

## THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF

MARK MONKARSH  
(CFP Board ID No. 80962),

Respondent.

CFP Board Case No. 2019-53020

November 7, 2022



### Appearances

Lane Thurgood, Esq. appeared by video conference for Certified Financial Planner Board of Standards, Inc. (“CFP Board”).

Respondent appeared by video conference and was not represented by counsel.

## ORDER

### I. Background

CFP Board granted Respondent the right to use the CFP<sup>®</sup>, CERTIFIED FINANCIAL PLANNER<sup>™</sup>,  and  certification marks (“CFP<sup>®</sup> marks”) on January 27, 2003, and he has maintained his certification since that date. (DEC Book at 22.)

On February 12, 2020, CFP Board sent a Notice of Investigation (“NOI”) to Respondent requesting certain information and documents concerning his voluntary resignation from his firm and three federal tax liens. (*Id.* at 116.)

On July 21, 2020, Respondent replied to the NOI, stating that he could not provide documentation of his tax liens, but he was in communication with the U.S. Internal Revenue Service (“IRS”) and the IRS told him it could take 90 days or longer to obtain the documentation. (*Id.* at 118.) Respondent had not previously disclosed the above information to CFP Board and stated that he was unaware he was required to disclose his tax liens to CFP Board because he had disclosed the tax liens to his broker dealer and updated his Form U-4. (*Id.*)

On September 30, 2020, CFP Board sent to Respondent a Request for Additional Information (“First RFAI”), requesting certain additional information and documents and providing a deadline of October 14, 2020. (*Id.* at 119-121; 143-145.) Respondent did not respond to the First RFAI before the deadline, and a series of events followed involving multiple instances of Respondent’s alleged Failure to Cooperate, which included two more RFAs, numerous missed deadlines and requests for extensions by Respondent, five different dates for an Oral Examination by CFP Board Counsel that required scheduling and rescheduling due to Respondent’s repeated requests to postpone, and several notices of Failure to Cooperate that resulted in an Administrative Order of Revocation and an Administrative Order of Suspension, both of which were eventually withdrawn by CFP Board Counsel. (*See id.* at 119-174.) In addition, the hearing on this matter before a Hearing Panel of the Disciplinary and Ethics Commission (“Commission”) was continued three

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times, each at Respondent's request, two of which Respondent filed less than 24 hours prior to the scheduled hearing. (*See Exhibit A.*) In effect, as a result of these events, Respondent delayed CFP Board's investigation and adjudication of this matter for more than two years, beginning from the date of the First RFAI. Because it is lengthy, further procedural history describing these matters is provided in Exhibit A to this Order.

On March 17, 2022, CFP Board served a Complaint upon Respondent pursuant to Article 3 of the *Procedural Rules*, which set forth grounds for sanction based on Respondent's conduct that gave rise to alleged violations of the *Rules of Conduct*. (*Id.* at 10-19.) On April 22, 2022, Respondent filed an Answer to CFP Board's Complaint and requested a hearing by video conference before the Commission. (*Id.* at 259-263.)

After three continuances, a Hearing Panel of the Commission convened by video conference on September 20, 2022 to review the above-described CFP Board Complaint. (Transcript of Hearing of Mark Monkarsh, CFP, September 20, 2022 ("Monkarsh Tr.") at 1.) The Commission considered the Hearing Panel's recommendation and then issued its final order on November 7, 2022.

## II. Findings of Fact

### A. Background

Respondent has passed the following FINRA examinations: (a) Series 6 – Investment Company Products/Variables Contracts Representative Examination (1997); (b) Series 63 – Uniform Securities Agent State Law Examination (1999); and (c) SIE – Series Industry Essentials Examination (2018). (DEC Book at 55.)

Respondent maintains an insurance license with the State of Florida Department of Financial Services. (*Id.* at 77.)

Respondent is currently associated with MML Investors Services, LLC as a registered representative and investment advisor representative, and is also employed by Massachusetts Mutual Life Insurance Co. (*Id.* at 52.) Respondent stated he has a fee-and-commission type of business model, with commissions typically accounting for 40%-60% and as much as 80% of his total income. (*Id.* at 192; *see also* Monkarsh Tr. at 139-144.)

Respondent stated at the hearing: "I've been a CFP<sup>®</sup> professional], and financial professional, and have never ever had a negative situation with a client. Never an internal compliance situation that was negative, never an external, never a problem with referral sources." (Monkarsh Tr. at 23.) However, Respondent's Financial Industry Regulatory Authority, Inc. ("FINRA") BrokerCheck Report indicates Respondent had one customer complaint in 2011, which alleged the customer was given inaccurate information on a variable annuity product, although the complaint was denied by Respondent's firm. (DEC Book at 59-60.) His BrokerCheck Report also indicates that in 2010, Respondent resigned from his previous employer while under internal review for allegedly

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participating in outside insurance transactions against firm policy, although Respondent stated he was unaware of the investigation when he resigned. (*Id.* at 61; *see also* Monkarsh Tr. at 118.)

Respondent stated he is currently under heightened supervision at his broker dealer due to his “tax situation.” (*Id.* at 94-95.) As part of the terms of his heightened supervision, Respondent stated a compliance supervisor at his broker dealer monitors whether his taxes are paid, conducts credit checks, reviews all case files and notes before Respondent may engage a client, performs quarterly reviews, and requires quarterly updates from Respondent’s tax attorney. (*Id.* at 169-170.) Respondent stated that he “would have to basically tell” his broker dealer about any public sanction that “adds to” his heightened supervision and doing so could cause him to lose his position with the broker dealer and place his livelihood at risk. (Monkarsh Tr. at 94-95: “if I have a public censure, I most likely will [lose] my position at the broker-dealer....”) When CFP Board Counsel asked, Respondent stated that he had not informed his supervisor of his appearance at the hearing on this matter before the Commission—Respondent even asked CFP Board Counsel whether it is something he must disclose. (*Id.*) Respondent also stated: “I don’t think it would be a good scenario so I was trying to avoid that if possible.” (DEC Book at 212.)

