THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF ROBERT HENDERSON, JR., Respondent.	CFP Board Case No. 2022-63830 May 16, 2024

ORDER

I. Procedural Background

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 Board marks") on December 15, 1986, and he has been certified continuously since that date. (DEC Book at 15.)[1]

On March 5, 2020, CFP Board Enforcement Counsel delivered to Respondent a Notice of Investigation ("NOI") requesting certain information and documents related to FINRA Complaint Docket No. 2017053462401 and six Internal Revenue Service ("IRS") tax liens filed against him. (*Id.* at 114-15.) On May 20, 2022, Respondent paid these federal tax liens in full (*id.* at 116-124), and, on May 27, 2022, Enforcement Counsel dismissed its investigation as to the tax liens while admonishing Respondent about the importance of adhering to Standard E.2 of the *Code of Ethics and Standards of Conduct* ("*Code and Standards*") which provides that a CFP® professional may not engage in conduct that reflects adversely on his integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession, which includes having a federal tax lien on property owned by the CFP® professional. (*Id.* at 125-26.)

Enforcement Counsel continued its investigation of FINRA Complaint Docket No. 2017053462401 in the instant case, and, on May 25, 2022 sent Respondent a NOI requesting certain information and documents related to the FINRA complaint. (*Id.* at 128-29.) Respondent provided materials from all of these proceedings to Enforcement Counsel during the course of its investigation. (*Id.*, *passim*.)

On June 13, 2023, Enforcement Counsel delivered to Respondent a Notice of Complaint and Complaint that alleged violations of the *Code and Standards*. (*Id.* at 3-9.) In accordance with Article 3.1 of CFP Board's *Procedural Rules*, Enforcement Counsel's Complaint included numbered paragraphs setting forth the grounds for sanction, including a detailed factual description of the conduct and a specific statement of the alleged violations. (*Id.*) On November 17, 2023, Respondent delivered his Answer to Enforcement Counsel's complaint. (*Id.* at 396-98.)

On February 21, 2024, a Hearing Panel of the Commission convened to review the above-described Complaint. (Transcript of Hearing of Robert Henderson, CFP®, February 21, 2024

[1] The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*.

("Tr.") at 1.) Enforcement Counsel appeared for CFP Board; DEC Counsel appeared for the DEC and for the Hearing Panel; Respondent appeared *pro se*.

II. Findings of Fact

A. Background

Respondent has passed the (a) Series 6 – Investment Company Products/Variable Contracts Representative Examination (1983); (b) Series 7 – General Securities Representative Examination (1985); (c) Series 63 – Uniform Securities Representative Examination (1992); and (d) SIE – Securities Industry Essentials Examination (2018). (DEC Book at 54.)

Respondent maintains an Insurance License with the Florida Department of Financial Services. (*Id.* At 105.)

Respondent is currently associated with IA Firm as an investment advisor representative and BD Firm as a broker. He has been associated with IA Firm and BD Firm since February 2021. (*Id.* at 51.)

B. Respondent's 2015 Cautionary Action Letter from FINRA

During a 2014 cycle examination of Respondent's then employer, FINRA discovered eight federal tax liens that had been recorded against Respondent that he had failed to disclose on his Form U4. (*Id.* at 203.) On December 15, 2015, FINRA issued a Cautionary Action Letter ("CAL") to Respondent about these liens. (*Id.*) The CAL cautioned Respondent about his "[f]ailure to comply with Article V, Section 2 of the By-Laws of the Corporation, in that while associated with various member firms, you failed to disclose liens that were filed against you by the Internal Revenue Service during the period October 1991 through August 2006." (*Id.* at 203-04.)

Respondent wrote a letter in response to the CAL stating, "I will maintain records and update information on my U4 upon receipt of notification of U4 amendable activities." (*Id.* at 204.) Respondent represented he would work closely with his Designated Supervising Principal at his then employer to ensure that all information on his Form U4 was accurate and updated. (*Id.*)

Despite these representations, Respondent failed to work with his Chief Compliance Officer (his Designated Supervising Principal) and did not review his outstanding tax liens to make certain they were disclosed on his Form U4. (*Id.* fn. 85.)

