Years 2015-2016** asserting Respondent owed a total of \$31,094.33 in unpaid taxes (*Id.* at 48.) To date, Respondent has not paid the outstanding balance, and therefore, the lien remains outstanding. (*Id.*)

In summary, based on filings with the Cumberland County Recorder and Respondent’s Certificates of Tax Lien and tax transcripts, Respondent has had the following unsatisfied and outstanding liens filed against him:

IN THE MATTER OF KENNETH L. RAPP, CFP®

CFP Board ID No. 97038

CFP Board Case No. 2019-52059

October 20, 2021

Federal Tax Liens		Tax Account Balance		
Tax Year	Amount (\$)	Amount Owed (\$)	Penalty (\$)	Interest (\$)
2008	58231.35	75332.85	8502.75	25581.63
2009	14511.85	18753.02	2149.25	5906.45
2010	34758.9	45794.4	5481.24	13120.04
2011	42872.31	57975.14	7147.74	15277.43
2012	34460.88	-	-	-
2013	29523.56	41649.81	7141.24	9182.76
2015	7106.12	7957.35	1219.04	1658.52
2016	23988.21	5780.3	1610.64	3458.66
<b>Total</b>	<b>\$245,453.18</b>	<b>Total</b>	<b>\$253,242.87</b>	

(*Id.* at 160.)

#### D. Respondent's Effort to Resolve Tax Liens with the IRS

In the hearing, Respondent testified that he “currently owe[s] the IRS [a]pproximately \$235,000.” (Rapp Tr. at 40.) Respondent began discussing a potential payment plan with the IRS in 2014 and ultimately established an Installment Agreement in 2015 after he joined Turner Wealth Advisors. (DEC Book at 106.) Respondent renewed his 2015 Installment Agreement with the IRS in 2017. (*Id.* at 169.) Pursuant to this new Installment Agreement, Respondent agreed to pay \$463 every month. (*Id.* at 95-96.) Respondent represents that the 2017 Installment Agreement allowed him to “get ahead” of these taxes by 2018. (*Id.* at 95.)

In 2019, Respondent's 2017 Installment Agreement with the IRS expired, and he began working with the IRS to renew it. (*Id.* at 95-96, 173.) In the interim, Respondent made voluntary payments to the IRS. (*Id.* at 95.) The IRS established a new Installment Agreement for Respondent on January 14, 2021. (*Id.* at 79.) Pursuant to the 2021 Installment Agreement, Respondent agreed to pay \$2,636.00 on the 10<sup>th</sup> of each month starting February 10, 2021. (*Id.* at 83.) The 2021 Installment Agreement covers the entirety of Respondent's remaining tax debt between 2008 and 2016 – \$253,242.98 as of January 2021. (*Id.* at 71-79.)

Respondent testified at the hearing that he “made the August 10th payment...so [he] made seven of the 24 agreed...payments.” (Rapp Tr. at 42.) He stated that “[i]n 23 months, [he will] renegotiate.” (*Id.*) Respondent asserts that at the time of renegotiation, he would have paid about \$60,000 of the taxes and will try to “find a lender that will allow subordination” based on the “accumulated \$80,000 equity in [his] house.” (*Id.*) Respondent expects to pay off the entire balance in or about 2030. (DEC Book at 173.) In the hearing, Respondent repeatedly stated that his current financial situation did not reflect adversely on his integrity or fitness as a CFP® professional “because [he] made sure clients were not impacted by this.” (Rapp Tr. at 84-85.)

IN THE MATTER OF KENNETH L. RAPP, CFP®

CFP Board ID No. 97038

CFP Board Case No. 2019-52059

October 20, 2021

### III. Determination Regarding Alleged Grounds for Sanction

Under Article 12.3 of the *Procedural Rules*, the Commission must determine whether Respondent violated the *Code of Ethics and Standards of Conduct*, or a predecessor rule.

#### *First Ground for Sanction*

CFP Board's Complaint alleged that, pursuant to Article 3(a) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 6.5 of the *Rules of Conduct*, which provides that 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 was a CFP® professional at a time when the liens were outstanding. Respondent, a certificant, engaged in conduct which reflects adversely on his fitness as a certificant, upon the CFP® marks, and upon the profession when he incurred a tax liability that he failed to timely pay to the IRS from 2008 to 2012 and from 2013 to 2016 resulting in the IRS filing three tax liens for those years. All of the liens are currently outstanding and, as of January 2021, Respondent owes the IRS over \$250,000. Therefore, Respondent violated Rule 6.5 of the *Rules of Conduct*.