In his closing remarks, Respondent stated: “I will give up my CFP<sup>®</sup> mark if there’s any way for [this matter] to be private. I do not want to lose my income or my livelihood. But if I lose the CFP<sup>®</sup> mark in a public manner, I would lose that.” (Monkarsh Tr. at 182.) Respondent said in his testimony: “I’d do anything to have it not public.” (*Id.* at 120.) (Emphasis added.)

B. Respondent’s History of Financial Difficulties

Respondent stated that he separated from his wife in 2011 and began experiencing financial hardship in 2014, when the associated legal costs of their divorce and custody proceedings significantly accumulated, reaching \$417,000 over a nine-year period [REDACTED] (Monkarsh Tr. at 22, 148; *c.f.* DEC Book at 152 and 201: Respondent previously stated his legal bills were \$200,000 and \$250,000, approximately half the \$417,000 amount he represented at the hearing.) Respondent stated that during his divorce proceedings, he was “always” required to allocate an additional \$40,000 or 50,000 from his total income for a tax attorney or be held “in contempt of court....” (although, it was never explained why a divorce court would hold Respondent in contempt unless he paid such a large amount for a tax attorney). (DEC Book at 204.) Respondent stated that he was caught in a “horrible cycle” of paying his attorney’s fees instead of paying his taxes. (*Id.*)

In addition to the attorney’s fees for his divorce and child custody, Respondent stated he paid approximately \$16,000 in alimony and \$2,600 in child support per month, until he was awarded rights to joint custody of his children. (Monkarsh Tr. at 90.) In 2015, Respondent stated that [REDACTED] stunted his response to his tax liabilities for two years. (DEC Book at 152; *see also* Monkarsh Tr. at 92, 143.) [REDACTED] (Monkarsh Tr. at 92-93.)

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C. Respondent's Federal Tax Obligations for Tax Years 2011 to 2021 and  
Respondent's Four (4) Outstanding Federal Tax Liens Spanning Five (5) Years

Despite Respondent's high income during the relevant period, ranging from \$222,837 to \$658,604, Respondent failed to pay, or failed to timely file and pay, his federal tax obligations to the IRS for multiple Tax Years between 2011 and 2017, causing the IRS to file four federal tax liens against Respondent spanning five Tax Years. (*See id.* at 93-115; *see also* Monkars Tr. at 18-19, 29-30.) At the time of the hearing, Respondent owed over \$1.1 Million in back taxes, penalties, and interest to the IRS, with approximately half that amount levied by four federal tax liens. (*Id.*) Respondent stated during the hearing that “since 2018 I have paid my taxes on time [and], for 2018, '19, '20, and '21, all taxes are current.” (Monkars Tr. at 22; *see also* DEC Book at 112-115.) However, to date, Respondent has not paid his back taxes in full, so the IRS has not released its federal tax liens for Tax Years 2012, 2013, 2014, 2015, and 2016. (*Id.* at 86-92.)

*i. 2011 Tax Year*

On April 15, 2012, Respondent filed for and received an extension of time until October 15, 2012, to file his 2011 Tax Return.<sup>1</sup> (*Id.* at 95.) Respondent filed his 2011 Tax Return within the extended deadline<sup>2</sup> but did not pay his 2011 tax liability in full. (*Id.*) On November 26, 2012, the IRS assessed a penalty against Respondent for late payment in the amount of \$1,354.44, and Respondent subsequently accrued further significant penalties and interest. (DEC Book at 95-96; *see also id.* at 92.) Through an established Installment Agreement with the IRS, Respondent eventually paid off his outstanding balance for Tax Year 2011. (*Id.*)

*ii. 2012 Tax Year and Federal Tax Lien*

On April 15, 2013, Respondent and his now ex-wife jointly filed for and received an extension of time until October 15, 2013, to file their joint 2012 Tax Return. (*Id.* at 98.) Respondent and his ex-wife filed their joint 2012 Tax Return within the extended deadline but did not pay their 2012 tax liability in full. (*Id.* at 98.) On December 2, 2013, the IRS assessed a penalty against

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<sup>1</sup> Respondent stated that his “CPA always files an extension.” (Monkars Tr. at 22.) Respondent also indicated that he understands the IRS imposes penalties for not paying the amount owed on his yearly tax returns by April 15 every year—even when filing within the October 15 extended deadline. (*Id.* at 153.)

<sup>2</sup> During the hearing, CFP Board Counsel acknowledged that Respondent filed his Tax Returns within the extended deadline for Tax Years 2011, 2012, 2013, 2014, 2017 and 2018, but stated that Respondent did not file within the extended deadline for Tax Years 2015 and 2016. (Monkars Tr. at 114.) Therefore, the allegation in CFP Board's Complaint that Respondent filed his Tax Returns beyond the extended deadline for all those tax years was incorrect to the extent it cited to the “processing date” on Respondent's Tax Account Transcripts rather than the “due or received date.” (DEC Book at 5-20, 92; *c.f. id.* at 93-115.) Respondent intended to have a witness testify that he paid his Tax Returns on time for Tax Years 2011, 2012, 2013, 2014, 2017, 2018, 2019, 2020, and presumably 2021; however, when Respondent called upon his witness at the hearing, his witness was no long in the waiting room. (Monkars Tr. at 106: “He was ... available at 12:00 o'clock.... that was the point of the witness was to show that I actually paid, or filed and paid the taxes on time.”) Over one month after the hearing, on September 21, 2022, Respondent sent the Commission a letter from his tax attorney, but the letter described settlement negotiations with CFP Board and was not admissible pursuant to the *Procedural Rules*. (Exhibit N.)