C. Respondent's FINRA Suspension

On December 6, 2019, FINRA served Respondent with a Complaint (*id*. at 135-39) alleging that, between December 2010 and October 2018, he engaged in three outside business activities ("OBAs") without providing written notice to his firm, in violation of FINRA Rules 3270 and 2010. (*Id.*) The Complaint also alleged that, between October 2014 and October 2018, Respondent willfully failed to timely amend his Form U4 to disclose four federal tax liens, totaling more than

$368,000 in violation of Article V, Section 2(c) of the FINRA By-Laws and FINRA Rules 1122 and 2010. (*Id.* at 140-47.)

Following a hearing, a FINRA hearing panel issued its Decision on September 7, 2021. (*Id.* at 254-79.) The panel found that Respondent: 1) violated FINRA Rules 3270 and 2010 by engaging in undisclosed OBAs; (*id.* at 267) and 2) failed to amend his Form U4 to disclose the four liens, totaling $368,220, in willful violation of Article V, Section 2(c) of FINRA's By-Laws, and FINRA Rules 1122 and 2010. (*Id.* at 271.)

The FINRA hearing panel imposed the following sanctions:

a. For engaging in three OBAs, a $10,000 fine and four-month suspension from associating with any FINRA member firm in any capacity. (*Id.* at 277.)
b. For willfully failing to timely amend his Form U4, a $20,000 fine and nine-month suspension from associating with any FINRA member firm in any capacity. (*Id.* at 278.)
c. These suspensions were ordered to run consecutively. (*Id.* at 279.)

Respondent appealed the decision to FINRA's National Adjudicatory Council ("NAC"). (*Id.* at 280.) On December 29, 2022, the NAC affirmed the September 7, 2021 findings and sanctions of the FINRA hearing panel. (*Id.* at 365.) Respondent's FINRA suspension ended on April 8, 2024. (*Id.* at 62.)

D. Respondent's Testimony, Demeanor and Credibility

Respondent's explanation regarding the three OBAs that FINRA disciplined him for has changed over time. At one point in the FINRA matter, he claimed that the OBAs did not need to be disclosed to his then employer because he was merely a passive investor. (*Id.* at 366.) In Respondent's answer to Enforcement Counsel's Complaint, he maintained that because two of the OBAs were real estate-based, they were disclosed by virtue of mentioning his real estate broker's license on his Form U4. (*Id*. at 397; Tr. at 18.) At his CFP Board hearing, and in the FINRA matter, he claimed that, for one OBA attributed to him, his sister-in-law had added his name as a corporate officer for a limited liability company without his knowledge or consent. (Tr. at 48-49; DEC Book at 325.) He also testified that the third OBA was a tax-avoidance vehicle, a corporate entity that he formed to purchase office equipment that his financial planning business then leased. (Tr. at 19.) Respondent testified that this entity did not transact business with the public. (*Id*. at 59-61.)

Respondent testified that his tax problems began when he failed to properly account for monies that he had paid contractors engaged to develop a real estate project.[2] (Tr. at 64-65, 69.) He paid seemingly significant sums to the contractors on the project – he mentioned one individual, a family member, being paid $200,000 – without issuing IRS Forms 1099 to the contractors. (Tr. at 65.) Because the closely held corporation that he transacted this business through was an S-

[2] This testimony is contradicted by FINRA's 2015 CAL, which referenced eight tax liens filed against Respondent for the period 1991 to 2006, long before the real estate project was considered. (DEC Book at 203-04.)

Corporation, when the IRS disallowed deductions for these undocumented contractor payments, the resulting tax liabilities passed through to him in his personal capacity. (Tr. at 67, 70-71.)

Respondent blames his tax liabilities on flawed advice from his accountant, (Tr. at 73) but he failed to discharge the accountant or take other mitigating action when it first became apparent that the advice was erroneous. Instead, Respondent's own testimony reflects that he continued using this "under the table" contractor payment strategy for at least two more years. (Tr. at 72-73.) Nor did he sue his accountant for malpractice to recover any of the losses that he suffered because of their advice. (Tr. at 71-72.)

The Hearing Panel found, and the Commission agrees, that the tax lien matter reflected Respondent's lack of credibility. The Hearing Panel and the Commission believe that it strains credulity that any financially literate adult, much less a CFP® professional of long standing, would think that the IRS would simply review his bank statements and cancelled checks during an audit and accept those items in lieu of required IRS forms and filings. In Respondent's own words:

> So, when I got audited – they audited me twice. When I got audited, ***I figured I was in the clear because I didn't give them cash money***. I figured I can just go in my bank account, see that I wrote this check to J***, or L***, and then when I did my taxes, I can write it off. No, no. The IRS says, we are disallowing it. If you didn't give a 1099, we're going to disallow it and you got to eat them taxes.

