

THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF

MATTHEW S. WHITE,



Respondent.

CFP Board Case No. 2022-63945

November 2, 2023

ORDER

I. Procedural History

Certified Financial Planner Board of Standards (“CFP Board”) granted Respondent the right to use the CFP[®], CERTIFIED FINANCIAL PLANNER[™],  and  certification marks (“CFP Board certification marks”) on June 1, 2007. (DEC Book at 15.)¹ He allowed his certification to lapse, effective September 20, 2019.

On June 28, 2022, Respondent submitted a Reinstatement Application for CFP[®] Certification. (*Id.* at 4.) In the Declaration Section, Respondent disclosed to CFP Board his 2019 termination from the wealth management firm that had employed him, as well as his 2020 Chapter 13 bankruptcy filing. (*Id.*) CFP Board Enforcement Counsel initiated an investigation (*Id.* at 51) and requested further information from Respondent, which he supplied in a letter dated July 27, 2022. (*Id.* at 54.)

On January 9, 2023, CFP Board gave Respondent notice that his 2019 termination, the misconduct that prompted that termination, and his 2020 bankruptcy filing were conduct that may reflect adversely upon Respondent’s fitness for CFP[®] certification, the profession, or the CFP Board certification marks, and informed him that he may file a Petition for Fitness Determination (“Petition”) by February 8, 2023, should he so choose. (*Id.* at 4.) On March 7, 2023,² Respondent filed his Petition pursuant to CFP Board’s *Procedural Rules*.³

On August 9, 2023, a Hearing Panel of the Commission convened via video conference and held a hearing to review Respondent’s Petition. (Transcript of Hearing of Matthew S. White, August 9,

¹ The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*.

² The record in this matter reflects neither a request for enlargement of time in which to file the Petition, nor an objection that the Petition was not timely filed.

³ Respondent filed and argued his Petition pursuant to CFP Board’s *Procedural Rules*, as revised and effective February 21, 2022. Accordingly, the Commission has applied the factors relevant to Respondent’s fitness for CFP[®] certification found in Article 5.2 of CFP Board’s February 21, 2022 *Procedural Rules*, which were otherwise superseded on September 1, 2023.

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2023 (“White Tr.”).⁴ CFP Board Enforcement Counsel appeared for CFP Board; DEC Counsel appeared for the DEC and for a Hearing Panel of the Commission; Respondent appeared *pro se*. After the hearing, Respondent indicated his intention to submit additional materials to the record. (See Exhibit A). Although DEC Counsel twice requested that Respondent submit any further materials promptly (*id.*), as of November 2, 2023, he had not responded to DEC Counsel’s inquiries and had sent nothing further for the Hearing Panel’s consideration.

The Commission considered the Hearing Panel’s recommendation and issued this final order on November 2, 2023.

II. Findings of Fact

A. Background

Respondent has passed the following FINRA examination: (a) Series 66 – Uniform Combined State Law Examination (2004). (DEC Book. at 44.) He was registered as an Investment Advisor Representative with various firms from 2005 until 2019. (*Id.* at 45.) Since 2022 he has been a licensed insurance producer in his state of residence, and he is not currently registered with any member firm. (*Id.* at 43.)

B. Respondent’s Termination

For years prior to Respondent’s termination from his most recent employer, Respondent alleges that he struggled with a severe addiction to alcohol. (*Id.* at 55.)

Respondent and a client of his firm were involved in an outside business that had been properly disclosed. (*Id.*) Respondent admitted that he misappropriated assets from that business, but, oddly, in his Petition, he gave no details about his misconduct or even the business itself. (*Id.* at 55. 172-73.) In his hearing testimony, Respondent expanded, somewhat, on the description of his misconduct that he had offered during Enforcement Counsel’s investigation and in his Petition. He testified that the outside business was a bakery, and that he “would just take the cash and go spend it.” (White Tr. at 32.) This was the extent of his testimony on the matter; at no time did Respondent explain why he had pilfered cash from his bakery’s till, or how he had spent the \$13,000 that he testified to having taken in the first six months of 2019. (White Tr. at 47, 50-51.)