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Respondent and his ex-wife for late payment in the amount of \$4,004.12, and they subsequently accrued further significant penalties and interest. (*Id.* at 98-99; *see also id.* at 92.)

As part of their divorce settlement, Respondent stated that his ex-wife agreed to pay their tax liabilities for Tax Year 2012, but she did not pay these taxes. (DEC Book at 200.) Respondent's 2012 Tax Account Transcript included his Form Number 1040 Separate Assessment for Tax Year 2012, which sets forth Respondent's tax liabilities separately from his ex-wife's. (*Id.* at 100-101.) Respondent's 2012 Tax Account Transcript and Form Number 1040 indicate that Respondent failed to pay his full tax obligations for Tax Year 2012, causing the IRS to assess a federal tax lien against Respondent and his ex-wife as joint taxpayers for Tax Year 2012.<sup>3</sup> (*Id.* at 86.)

On November 19, 2015, the IRS filed a federal tax lien against Respondent and his ex-wife for Tax Year 2012 in the amount of \$91,836.73. (*Id.* at 86.) To date, neither Respondent nor his ex-wife have paid off this outstanding tax debt, and therefore, the IRS has not released this tax lien.<sup>4</sup> (*Id.*)

*iii. 2013 Tax Year and Federal Tax Lien*

On April 14, 2014, Respondent filed for and received an extension of time until October 15, 2014, to file his 2013 Tax Return. (*Id.* at 103.) Respondent filed his 2013 Tax Return by this extension date but did not pay his 2013 tax liability in full. (*Id.*) On November 24, 2014, the IRS assessed a penalty against Respondent for late payment in the amount of \$1,125.65, and Respondent subsequently accrued further significant penalties and interest. (DEC Book at 103; *see also id.* at 92.) Respondent failed to pay his full tax obligations for Tax Year 2013 causing the IRS to issue a federal tax lien. (*Id.* at 87.)

On November 19, 2015, the IRS filed a federal tax lien against Respondent for Tax Year 2013 in the amount of \$65,502.89. (*Id.*) To date, Respondent has not paid off this outstanding tax debt, and therefore, the IRS has not released this tax lien. (*Id.*)

*iv. 2014 Tax Year and Federal Tax Lien*

On April 15, 2015, Respondent filed for and received an extension of time until October 15, 2015, to file his 2014 Tax Return. (*Id.* at 105.) Respondent filed his 2014 Tax Return within this extension date but did not pay his 2014 tax liability in full. (*Id.* at 105.) On November 23, 2015, the IRS assessed a penalty against Respondent for late payment in the amount of \$4,029.52, and

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<sup>3</sup> Tax Year 2012 is the only Tax Year during the relevant period when Respondent and his ex-wife filed their taxes as "married filing jointly" and is the only federal tax lien that the IRS assessed against both Respondent and his ex-wife as joint taxpayers. (DEC Book at 86.) Respondent filed his taxes as either "single" or "head of household" for all other tax years during the relevant period, and the IRS assessed all other tax liens against only Respondent. (*Id.* at 87-91, 93-115.)

<sup>4</sup> Respondent stated at the hearing that the IRS had at some point released this lien against Respondent, but his ex-wife had the IRS assess the lien against Respondent again in 2021. (Monkarsh Tr. at 167.) There is no evidence in the record supporting this claim, but the fact remains that the IRS has a lien assessed against Respondent for Tax Year 2012.

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Respondent subsequently accrued further significant penalties and interest. (*Id.*; *see also id.* at 92.) In 2016, the IRS audited Respondent for Tax Year 2014 and Respondent stated that his former Certified Public Accountant (“CPA”) did not appear at the audit, which caused Respondent to incur significant penalties or further assessments. (DEC Book at 152-203.) Respondent failed to pay his full tax obligations for Tax Year 2014 causing the IRS to issue a federal tax lien. (*Id.* at 88.)

On March 16, 2017, the IRS filed a federal tax lien against Respondent for Tax Year 2014 in the amount of \$108,025.75. (*Id.*) To date, Respondent has not paid off this outstanding tax debt, and therefore, the IRS has not released this tax lien. (*Id.*)

v. 2015 and 2016 Tax Years and Federal Tax Lien

Respondent failed to timely file, and failed to pay in full, his tax obligations for Tax Years 2015 and 2016, causing the IRS to issue a single federal tax lien against Respondent for those years combined. (*Id.* at 91.)

On April 15, 2016, Respondent filed for and received an extension of time until October 15, 2016, to file his 2015 Tax Return. (*Id.* at 107.) Respondent failed to timely file his 2015 Tax Return by this extension date and eventually filed his 2015 Tax Return on August 11, 2017. (*Id.* at 106.) On that date, the IRS assessed a penalty against Respondent for filing after the due date in the amount of \$18,770.85 and a penalty for late payment in the amount of \$7,508.34, and Respondent subsequently accrued further significant penalties and interest. (*Id.* at 107; *see also id.* at 92.) Respondent failed to pay his full tax obligations for Tax Year 2015, causing the IRS to issue a federal tax lien. (*Id.* at 89.)

On April 12, 2017, Respondent filed for and received an extension of time until October 15, 2017, to file his 2016 Tax Return. (*Id.* at 109.) Respondent failed to timely file his 2016 Tax Return by this extension date and eventually filed his 2016 Tax Return on January 31, 2018. (*Id.* at 108.) On March 26, 2018, the IRS assessed a penalty for late payment in the amount of \$10,593.36, and Respondent subsequently accrued further significant penalties and interest. (DEC Book at 109; *see also id.* at 92.) Respondent failed to pay in full his tax obligations for Tax Year 2016, causing the IRS to issue a federal tax lien. (*Id.* at 89.)