(Tr. at 65-66 (emphasis added).) He continued:

> Well, what I mean is that usually when you're going to build something, there's a cost for it. And when you get ready to file your taxes, you always have to justify the cost. What the IRS says – which I did not know, I had to learn – if the IRS says that if you did not give a 1099 to a contractor, then it's like it never happened, because without giving – and I had to learn this – without giving a 1099 to a contractor, the IRS has no way of knowing that I paid them. Even though they can look at the ledger, they can look at my bank statements, they can actually see that I paid it to J*** D***, and they can actually see J*** D*** cashed a check, but the IRS says you're guilty until we have proof. So, even though I paid $150,000 to J*** D***, they see that he cashed it, they see that it was paid to him, but then the IRS, since they're so used to so many criminals and people doing the wrong thing[.]

(Tr. at 71-72.)

III. Discussion of Respondent's Misconduct

To impose a sanction on Respondent, the Commission must find grounds for sanction. The Commission found grounds for sanction under the *Procedural Rules* because it determined that Respondent violated CFP Board's *Rules of Conduct* and *Code and Standards*, as discussed below. The Commission made its decision based on the authority granted to it in Article 12 of the *Procedural Rules*.

Ground for Sanction

CFP Board Enforcement Counsel's Complaint alleged there are grounds to sanction Respondent for a violation of Standard A.8.a. of the *Code and Standards*, which provides that a CFP® professional must comply with the laws, rules, and regulations governing Professional Services, and Rule 4.3 of the *Rules of Conduct*, which provides that a CFP® professional shall be in compliance with applicable regulatory requirements governing professional services provided to the client.

Article 7.2 of the *Procedural Rules* provides that a record from a (a) federal, state, local, or foreign governmental agency, (b) self-regulatory organization, or (c) other regulatory authority imposing discipline upon Respondent ("Professional Discipline") is conclusive proof of the existence of such Professional Discipline and the facts and violations that serve as the basis for such Professional Discipline. The fact that Respondent has not admitted or denied the findings contained in the record does not affect the conclusiveness of the proof. Professional Discipline includes a censure, injunction, undertaking, order to cease and desist, fine, suspension, bar, or revocation, and the surrender of a professional license or certification in response to a regulatory action or regulatory investigation. A record of Professional Discipline includes a settlement agreement, order, consent order, and Letter of Acceptance, Waiver and Consent ("AWC").

FINRA is an industry self-regulatory authority. The FINRA disciplinary decision is a record of Professional Discipline by FINRA, and Respondent is the subject of that record. Therefore, the FINRA disciplinary decision, as affirmed by the NAC, conclusively establishes the existence of such Professional Discipline for purposes of this disciplinary proceeding and is conclusive proof of the facts and violations that serve as the basis for such Professional Discipline of Respondent.

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

The September 7, 2021 FINRA decision, as affirmed by the NAC, is conclusive proof that Respondent failed to comply with FINRA Rules 3270, 2010, and 1122, which are regulatory requirements governing the proper disclosure of OBAs and tax liens.

Therefore, there are grounds to sanction Respondent for a violation of Standard A.8.a. of the *Code and Standards* and Rule 4.3 of the *Rules of Conduct*.

IV. The Commission's Decision

Pursuant to 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 does warrant a sanction. The Commission has discretion to order a sanction among those applicable sanctions set forth in Article 11.1.

After carefully considering the evidence in Respondent's matter and the violation found, the Commission determined to issue Respondent a **Three-Year Suspension with Other**

IN THE MATTER OF ROBERT HENDERSON, JR.
CFP BOARD CASE NO. 2022-63830
May 16, 2024

Undertakings. The Undertakings ordered by the DEC require Respondent to hire an established compliance professional to produce reasonable firm policies and procedures that incorporate CFP Board's *Code and Standards* into Respondent's practice. Should Respondent choose to seek reinstatement after the term of the Suspension has run, he must demonstrate implementation of those policies and procedures in his businesses.