Though the bakery’s business began to suffer, his business partner remained unaware of Respondent’s theft because Respondent handled the bookkeeping, (DEC Book at 55) as would be expected of someone with CFP® certification. (White Tr. at 71-72.) In July 2019, Respondent decided to inform his business partner, wife, and employer about his misappropriation of funds after his partner finally started asking questions. (DEC Book at 55.) There is no evidence that

⁴ CFP Board originally noticed Respondent’s hearing for June 8, 2023, but it was postponed. (DEC Book at 183). CFP Board provided Respondent with a Notice regarding Obligation to Sign Pathway to CFP® Certification Agreement to Pursue a Petition for Fitness Determination, which Respondent signed on July 5, 2023. (*Id.* at 244-251.) On July 10, 2023, CFP Board sent Respondent a new Notice of Hearing for a hearing on August 9, 2023. (*Id.* at 242.)

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Respondent faced criminal charges as a result of his misconduct; he has stated that local prosecutors deemed it a “contract dispute” and declined to press charges. (*See* Exhibit A.)

Shortly after his confession, Respondent asserts that he entered a detox program, a 28-day inpatient treatment program, and a month-long outpatient treatment program to address his addiction. (DEC Book at 55.) Respondent continues to assert that he is not sure why he misappropriated funds from the bakery. (*Id.*) During the time of his misconduct, he claims to have been well paid and current on his bills. (*Id.*) Notably, Respondent has not offered any evidence of a medical diagnosis or any other facts that might illuminate his unexamined compulsion to steal during a specific time and from a specific victim, or to explain why his misconduct would be limited to these circumstances. On July 18, 2019, Respondent received a letter from his firm terminating his employment. (*Id.* at 144-147.) According to Respondent’s Form U5, “The firm discharged [Respondent] after concluding an internal review into allegations that the firm received relating to the possible misappropriation of assets of a business jointly owned by the [Respondent] and a client of the firm.” (*Id.* at 153.) Two months later, Respondent administratively relinquished his CFP® certification. (*Id.* at 15.)

C. Respondent’s Financial Difficulties

After his termination, Respondent spent the next six months looking for a job outside of the securities and financial planning industries. (*Id.* at 56.) He claims that he does not intend to ever work in those industries ever again and has reiterated this position throughout the investigation and hearing of this matter. (*Id.* at 56; White Tr. at 33.) Respondent’s wife filed for divorce at this time as well, and Respondent asserts that, taken together, all these difficulties depleted his savings. (DEC Book at 56.) Respondent eventually secured executive level employment at a media company that paid better than his previous position. (*Id.*) However, he stated that, unfortunately, approximately two weeks after starting this new job he was forced to take a 60% pay cut due to COVID. (*Id.*) At 40% of his full salary, Respondent’s financial position rapidly declined; in October 2020, his position was eliminated entirely. (*Id.* at 57.) Respondent claims that his former business partner offered to resolve their issues for a little under \$15,000, during this time, but Respondent was unable to pay that amount. (*Id.* At 56.)

By August 2020, Respondent was behind on every bill he had, including his mortgage. (*Id.* at 57.) He was in danger of lawsuits being filed by his former business partner and by the facilities that had treated him for alcohol addiction. (*Id.*) Respondent’s attorney recommended that he file for Chapter 13 Bankruptcy protection. (*Id.*) On September 17, 2020, Respondent filed a petition for Chapter 13 Bankruptcy protection in the United States Bankruptcy Court for the district in which he resides. (*Id.* at 59.) Respondent’s bankruptcy has not yet been discharged; he pays \$983 twice a month and testified that he is current on those payments. (White Tr. at 52.)

D. Respondent’s Subsequent Professional Activities

On November 8, 2022, Respondent incorporated a non-profit organization, which he intends “will provide integrated care from a diverse team of professionals that will touch all areas of the lives

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of addicts and their families.” (DEC Book at 58.) He is the Executive Director of the organization, and he testified that he “hope[s] to have the CFP [Board certification] marks reinstated so that [he] can demonstrate to clients that [he has] the training experience that marks –that the marks signify and that [he] can confidently help them rebuild their financial lives in the wake of addiction.” (White Tr. at 26.) This non-profit is the focus of his current professional activities, as his small consulting practice winds down. (White Tr. at 35.) Respondent has filled five of the nine seats on the Board of Directors and hopes to start taking clients in the first quarter of 2024. (White Tr. at 38-41.)

III. Analysis of Respondent’s Petition for Fitness Determination

CFP Board has established specific character and fitness standards for candidates for CFP® certification to ensure the candidate’s conduct does not reflect adversely on the candidate, the candidate’s fitness for CFP® certification, upon the profession, or upon the CFP Board certification marks. Pursuant to CFP Board’s *Fitness Standards*, a Respondent may petition the Commission for a fitness determination in accordance with CFP Board’s *Procedural Rules*. The Commission will either grant the Petition or deny the Petition and impose either a Temporary Bar or Permanent Bar.