On March 22, 2021, the IRS filed a single tax lien against Respondent for both Tax Years 2015 and 2016 combined, in the amount of \$312,338.98.<sup>5</sup> (*Id.* at 91.) To date, Respondent has not paid off this outstanding tax debt, and therefore, the IRS has not released this tax lien. (*Id.* at 91.)

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<sup>5</sup> Previously, on September 26, 2017, the IRS filed a federal tax lien against Respondent for Tax Year 2016 in the amount of \$25,770.06. (*Id.* at 89.) Respondent had not satisfied this tax lien, but the IRS released the lien on January 5, 2018, then issued a combined federal tax lien for both Tax Years 2015 and 2016 on March 22, 2021. (*Id.* at 90.)

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vi. *2017 through 2021 Tax Years*

Respondent failed to timely file his 2017 Tax Return by April 15, 2018, and eventually filed his 2017 Tax Return on June 4, 2018. (*Id.* at 111.) Although Respondent paid in full the amount owed on his 2017 Tax Return, on June 4, 2018, the IRS assessed a penalty against Respondent for late payment in the amount of \$1,436.12, and Respondent subsequently accrued further significant penalties and interest. (*Id.* at 111; *see also id.* at 92.)

Respondent timely filed and paid in full his 2018 Tax Return. (*Id.* at 112-113.)

Respondent filed and paid in full his 2019 Tax Return on June 23, 2020. (*Id.* at 114.) On August 17, 2020, the IRS assessed a penalty of \$339 for not prepaying his 2019 Tax Return. (*Id.*)

Respondent timely filed and paid in full his 2020 Tax Return. (*Id.* at 115; *see also* Monkars Tr. at 54-55.). There is no documentary evidence in the record suggesting Respondent did not file or pay timely his 2021 taxes. (*See id.* at 54-55.)

vii. *Summary of Respondent's Outstanding Federal Tax Debts and Four (4) Outstanding Federal Tax Liens*

In summary, based on filings with the Hillsborough County Recorder, Respondent has the following unsatisfied and outstanding IRS tax liens filed against him:

<b>Federal Tax Liens</b> (as of September 20, 2022)		
<b>Tax Year</b>	<b>Amount</b>	
2012	\$91,836.73	
2013	\$65,502.89	
2014	\$108,025.75	
2015	\$312,338.98	\$116,882.62 + \$195,456.36
2016	(combined)	
<b>Total =</b>	<b>\$577,703.37</b>	

(*See id.* at 93-115.)

According to Respondent's Tax Account Transcripts from Tax Years 2010 through 2020, as of September 27, 2021, Respondent owed, in total, the following tax balances with accrued interest and penalties:

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<b>Federal Tax Account Balance w/ Accrued Interest and Penalties</b> (as of September 27, 2021)	
<b>Tax Year</b>	<b>Amount</b>
2010	\$0.00
2011	\$0.00
2012	\$122,151.82
2013	\$25,952.40
2014	\$363,214.06
2015	\$152,799.52
2016	\$262,104.33
2017	\$205,532.81
2018	\$0.00
2019	\$0.00
2020	\$0.00
<b>Total =</b>	<b>\$1,131,754.94</b>

(See *id.*; see also *id.* at 92.)

Respondent's Tax Account Transcripts indicate that on April 19 and June 14, 2021, Respondent's U.S. passport was classified as "seriously delinquent tax debt," which, CFP Board Counsel explained during the hearing, means Respondent cannot be issued a U.S. passport and his current U.S. passport may be revoked.<sup>6</sup> (*Id.* at 107, 109; see also Monkarsh Tr. at 32.)

**D. Respondent's Efforts to Address His Outstanding Federal Tax Liabilities**

Respondent has consulted with tax professionals to assist in addressing his outstanding tax liabilities. Respondent stated that he began working with tax professionals in 2015, when he engaged "Optima tax relief" and a CPA to assist with his taxes, and he is currently working with a tax attorney (who is also CPA) to negotiate the amount that he owes to the IRS. (Monkarsh Tr. at 88, 96, 103.) Respondent's Tax Account Transcripts indicate he had an "appointed representative" (and had removed appointed representatives) at certain points during 2015, 2017, 2019, and 2021. (DEC Book at 93-115; see, e.g., *id.* at 94.) In addition to consulting tax professionals to assist in addressing his outstanding tax liabilities, Respondent previously entered into an installment agreement with the IRS, has previously submitted an Offer in Compromise ("OIC") to the IRS, and currently has an outstanding OIC with the IRS, as described below.

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<sup>6</sup> Respondent stated he has a letter indicating this classification was removed but he did not provide the Commission with any such evidence. (Monkarsh Tr. at 158-159.) It is unclear whether his Tax Account Transcripts reflect that this classification was removed, although the classification does not appear in his Tax Account Transcripts for Tax Years 2017 through 2020.



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*i. Respondent Defaults on his 2013 Installment Agreement with the IRS and the IRS Rejects His 2017 Offer in Compromise*

In March 2013, Respondent entered into an Installment Agreement with the IRS to make monthly payments of \$1,000 towards his unpaid tax debts for Tax Years 2011 and 2012. (*Id.* at 96.) One year later, in March 2014, Respondent's Installment Agreement went into default because Respondent incurred additional tax debts. (*See id.* at 93-115; *see also id.* at 96, 207.) In 2017, Respondent submitted an OIC to the IRS. (*See id.* at 93-115; *see also id.* at 152, 207-208.) The IRS rejected this OIC in 2020, and Respondent stated he hired his current tax attorney to appeal this decision, but the appeal was unsuccessful. (*See id.* at 93-115; *see also id.* at 152.)