CFP Board has issued its non-binding *Sanction Guidelines* that are intended to serve as guidance for determining appropriate sanctions. The Commission considered the following conducts and recommended sanctions from the Sanction Guidelines:

- Conduct 31: Securities Law Violation (Public Censure).

- Conduct 35: Professional discipline as defined in Article 7.2 involving a suspension for more than three months (Suspension for at least one year and one day).

The Policy Notes to Conduct 31 provide that knowing violations of the securities laws should be treated more seriously than negligent acts.

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 decisions.

In mitigation, the Commission cited that:

1. Respondent testified credibly that he has worked to provide *pro bono* financial planning services to underrepresented communities who may not otherwise be able to access financial planning help.

In aggravation, the Commission cited that:

1. Respondent's misconduct continued over an extended period of time; he received a CAL from FINRA in 2015 for failure to properly disclose tax liens on his Form U4, yet continued this course of conduct until at least 2018;
2. In the underlying FINRA proceedings, Respondent's failure to properly update his Form U4 was found to be willful, which warrants a higher sanction in accordance with the Policy Notes to Conduct 31;
3. Respondent's sanction from the FINRA matter was substantial – a 13-month suspension and $30,000 fine;
4. Respondent's BrokerCheck report is 28 pages long and reflects what appears to be a pattern of alleged customer sales practice misconduct, including five disclosed settled customer complaints and several additional dismissed complaints;
5. Respondent's conduct reflects a blatant disregard for the orderly administration of his own finances and those of his OBAs;
6. Respondent's testimony reflected a shocking lack of appreciation of FINRA and IRS regulatory authority; and

7. Respondent took no personal responsibility for his actions and deflected his accountability, instead blaming his accountant, FINRA and CFP Board for the investigations and professional discipline that he faced.

The Commission then consulted relevant *Case Histories* (referred to as "ACHs" or "CHs") to determine if those relevant CHs contained precedent that warranted a deviation from the *Sanction Guidelines*.

In ACH 26226, a CFP® professional engaged in a private securities transaction with a client and invested in an outside investment with a colleague over a one-year period; he relied on the colleague's advice that it did not need to be reported to their employer. When FINRA began its investigation of the matter, the CFP® professional initially withheld important information from the FINRA investigator and his firm's compliance department. When the CFP® professional provided his firm with the information that he initially withheld, the firm terminated him. He entered into a Letter of Acceptance, Waiver, and Consent ("AWC") with FINRA, consenting to the imposition of a seven-month suspension, a fine, and an order of restitution for an illegitimate referral fee. The Commission found six rule violations and imposed a seven-month suspension, citing several mitigating factors, including his remorse. Aggravating factors cited were the fact that the professional had borrowed money for the outside business investment and that he had been untruthful with FINRA and his employer. In the instant matter Respondent's conduct is far more egregious both in scope and in duration, but there is no record evidence that Respondent was actively dishonest with his employer.

ACH 31669 involved a CFP® professional who entered into a Consent Order with CFP Board. In that case the CFP® professional violated his firm's policies regarding assisting firm clients in the sales of precious metals by participating in a referral program with a precious metals dealer, in which he received referral commissions. The CFP® professional supervised two other registered representatives who also participated in the referral program. After an investigation and hearing, FINRA found that the CFP® professional and his two supervisees had engaged in undisclosed OBAs in violation of FINRA Rules 3270 and 2010. FINRA further held that the CFP® professional had failed to adequately supervise the other registered representatives. FINRA imposed a six-month suspension and $15,000 fine for the OBA violations. The Commission accepted a Consent Order in which the CFP® professional agreed to violations of four *Rules of Conduct* and a six-month suspension. In aggravation, the Commission considered that the course of misconduct persisted for 17 years; in mitigation, it took into account that the CFP® professional had a long career with no prior customer complaints or disciplinary actions and that his employer could have terminated him but chose not to do so. The Commission also viewed favorably the CFP® professional's prompt remedial measures when the violations of firm policy were brought to his attention.

Respondent in the instant matter has a course of misconduct that started with his first tax lien in 1991 (DEC Book at 203-04 (referencing Respondent's eight tax liens from 1991 to 2006)), and OBAs that, in part, pre-dated his association with his firm. (*Id.* at 256.) Unlike the CFP® professional in ACH 32209, Respondent failed to take prompt remedial measures when cautioned about his misconduct by both FINRA and Enforcement Counsel. The record in this matter is

replete with evidence of Respondent's long pattern of not properly managing his financial affairs and failing to make required disclosures even after he has been made aware of their necessity.