A. Factors Relevant to Respondent’s Fitness

Pursuant to Article 13 of the *Procedural Rules*, a Respondent who has filed a Petition must prove their fitness for CFP® certification by a preponderance of the evidence (meaning “more probable than not,” *i.e.*, evidence which shows that, as a whole, the matter sought to be proved is more probable than not to have occurred”), under the factors relevant to a Respondent’s fitness that are set forth in Article 5.2 of the *Procedural Rules*.

1. The extent to which the Relevant Conduct reflects adversely upon the profession or the CFP® certification marks

As Respondent himself has admitted, his conduct – theft, threatened civil litigation, bankruptcy, and employment termination – all reflect adversely on the profession and the CFP Board certification marks. (DEC Book at 172; White Tr. at 14.) It is Respondent’s position that his conduct was aggravated by his alcoholism (DEC Book at 14), but there is no evidence in the record other than Respondent’s own testimony to support that assertion.

2. Whether and how Respondent has taken actions that are designed to prevent the Relevant Conduct from reoccurring in the future

Respondent entered detox and rehabilitation and testified credibly that he has been sober for four years. (DEC Book at 172; White Tr. at 21.) Respondent testified that his nascent non-profit organization has stringent bylaws, strong internal controls, and will require Board approval for any expenditures over \$75. (White Tr. at 39.) He testified that, once the full Board is established, it will have a finance committee that will oversee the non-profit’s accounts and accounting systems. (*Id.* at

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40) Unlike the jointly owned bakery, he asserts that the non-profit's transactions will be conducted electronically, rather than in cash. (*Id.*) Respondent also testified that his non-profit's Board members are fully aware of his prior misconduct, and presumably would be alert for any future malfeasance. (*Id.* at 38-40.) He offered no corroboration of these assertions, however, such as his non-profit's bylaws, or testimony from the current Board members.

3. *Whether and how Respondent has integrated the Code and Standards in Respondent's practice*

Respondent asserts that he is not currently engaged in the practice of financial planning, has not been since 2019, and has emphasized that he has no interest in working in the financial services industry again. (DEC Book at 172; White Tr. at 33.) He proposes to help recovering addicts with managing personal finances through his non-profit. (White Tr. at 26.) These services, even if provided *pro bono*, are financial planning work, and Respondent's apparent failure to appreciate this fundamental point is troubling. It would appear that his understanding of "working in the financial services industry" does not embrace the *pro bono* clients who he so passionately wants to serve. Respondent did not squarely address how he has integrated, or plans to integrate, the *Code and Standards* into his projected practice, though he did reaffirm his commitment to honesty and integrity. (DEC Book at 172; White Tr. at 14, 20, 22.)

4. *Whether Respondent has submitted positive letters of reference from current clients, supervisors, colleagues, or other professionals concerning the Relevant Conduct or the Respondent's character*

Respondent submitted letters of reference from the principal of the wealth management firm that terminated him, his Alcoholics Anonymous sponsor, a former consulting client, and opposing counsel in his divorce matter. (DEC Book at 154, 179-181.) Each speaks favorably of Respondent, his character, and his abilities. In particular, the letter from opposing counsel references Respondent's excellent progress in recovery from his addiction.

5. *Any other factors the Commission determines are relevant to Respondent's circumstances*

The Commission notes that Respondent has failed to provide the post-hearing materials that he asserted would support his Petition. Respondent has failed to respond to DEC Counsel's inquiries about his proffer of additional post-hearing evidence, even though Enforcement Counsel acquiesced and offered no objection to its admission. (*See* Exhibit A.)

B. Aggravating and Mitigating Factors

The Commission did not consider any aggravating factors.

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The Commission cited in mitigation that:

1. Respondent did not dispute that the facts presented were accurate. Respondent admitted to and was remorseful for the theft, termination, and bankruptcy that he maintains occurred as a result of his alcohol addiction;
2. Respondent has maintained sobriety for four years;
3. Respondent was remorseful and took ownership of his misconduct;
4. Respondent is giving back to his community by forming a recovery program and a non-profit to assist low-income community members.

C. Relevant Case Histories (“CHs”)

The Commission consulted various *Case Histories*⁵ (“CHs” or “ACHs”), particularly ACH 43167, ACH 31147, and ACH 28993.