*ii. Respondent's Current OIC*

Respondent is not currently enrolled in an Installment Agreement, nor has he secured an OIC, but Respondent confirmed that, on or about January 26, 2022, he submitted a second OIC to the IRS, in which he offered to pay a total of \$22,412<sup>7</sup> to satisfy his debts, which is 1.98% of the \$1,131,754.94 that the IRS has assessed against him. (*See ex.*, Monkarsh Tr.,<sup>8</sup> at 116, 175; *see also id.* at 19, 32, 65-66, 83-84, 104, 121.) Respondent stated that he and his tax attorney decided to pursue this second OIC for \$22,412, rather than negotiate a second installment agreement with the IRS for the full amount assessed against him, because he believes he does not owe back taxes for Tax Year 2012 and does not owe the penalties or interest on Tax Years 2013, 2014, and 2017. (*See id.*) Respondent asserts this OIC would allow him to repay only the principal on those back taxes that he believes he does owe.<sup>9</sup> (*Id.*)

*a. Respondent Asserts He Does Not Owe Tax Year 2012 Liabilities*

Respondent stated that he believes he has no responsibility for paying the tax debts the IRS assessed against him for Tax Year 2012 because his ex-wife agreed to pay their joint 2012 tax liabilities as part of their divorce settlement. (DEC Book at 194-195; *see also* Monkarsh Tr. at 90; 156-158: "She had \$160,000 to do that, and chose not to.... I gave up an asset for her to assume the tax liability.... And we're trying to enforce that.") However, Respondent did not provide copies of his divorce settlement or any other corroborating evidence. Respondent also provided no explanation as to why the joint 2012 tax liability had not been paid either by Respondent or his ex-wife when they have had over a decade to do so. Further, Respondent's 2012 Tax Account Transcript indicates that his ex-wife filed and received from the IRS an "innocent spouse claim" on August 26, 2016, after the IRS filed its lien on November 11, 2015, indicating the IRS's

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<sup>7</sup> CFP Board's Complaint states Respondent's OIC was for a total amount of \$22,412, to be paid with 20% down and the rest paid over five months. (DEC Book at 15.)

<sup>8</sup> CFP Board's Complaint references Respondent's OIC but does not cite to any particular documents in the DEC Book. (DEC Book at 15.) CFP Board Counsel then referred to the OIC several times throughout the hearing, and Respondent referred to the OIC throughout the hearing, which provided corroborative evidence of its existence, but the record contains no documentary evidence of the second OIC that Respondent submitted to the IRS on January 26, 2022.

<sup>9</sup> In contrast, Respondent also stated during the hearing: "I can admit guilt if I don't pay a tax, I owe a tax, and ... on my transcript ... there will be penalties associated with that." (Monkarsh Tr. at 160.)

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recognition that Respondent alone is responsible for paying all of his Tax Year 2012 liabilities. (DEC Book at 101, 86; *see also id.* at 195: “this past year the full 2012 debt was put upon me and not her”; *c.f.* Monkars Tr. at 150: “we are waiting for the hearing to, hopefully, get that reversed.”)

b. Respondent Asserts He Does Not Owe Tax Year 2013 Liabilities

Respondent also stated that he fully paid his debts for Tax Year 2013 and should not be held accountable for the penalties and interest that accrued thereafter. (Monkarsh Tr. at 90-91: “A check was given with the ... return for \$45,000. And an amended return was filed.”) However, Respondent’s 2013 Tax Account Transcript indicates he paid \$47,000 in January 2017, three years after his 2013 taxes were due, for which the IRS assessed penalties and interest. (DEC Book at 103.) Respondent explained “[t]he IRS has yet to hear that case” and “as soon as the offer in compromise is completed, then they will hear the tax lien case” but the record is unclear what “case” the IRS has not heard, and why there is still a question whether Respondent paid his 2013 taxes five years ago, and over eight years after they had become due. (Monkarsh Tr. at 90, 102.)

c. Respondent Asserts He Does Not Owe Tax Year 2014 Liabilities

Respondent stated that in 2015, his previous CPA, who had Power of Attorney for Respondent, did not appear at an IRS audit of Respondent’s 2014 Tax Year. (DEC Book at 196.) As a result, Respondent stated that the IRS auditors assessed every expense against Respondent that maybe would not have been assessed against him if his CPA had been present, adding \$240,000 to his total debts for Tax Year 2014. (*Id.*) Respondent explained: “Everything they had in question, they basically tacked on so I guess normally maybe if you had meals and expenses, you get credit for 90 percent of them or 85 percent or whatever the deal is and all of that tax debt was put on me.” (DEC Book at 196.) However, it is difficult to ascertain from the record how Respondent’s business meals could account for \$240,000 of deductible tax debt that the IRS assessed against him pursuant to an audit. Respondent stated that he intends to subsume those amounts assessed against him in the audit by paying his proposed OIC, if the IRS accepts Respondent’s OIC. (Monkarsh Tr. at 94, 102.)

d. Respondent Asserts He Does Not Owe Tax Year 2017 Liabilities

Respondent also stated he believes the amount owed for Tax Year 2017 is incorrect, but he did not explain why or how, and the record is not clear as to why he believes the amount owed for 2017 is incorrect. (*See* Monkars Tr. at 102.)

iii. *Feasibility of Respondent’s Current OIC*

Regardless of whether Respondent owes these contested liabilities, that is, *even if* the IRS were to agree with Respondent and omit the amounts it assessed against him for Tax Year 2012 (~\$122,151), and the amounts the IRS assessed in penalties and interest against him for Tax Year 2013 (~\$25,000), Tax Year 2014 (~\$150,000), and Tax Year 2017 (~\$41,000), Respondent’s outstanding tax debts would still exceed \$700,000.00, with over \$500,000.00 of that amount

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already levied by the IRS in federal tax liens. (*See* DEC Book at 92, 202; *see also* Monkarsh Tr. at 120-123.) There also is a suggestion in the record that Respondent only submitted this OIC in contemplation of the hearing on this CFP Board matter, potentially to mitigate any potential sanction. (*See* Monkarsh Tr. at 65-66: “[CFP Board Counsel told me] if I had a payment plan for a year I’d be looked upon differently than if I didn’t. So, I arranged that call. And after that call it was apparent that it was okay to go forward with the offer in compromise.”)