ACH 32209 is a case from 2022 that arose from two customer complaints filed with FINRA. After an internal investigation by his firm and an investigation by FINRA, the CFP® professional entered into an AWC with FINRA consenting to findings that he had engaged in undisclosed OBAs over the course of six years by actively participating in the management of an outside business when he had disclosed to his firm that he would only be a passive investor. The CFP® professional also consented to findings that he had loaned money to customers of his firm without prior approval and falsely stated on a compliance questionnaire that he had not loaned money to a firm customer. The AWC provided for a three-month suspension and a $10,000 fine. The Commission accepted the CFP® professional's proposed Consent Order, in which he agreed to findings that he violated four Rules of Conduct and consented to a suspension of one year and one day. In mitigation, the Commission cited that the CFP® professional had no previous disciplinary history with CFP Board; in aggravation the Commission noted that it appeared that the CFP® professional had provided inconsistent answers during his firm's internal investigation of his OBAs. Similarly, in the instant matter, Respondent did not fully disclose all of his OBAs; there is no evidence, however, that he made affirmative false statements directly to his employer denying that he engaged in those activities.

In ACH 29214, a case decided in 2015, a FINRA investigation revealed that the CFP® professional's efforts to disclose three years of his OBAs through his firm's electronic system were not effective and were not prompt, and that he had engaged in private securities sales of restricted stock without giving prior written notice to his firm. The CFP® professional entered into an AWC with FINRA in which he agreed to a two-year suspension, was fined $40,000, and agreed to pay $55,000 in restitution to customers identified by FINRA. The CFP® professional failed to disclose the FINRA suspension to CFP Board. The Commission imposed a suspension of one year and one day. Citing no aggravating factors, the Commission did view the CFP® professional's efforts to report his outside activities in mitigation, even though the efforts were ultimately not successful. Another mitigating factor was that the CFP® professional had recognized and reported potential criminal activity to the appropriate authorities. In this matter Respondent did not have a good faith but mistaken belief that his OBAs had been disclosed. Respondent's contention that his real estate activities were properly disclosed merely by mention of his broker's license on his Form U4 is untenable and does not compare to the conduct of the CFP® professional in ACH 29214.

ACH 33198, a case decided in 2021, is factually like the instant case in that the CFP® professional there also demonstrated a history of personal financial mismanagement. The CFP® professional in ACH 33198 had received discipline from CFP Board, a six-month suspension, eight years earlier, for making false representations to CFP Board, for violations of firm policies, and for failing to disclose professional discipline from FINRA – a three-month suspension and $5,000 fine. The CFP® professional also had previously received a CAL from FINRA for failing to report a state tax lien. The facts adjudicated in ACH 33198 included federal tax liens for obligations from six separate tax years totaling $271,682.60, and myriad other evidence of CFP® professional's inability to manage his personal finances, including bounced checks, child support arrears and collections activity for his failure to pay consumer debts. In mitigation, the Commission

IN THE MATTER OF ROBERT HENDERSON, JR.
CFP BOARD CASE NO. 2022-63830
May 16, 2024

considered that there was no client harm and that the CFP® professional was then current on his installment payments to satisfy all of his debts. In aggravation the Commission considered his prior misconduct and long history of disciplinary issues that had included suspensions. In that matter the Commission revoked the CFP® professional's right to use the CFP® marks. In this case, while Respondent has been cautioned, he does not have as extensive a disciplinary history as the CFP® professional in ACH 33198, nor was he found to have violated employer policies or misled CFP Board.

Respondent's failure to pay his tax obligations — which began as early as 1991 — and his willful failure to meet FINRA disclosure obligations was serious. Along with a long history of customer complaints and his failure to take responsibility for his actions, this matter merits a significant upward departure from the *Sanction Guidelines,* as reflected by the applicable Policy Notes. In light of the evidence that supports the Commission's factual findings and the violation found, and the number and weight of the aggravating factors in this matter, the Commission issues to Respondent an **Order of Suspension for Three Years with Other Undertakings** as described above.

Ordered by:

Disciplinary and Ethics Commission
CFP Board