In ACH 43167, an applicant for CFP® certification had a single bankruptcy and significant debt due to a gambling addiction. The candidate was issued a two-year bar by the Commission. The Commission found it troubling that the candidate had failed to seek organized treatment for his still-active addiction, despite having somewhat improved his financial situation. In this case, while there was harm to Respondent’s business partner/client, Respondent has sought treatment for his alcohol addiction, and credibly testified that he has maintained his sobriety for four years.

In ACH 31147, an applicant for CFP® certification had failed to pay state and federal taxes over a period of approximately 20 years due to his drug and alcohol addiction. The applicant also failed to disclose the resulting tax liens to CFP Board. The applicant’s Petition for Consideration⁶ was denied with a right to reapply in four years. The Commission credited the applicant’s ongoing addiction recovery efforts, which had been part of the resolution of a criminal drug possession charge; but determined that an extended temporary bar was necessary, given the duration of the applicant’s misconduct and the dollar amount at issue. In this case, Respondent’s misconduct only spanned approximately six months, and involved far less money.

In ACH 28993, a CFP® professional was terminated for having stolen more than \$100,000 from his two business partners by filing false expense reports seeking reimbursement for personal expenses over a period of five years. The CFP® professional consented to a FINRA bar, and the Commission imposed a four-year suspension of his right to use the CFP Board certification marks. Like Respondent, the CFP® professional was remorseful and had no prior disciplinary history; his misconduct occurred over a far longer period, however, and involved a much larger sum of money.

⁵ Case Histories or “CHs” are available on CFP Board’s website at <http://www.cfp.net/for-cfp-professionals/professionalstandards-enforcement/anonymous-case-histories>.

⁶ Petitions for Fitness Determination formerly were called Petitions for Consideration.

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IV. Resolution of Respondent's Petition for Fitness Determination

Although the Hearing Panel commended Respondent for his sobriety efforts, it felt that not enough time had passed to determine whether he was financially responsible. His bankruptcy has not been discharged and he provided no proof other than his own testimony that he is current on his bankruptcy payments. Respondent has formed a non-profit to help other recovering addicts manage their finances, however it is still in infancy. He has only filled five of the nine Board positions and has not started seeing clients yet. The non-profit was funded with seed money from a donor and Respondent plans to raise money from donations and grants; he will also receive payment for his services from insurance, and by taking court-appointed clients who are in diversion programs or on probation. Not enough time has passed to determine the success of the organization, however.

It is not disputed that Respondent committed theft and breached his fiduciary duty to his business partner/client when he stole approximately \$13,000 in cash from the bakery that they jointly owned. As Enforcement Counsel argued, had Respondent's business partner filed a criminal complaint rather than threaten civil action, Respondent may have faced criminal charges, and a felony conviction for theft may have resulted in a permanent bar from certification. (White Tr. at 58-59.) In addition, the reasons for Respondent's theft remain largely unexplained, as even he contends that he does not know why he stole from the bakery's cash receipts. (DEC Book at 54.)

Lastly, when Respondent was asked what impact not receiving the CFP Board certification marks would have on his career, he merely said he would have to hire a CFP® professional to work for his non-profit. (White Tr. at 42-43.) The Commission did not feel that this response adequately reflected an appreciation for Respondent's desire to have his right to use the CFP Board certification marks restored.

In considering the information provided by Respondent in connection with the factors relevant to his fitness for CFP® certification, the Commission found that Respondent did **not** prove by a preponderance of the evidence that he is fit for CFP® certification at this time. Accordingly, the Commission **denies** Respondent's Petition and imposes a **Temporary Bar for Two Years** prohibiting Respondent from applying for or obtaining CFP® certification. The Commission found Respondent to be incredibly honest and remorseful. It commended his efforts to remain sober and appreciated that he was trying to give back to the community and help others. CFP Board Enforcement Counsel recommended a Permanent Bar, however the Hearing Panel felt that Respondent should have the opportunity to come before the Commission again in the future, with further evidence of his rehabilitation and financial responsibility. In any future application for reinstatement, Respondent should demonstrate that he is current on his bankruptcy payments if it has not yet been discharged, that his non-profit, if it still exists, is maturing and successful, and that he has incorporated the applicable *Code and Standards* into any relevant services that it provides.

Ordered by:

CFP Board's Disciplinary and Ethics Commission
November 2, 2023