Respondent testified during the September 2022 hearing on this matter that he had a letter from the IRS stating it would contact him to finalize the OIC by June 2022; however, that did not occur by June 2022 (and Respondent did not provide the Commission with any such letter). (Monkarsh Tr. at 119.) Respondent also previously stated he expected to have a plan in place by October 2021, over a year ago, which also never materialized. (*Id.* at 152.)

Given the large amount of Respondent’s tax debts and his stated fee-and-commissions business model, pursuant to which commissions provide as much as 80% of his income, one member the Hearing Panel asked Respondent whether his tax liens might create a conflict of interest where he might recommend the purchase or sale of a commission-based product for his own personal benefit. (*Id.* at 139-144; *see also* DEC Book at 192.) However, Respondent assured that he “can’t imagine ever recommending a product to make more dollars.” (Monkarsh Tr. at 143.)

### **III. Discussion of Respondent’s Misconduct**

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 there are grounds to sanction Respondent for a violation of Rule 6.5 of the *Rules of Conduct*, which 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.

Conduct that reflects adversely in violation of Rule 6.5 includes the inability of a CFP® professional to manage his or his personal finances and to meet his or his personal financial obligations.

Respondent was a CFP® professional at all times relevant to this violation.

Respondent’s actions show a pattern of inability to manage his personal finances by failing to satisfy several tax liabilities as they have come due and by failing to satisfy his tax debts. Respondent’s violations are ongoing as he has failed to satisfy his outstanding tax obligations.

Therefore, there are grounds to sanction Respondent for a violation of Rule 6.5 of the *Rules of Conduct*.

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#### IV. Sanctions Imposed

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<sup>10</sup>, the Commission determined to issue Respondent a **Suspension for Three Years**, pursuant to Article 11.1 of the *Procedural Rules*. The suspension is effective from **December 7, 2022** until **December 7, 2025**.

CFP Board has issued non-binding *Sanction Guidelines* that are intended to serve as guidance for determining the appropriate sanction. (DEC Book at 197-235.) In arriving at its decision, the Commission considered applicability of the following *Sanction Guidelines*:

- Conduct 21: Judgment (Public Censure).

The Commission then reviewed the aggravating and mitigating factors to determine whether there were any materials factors, and, if so, what weight those factors may have in its decision. In aggravation, the Commission considered:

1. Respondent's misconduct has occurred over an extended period and continues as of the date of the hearing;
2. Respondent is currently under heightened supervision at his broker dealer due to his outstanding tax liabilities;
3. Respondent failed to timely file his yearly Tax Return for Tax Years 2015 and 2016, even though he applied for and was granted an extension to file his Tax Return in each of those years;
4. Respondent's failure to pay his tax obligations has resulted in the IRS filing four (4) federal tax liens against him, covering five (5) Tax Years;
5. Respondent has incurred in excess of \$1.1 million in federal back taxes, fees, and fines that he continues to owe to the IRS;
6. Respondent's proposed OIC of \$22,412 does not appear to be a viable plan to address his outstanding tax liabilities because that amount is miniscule when Respondent

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<sup>10</sup> During the hearing, Respondent made several references to his prior negotiations with CFP Board to settle this matter, however, Article 8.4.c. of the *Procedural Rules* states:

No Admissibility in Later Adjudication. The DEC must not admit, in the later adjudication of a Complaint or Petition, any evidence regarding the existence of a proposed Consent Order or Counteroffer, a proposed Consent Order, or any statement made by Respondent, CFP Board Counsel, or the DEC during or in the context of the negotiation or presentation of a Proposed Consent Order.

Accordingly, neither the Hearing Panel nor the Commission considered Respondent's testimony concerning the potential existence of or statements about settlement negotiations with CFP Board when making its decision on this matter.

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- admitted that he owes, at a minimum, over \$700,000 and up to an amount exceeding \$1.1 million;
7. Furthermore, Respondent's current OIC of \$22,412 shocks the conscience when considering the large amount of debt the IRS has assessed against Respondent (between approximately \$700,000 to \$1.1 million) and his yearly income of between approximately \$300,000 to \$650,000;
  8. Respondent did not take responsibility for his actions—Respondent spent most of his hearing time challenging the IRS data (without documentary evidence), rather than accepting responsibility that he owes between \$700,000 and \$1.1 million in outstanding federal tax liabilities;
  9. Even though CFP Board's Complaint did not allege Failure to Cooperate as a separate ground for sanction, Respondent was uncooperative with CFP Board throughout the course of the enforcement process which required CFP Board to file multiple Notice of Failures to Cooperate and to reschedule his Oral Examination and the hearing on this matter numerous times, and while Respondent eventually cured his failures to cooperate, he significantly prolonged CFP Board's investigation and delayed the Commission's resolution of this matter by approximately two years, which required CFP Board to expend considerable resources to obtain Respondent's cooperation and resolve the matter;
  10. Respondent appeared to lack integrity before the Commission because his myriad delays appeared to be intentional, so that his broker dealer would not become aware of this disciplinary matter until after Respondent had completed his period of heightened supervision; and
  11. Respondent has little respect or need for the CFP® certification marks—Respondent stated in his closing remarks that he would rather relinquish his certification than receive a public sanction, indicating that a private sanction means more to him than retaining the CFP® certification marks.

In mitigation, the Commission considered that there is no evidence that Respondent's conduct involved clients or caused client harm.