### IV. Discussion Regarding Decision

Pursuant to Article 12.3 of the *Procedural Rules*, the Commission must impose a sanction if it finds a violation that warrants a sanction. The Commission has discretion to impose any sanction under Article 11.1 of the *Procedural Rules*.

After careful consideration of the evidence in Respondent's matter and the violations found, the Commission determined to issue Respondent an **Order of Public Censure, plus additional remedial work**.

CFP Board has issued non-binding *Sanction Guidelines* that are intended to serve as guidance for determining the appropriate sanction. In arriving at its decision, the Commission considered the applicability of the following *Sanction Guideline*: Conduct 21: Judgment (Public Censure).

The Commission then consulted various *Anonymous Case Histories*<sup>1</sup> ("ACHs") to determine if any ACHs contained precedent that warranted a deviation from the *Sanction Guidelines*. The Commission considered ACH 30638, ACH 30897, and ACH 29430.

In ACH 30638, the CFP® professional incurred serious financial issues beginning in 2002 when an employment change resulted in a drastic reduction in income. To meet his financial obligations, the CFP® professional withdrew money from his 401(k), which resulted in a taxable distribution and an early withdrawal penalty. The CFP® professional was unable to fulfill payment obligations resulting in

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<sup>1</sup> Anonymous Case Histories or "ACHs" are available on CFP Board's website at <http://www.cfp.net/for-cfp-professionals/professionalstandards-enforcement/anonymous-case-histories>.

IN THE MATTER OF KENNETH L. RAPP, CFP®

CFP Board ID No. 97038

CFP Board Case No. 2019-52059

October 20, 2021

escalating back taxes, interest, and penalties with each ensuing year. The CFP® professional became the subject of six tax liens totaling over \$300,000. After the IRS suggested a payment plan requiring him to pay \$12,000 per month, the CFP® professional filed for Chapter 13 Bankruptcy to obtain a more affordable payment plan. The payment plan proposed by the CFP® professional was approved by the court in November 2015 and was successfully making required payments on a timely basis and was current on estimated tax payments. The Commission gave significant weight to mitigating factors, which included: (1) disclosing the bankruptcy the CFP® professional filed immediately after filing; (2) no prior disciplinary history; (3) conduct not involving clients or causing client harm; (4) taking ownership of the situation and seeking out a solution in which he paid at least a portion of his debt; and (5) not avoiding filing taxes. The Commission cited aggravating factors, including: (a) tax issues extending over multiple tax years; and (b) multiple liens for a significant amount of money. The Commission expressed concern about the CFP® professional continuing to meet his obligations and required the CFP® professional to report to CFP Board annually until the completion of his Chapter 13 plan payments. The Commission issued a Private Censure. Here, the Commission noted that, in contrast to the CFP® professional in ACH 30638, Respondent in the instant matter avoided filing taxes on three separate occasions.

In ACH 30897, the CFP® professional violated Rule 6.5 of the *Rules of Conduct* when he incurred two IRS federal tax liens, both of which were outstanding at the time of his hearing with no repayment plan in place and failed to respond to CFP Board staff's requests for information and provided evasive answers to the Commission during his testimony. Additionally, the CFP® professional filed for Chapter 13 Bankruptcy protection to address the outstanding tax debt, but the bankruptcy was dismissed by the Trustee for want of prosecution. The Commission considered the fact that the CFP® professional failed to answer requests from CFP Board and was evasive with his answers, continued to be unable to manage his finances, and failed to provide evidence of and satisfy a payment plan with response to his outstanding IRS tax liens. The Commission issued a suspension of one year and one day. Unlike the CFP® professional in ACH 30897, Respondent in this matter cooperated fully with CFP Board in its investigation.

The Commission also considered ACH 29430 where a CFP® professional stated that he believed he had reported the lien to CFP Board, but CFP Board had no record of the disclosure. According to the CFP® professional, the lien was the result of difficult personal circumstances. He had not filed taxes in several years and entered into a payment plan but stopped paying when he encountered additional issues with income. The Commission issued a suspension of a year and one day, citing no mitigating factors, despite the fact that the CFP® professional had identified personal issues as an explanation for his conduct, but cited several aggravating factors, including the fact that the CFP® professional had failed to disclose the tax lien to CFP Board, that he had failed to provide evidence of a current payment plan with the IRS, and that he provided a minimal explanation of the circumstances of the tax lien itself. The Commission considered that, in contrast to the CFP® professional in ACH 29430, Respondent in the instant case provided compelling and ample evidence of the circumstances contributing to his tax liens and his work to address it.