The Commission then consulted *Anonymous Case Histories* ("ACHs") to determine if any ACHs contained precedent that warranted a deviation from the *Sanction Guidelines*, including two recent cases, ACH 41166 and ACH 32989. The decisions in both ACH 41166 and 32989 cite to several other ACH precedents that support suspensions in tax lien cases, including ACH 30897, ACH 30638, ACH 29430, and ACH 28980.

In ACH 41166, a CFP® professional violated Rule 6.5 of the *Rules of Conduct* when he failed to meet his federal tax obligation for five tax years, resulting in two federal tax liens and an outstanding balance of \$94,724.60 owed to the IRS. The CFP® professional had no extenuating circumstances to explain his financial difficulties except that he was self-employed from 2014 to 2018 and did not put aside enough income to cover his tax liabilities. From 2019 to July 2020 the CFP® professional was employed at a CPA firm as an accountant and tax professional. The CFP® professional lost that job and had been self-employed for a year at the time of the hearing. The

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CFP® professional had defaulted on three prior installment agreements with the IRS and had no plan to address his tax liabilities at the time of the hearing, but stated he intended to enter into a new installment agreement when he established consistent income. The CFP® professional had paid his previous year's Tax Return in full and filed for an extension on the current Tax Year and expected he would not own taxes on the current year. The Commission determined the CFP® professional demonstrated a pattern of inability to manage his personal finances by failing to satisfy his tax liabilities as they had come due and issued to him a Suspension of One Year and One Day.

Unlike the CFP® professional in ACH 41166, Respondent has incurred seven to ten times (7-10x) the amount of federal tax liabilities owed to the IRS, including two more tax liens (four total), spanning one more tax year, than the CFP® professional in ACH 41166. Like the CFP® professional in ACH 41166, Respondent has paid his most recent Tax Returns, but also does not appear to have a viable plan to pay his tax liabilities—even though he has submitted an OIC for 1.98% of the total amount that the IRS has assessed against him, the Commission is skeptical this OIC was submitted in good faith. Respondent in the instant matter also has aggravating factors that did not exist in ACH 41166, including the fact that he is under heightened supervision by his broker dealer and lacks integrity because he appeared to intentionally delay CFP Board's investigation and hearing on this matter for two years so that his broker dealer would not become aware of this matter while he was under heightened supervision.

In addition to ACH 41166, the Commission reviewed ACH 32989. In ACH 32989, the Commission found that a CFP® professional violated Rule 6.5 of the *Rules of Conduct* when he failed to pay federal taxes for seven years, resulting in four federal tax liens filed against him and an outstanding federal tax balance amounting to \$436,248, in addition to two state tax liens spanning four tax years for over \$10,000 (although these state tax liens were satisfied and released prior to the hearing on the matter). ACH 32989 is similar and dissimilar to the instant matter in all the same ways that ACH 41166 above is similar and dissimilar to the instant matter, in that Respondent has twice as much debt and more aggravating factors, etc., except ACH 32989 is also relevant because the Commission in that matter found that the CFP® professional had violated Standard E.5 of the *Code and Standards*, which provided a separate ground for sanction under the *Procedural Rules* due to the CFP® professional's Failure to Cooperate. In the instant matter, CFP Board Counsel did not allege Respondent's Failure to Cooperate as a separate ground for sanction because Respondent eventually cured his Failures to Cooperate after being issued an Administrative Order of Revocation and an Administrative Order of Suspension (later withdrawn, as further discussed in Exhibit A). The CFP® professional in ACH 32989 did not cure his Failure to Cooperate, and the Commission in that matter issued to the CFP® professional a Suspension for One Year and One Day. However, the Commission determined that Respondent's seemingly intentional lack of cooperation in this matter was far more detrimental to CFP Board and required far more resources when compared to the CFP® professional's conduct in ACH 32989, and Respondent's lack of cooperation in this matter also demonstrated Respondent's substantial lack of integrity.

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The Commission also weighed Respondent's credibility and determined that Respondent was not credible. As described in Exhibit A, CFP Board's communications were reasonably delivered to Respondent using the address and email address of record he provided to CFP Board, consistent with Article 16.1 of the *Procedural Rules*, and Respondent therefore likely received CFP Board's communications throughout the entire course of CFP Board's enforcement process, even when he claimed he did not. The Commission determined that Respondent's consistently slowed or delayed and incomplete responses to CFP Board and Respondent's multiple requests to reschedule events he knew were scheduled in advance, indicated a pattern of failing to cooperate with CFP Board that could only have been intentional—or, as CFP Board Counsel suggested during the hearing, that Respondent's conduct "evinces either a deliberate pattern, or such an unbelievable lack of attention to important things that it puts at risk the CFP<sup>®</sup> marks." (Monkarsh Tr. at 44.)

Due to Respondent's numerous years of failing to fully satisfy his federal tax liabilities, and the great amount of those liabilities, as well as the weight of the other aggravating factors, the Commission determined to deviate upwards from the baseline recommended sanction of a Public Censure under Conduct 21 of the *Sanction Guidelines*. The Commission considered that CFP Board Counsel during the hearing sought a revocation of Respondent's CFP<sup>®</sup> certification as the most appropriate sanction (*id.* at 179), but on the other hand, the Commission was only able to consider the single ground for sanction since Failure to Cooperate and Failure to Report were not alleged as separate grounds for sanction. However, if Respondent files a Petition for Reinstatement at the conclusion of his suspension, at which time he would have the burden to prove by clear and convincing evidence that he is rehabilitated and fit for certification, the Commission should weigh heavily Respondent's transparent attempts to delay this matter, among other evidence and factors.

Based on the violations found, the *Sanction Guidelines*, the ACHs reviewed, and the aggravating and mitigating factors, the Commission determined to issue Respondent a **Suspension for Three Years**.

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 these *Procedural Rules*. Publication of the sanction will remain on CFP Board's website. The press release language that will be published is included in the cover letter to this Order.

Respondent will be required to submit to CFP Board within 45 days of the issuance of this Order, or, by **December 22, 2022**, written evidence that he has (1) advised his firm, in writing, of the Suspension, (2) advised all financial planning clients of the Suspension, 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 Suspension, 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

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default pursuant to Article 4.1 of the *Procedural Rules* and will receive an Administrative Order under Article 4.2.

Pursuant to 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 a reinstatement hearing no earlier than six months prior to the last day of the suspension and no later than five years after the first day of the suspension. Failure to do so will result in Respondent being permanently barred from using the CFP® certification. Respondent will be eligible to petition the Commission for reinstatement of his right to use the CFP® marks Petition between **June 7, 2025 and December 7, 2027**. During the period of the suspension, Respondent must continue to complete the continuing education required of a CFP® professional and must continue to pay the required fees to maintain the CFP® certification. As a courtesy, a checklist detailing certain requirements for reinstatement is enclosed with this Order.

The Commission notes that if Respondent determines to seek reinstatement, Respondent will be required to prove by clear and convincing evidence his rehabilitation and fitness for CFP® certification and compliance with the terms of the Commission's order, pursuant to Article 14.2 of the *Procedural Rules*. Article 14.3 of the *Procedural Rules* provides that factors relevant to rehabilitation and fitness include, among other things, "[w]hether and how Respondent has integrated the *Code and Standards* in Respondent's practice" and "[a]ny other factors the DEC determines are relevant to Respondent's circumstances." With respect to any Petition for Reinstatement Respondent files at the conclusion of his suspension, Respondent shall be required to provide credible evidence demonstrating Respondent has:

1. Properly and timely-filed all federal and state tax returns for any period that is relevant;
2. Incurred no new liens, state or federal tax debts, civil or criminal judgments, or any publicly discoverable debts;
3. Demonstrated Respondent's ability to responsibly manage his personal and business finances by providing cash-flow analyses beginning from the issuance date of this Order until the date of his Petition;
4. Made full and complete payment in satisfaction of all outstanding tax liabilities discussed in this Order, including any new balances, interest, penalties, fees, or any other amounts associated with the tax liabilities discussed in this Order; or has established an OIC or Installment Agreement that has been accepted by the IRS to satisfy all tax liabilities discussed in this Order, including any new balances, interest, penalties, fees, or any other amounts associated with the tax liabilities discussed in this Order, and has fully complied with such OIC or Installment Agreement by timely making all payments, in full, when those payments become due, for a period of 24 months prior to and as a pre-requisite to Respondent filing any Petition for Reinstatement.



**CFP BOARD**

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

May 19, 2023

NAMES AND ADDRESSES REDACTED

**Re:** *Decision of the Appeals Commission*  
*Case No. 2019-53020*  
*CFP Board ID No.* REDACTED

Dear REDACTED:

This case is before the Appeals Commission of the CFP Board (“Commission”) on the appeal filed by Mark Monkarsh in the above referenced matter. Pursuant to Article 15.7 of the *Procedural Rules*, the Chair of the Commission determined that a hearing was not necessary and would not be held in connection with this appeal.

The Commission has reviewed the Order of the Disciplinary and Ethics Commission (“DEC”), dated November 7, 2022 (“DEC Order”). A copy of the DEC Order is attached hereto as Exhibit A for your reference. The Commission has also reviewed the entire record in this matter, including the briefs filed in this appeal by Counsel for the Appellant and CFP Board Appeals Counsel.



CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

After careful review of the record, pursuant to Article 15.3 of the *Procedural Rules*, the Commission finds that the DEC’s factual findings were supported by substantial evidence and that the DEC’s interpretation and application of the *Code and Standards*, *Pathway to CFP® Certification Agreement*, and *Procedural Rules* were reasonable. The Commission further finds that the DEC’s decision to deviate upward from the applicable Sanction Guideline to impose a Suspension instead of a Public Censure was not an abuse of discretion. However, the Commission finds that imposition of a suspension for a period longer than one year and one day was an abuse of discretion because it was not justified by the facts of the case and was inconsistent with prior decisions in similar cases without an adequate justification for such inconsistency.

In so ruling, the Commission notes that suspensions imposed in prior cases where the only ground for discipline was a violation of Rule 6.5 have not been for a period longer than one year and one day. The Commission further notes that while the DEC’s findings of lack of cooperation and delay by Appellant as aggravating factors were supported by substantial evidence, the Appellant was not charged with failing to cooperate or any other disciplinary violation other than the violation of Rule 6.5. Although the Commission finds that the aggravating factors cited by the DEC, together with consideration of the specific facts of this case – including that Appellant’s financial problems resulted, at least to an extent, from medical issues and Appellant’s involvement in a lengthy and costly divorce (which facts the Commission considered to be mitigating factors) – are sufficient to warrant the imposition of a suspension of one year and one day, the Commission finds that they were not sufficient to justify imposition of a longer suspension and that the DEC’s imposition of a three year suspension in this case is inconsistent with prior cases. Accordingly, the Commission adopts and affirms the DEC Order except that the Commission hereby modifies the sanction imposed by the DEC from a Suspension of Three Years to a Suspension of One Year and One Day.

Appellant’s certification and right to use the CFP®, CERTIFIED FINANCIAL PLANNER™, and certification marks (“CFP® marks”) is suspended for a period of One Year and One Day effective immediately and he shall comply with the terms of the CFP Board’s SUSPENSION CHECKLIST (MORE THAN ONE YEAR) appended to the DEC Order forthwith.

**CFP BOARD**

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

This constitutes the final decision and order of the CFP Board and, as provided in Article 15.8 of the *Procedural Rules*, it is not subject to further appeal or review.

For the Appeals Commission,

REDACTED

cc:

REDACTED

REDACTED