The Commission then reviewed the aggravating and mitigating factors in this case to determine whether there were any material factors relevant to this matter, and, if so, what weight those factors may have in its decision.

IN THE MATTER OF KENNETH L. RAPP, CFP®

CFP Board ID No. 97038

CFP Board Case No. 2019-52059

October 20, 2021

The Commission cited in mitigation that:

1. There was no direct client harm or customer complaint as a result of Respondent's actions.

In aggravation, the Commission considered that:

1. [REDACTED]
2. Respondent has incurred in excess of \$250,000 in back taxes, penalties, fees, and fines;
3. Respondent did not express remorse as shown by a lack of acceptance that his conduct reflected adversely on his integrity and fitness as a certificant, upon the CFP® marks, and upon the profession; and
4. Respondent's misconduct has occurred over an extended period and continues as of the date of this Order.

The Commission gave strong weight to the facts that Respondent took meaningful steps to address the outstanding tax liens. As a result, in light of the relevant *Sanction Guidelines* and ACHs, and the weight of the aggravating and mitigating factors, the Commission issues an **Order of Public Censure**. The Commission is also requiring additional remedial work in connection with the Order of Public Censure, as described in Article 11.1.b of the *Procedural Rules*.

Specifically, Respondent shall make periodic reports to CFP Board Counsel on the status of his progress on his tax liens and make a certification to CFP Board every six months, for a total of three years. Specifically, the Respondent shall certify the following:

1. On or before the six-month anniversary of effective date of the Public Censure, Respondent shall certify that he has established a plan to resolve any outstanding tax balance with the IRS in the form of:
  - a. An OIC that has been accepted by the IRS;
  - b. A proposed Installment Agreement that has been accepted by the IRS; or
  - c. A proposed Installment Agreement that has not been rejected by the IRS.
2. By the third certification (within 18 months of the effective date of the Public Censure), Respondent shall certify that he has entered into a negotiated agreement with the IRS for the resolution of his tax liens and that he is in compliance with that agreement. The certifications shall also indicate that Respondent has received no new liens and that he has filed all new state and federal tax returns on time, with full payment for taxes due.
3. Respondent has fully complied with all requirements of the established plan identified above. Compliance with an Installment Agreement shall include making all periodic payments required under the agreement, including payments consistent with that plan prior to final approval of that plan.

In the event that Respondent fails to comply with the certification requirement described above, CFP Board shall issue a Notice of Noncompliance, which shall describe the nature of the failure and provide

IN THE MATTER OF KENNETH L. RAPP, CFP®

CFP Board ID No. 97038

CFP Board Case No. 2019-52059

October 20, 2021

an opportunity to cure such failure, with no less than fourteen (14) days to do so. Any continued failure to comply beyond the cure period defined in the Notice of Noncompliance shall be considered a default, as defined by Article 11.4 of the *Procedural Rules*, with Respondent subject to an Administrative Order of Suspension for One year and One day.

Pursuant to Article 17.7 of the *Procedural Rules*, CFP Board will publish the order imposing the public sanction and/or a summary of the contents of the order in a press release, on CFP Board's website, and any other form of public disclosure that CFP Board determines is appropriate. In the publication, CFP Board will have the right to identify Respondent and the form of sanction, and provide some or all of the facts, as CFP Board has determined them to be, that CFP Board has determined are relevant to the sanction, including information which otherwise may be private or confidential under the *Procedural Rules*. Publication of the sanction will remain on CFP Board's website.

Within 45 days of the effective date of the Order of Public Censure, Respondent is also required to submit to CFP Board written evidence that (1) he has advised his firm, in writing, of the Order of Public Censure, (2) advised all clients of the Public Censure, in writing, including the location of CFP Board's website that will set forth his disciplinary history, and (3) advised all other clients of the Public Censure, including the location of CFP Board's website that will set forth his disciplinary history. If Respondent fails to provide the written evidence described, he will be in default pursuant to Article 4.1 of the *Procedural Rules* and will receive an Administrative Order under Article 4.2.

For the Commission,



Stephanie King, CFP®  
Chair, Disciplinary and Ethics Commission