

THE DISCIPLINARY AND ETHICS COMMISSION

IN THE MATTER OF

JOSEPH TOMCZYK, CFP®



Respondent.

CFP Board Case No. 2023-64475

November 6, 2023

ORDER

I. Procedural Background

CFP Board granted Respondent the right to use the CFP Board certification marks (CFP®, CERTIFIED FINANCIAL PLANNER™,  and  certification marks) (“CFP® marks”) on October 25, 2011 and he has maintained his certification since that date. (DEC Book¹ at 13.)

On December 15, 2022, CFP Board Enforcement Counsel delivered a Notice of Investigation (“NOI”) to Respondent requesting documents and information relating to: “11/14/2022 Chapter 13 Bankruptcy Filing, Case No. 2:22-BK-19051.” (DEC Book Supp.² at 3.) On March 1, 2023, Respondent provided a written response to the NOI (“Response”), stating in relevant part:

I'm going to do my best to comply with the information requested. It would be different if entirely up to me, but please understand this is an ongoing legal matter and while my attorney doesn't feel comfortable with providing some of the requested information, he is open to providing some information including me telling my story of how I ended up in this position.

(*Id.* at 3.)

In his Response, Respondent provided a copy of the Chapter 13 Petition for Bankruptcy and certain other information, but otherwise did not provide the documents and information Enforcement Counsel had requested in its NOI. (*Id.* at 3-4.)

On April 18, 2023, CFP Board Enforcement Counsel delivered a Complaint for Single Bankruptcy to Respondent pursuant to Article 3.3 of CFP Board’s *Procedural Rules*, alleging that there are grounds to sanction Respondent for acts or omissions that violate Standard E.2.c. of CFP Board’s *Code of Ethics and Standards of Conduct* (“*Code and Standards*”) based on Respondent filing a single personal bankruptcy. (*Id.* at 10-11.) Under Standard E.2.c. of the *Code and Standards*, 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®

¹ The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*.

² On August 4, 2023, CFP Board Enforcement Counsel filed with DEC Counsel and contemporaneously delivered to Respondent, documents to supplement those previously filed with the Commission and provided to the parties in the DEC Book (“DEC Book Supp.”), to which Respondent did not object. (Exhibit A.) The DEC Book Supp. was provided to the Commission and the Hearing Panel prior to the hearing and was available to the Hearing Panel and to the parties at the hearing.

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marks, or upon the profession. Such conduct includes, but is not limited to, conduct that results in [a] personal bankruptcy ... filing or adjudication ... unless the CFP® professional can rebut the presumption that the bankruptcy demonstrates an inability to manage responsibly the CFP® professional's financial affairs.”

The Complaint alleged that Enforcement Counsel received credible evidence that Respondent filed for a personal bankruptcy (“Bankruptcy Matter”); that, to Enforcement Counsel’s knowledge, Respondent has no other Bankruptcy Matter; and that there is no probable cause to believe that other grounds for sanction exist. (*Id.*) The Complaint alleged further that Enforcement Counsel has determined that Respondent’s conduct raises the presumption that Respondent has demonstrated an inability to manage responsibly his financial affairs and should receive an Order of Public Censure. (*Id.*)

Pursuant to Article 3.4 of the *Procedural Rules*, if Respondent has no other Bankruptcy Matter and admits that the Bankruptcy Matter demonstrates an inability to manage responsibly Respondent’s financial affairs, Respondent may accept an Order of Public Censure and the Commission will not hold a hearing. If Respondent has no other Bankruptcy Matter and denies that the Bankruptcy Matter demonstrates an inability to manage responsibly Respondent’s financial affairs, then Respondent must provide the factual basis for Respondent’s denial in a Bankruptcy Answer. In that circumstance, the Complaint for Single Bankruptcy proceeds to a hearing as set forth in Article 10 of the *Procedural Rules*.

On July 18, 2023, Respondent filed a Bankruptcy Answer to Enforcement Counsel’s Complaint for Single Bankruptcy pursuant to Article 3.4 of the *Procedural Rules*. (*Id.* at 141-147.) In his Bankruptcy Answer, Respondent admitted the existence of his Bankruptcy Matter, affirmed that he did not have an additional Bankruptcy Matter, and denied that the existence of the Bankruptcy Matter demonstrates an inability to manage responsibly his financial affairs and provided the factual basis for his denial. (*Id.*)

On August 9, 2023, a Hearing Panel of the Disciplinary and Ethics Commission (“Commission”) convened by video conference pursuant to Article 10 to review the above-described Complaint. (Transcript of Hearing of Joseph Tomczyk, CFP®, August 9, 2023 (“Tomczyk Tr.”) at 1.) Enforcement Counsel appeared for CFP Board, DEC Counsel appeared for the Commission and for the Hearing Panel of the Commission, and Respondent appeared *pro se*. (*Id.* At 2.)

Following the hearing, on August 15 and 17, 2023, Respondent emailed DEC Counsel and Enforcement Counsel asking if a decision had been made in the matter and whether he could submit additional documents, to which Enforcement Counsel replied stating Respondent may request to supplement the record by filing a Motion to Supplement Record. (Exhibit B.) Respondent did not reply to these communications until October 2, 2023, at which time he filed a Motion to supplement his testimony at the hearing and introduce a copy of a restraining order against his spouse and other documents (“Motion”). (Exhibit C.)

DEC Counsel granted Respondent’s Motion in part and denied Respondent’s Motion in part (Exhibit E), and, on October 11, 2023, DEC Counsel added to the record Respondent’s Application to Amend Domestic Violence Complaint (Exhibit F), 2021 Tax Return (Exhibit G), 2022 Tax Return (Exhibit H), and Bankruptcy Statement (Exhibit I), which are discussed further below.

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The Commission considered the Hearing Panel’s recommendation, and then issued its final order on November 6, 2023.

II. Findings of Fact

A. Background

Respondent has passed the (a) Series 7 – General Securities Representative Examination (2014); (b) SIE – Securities Industry Essentials Examination (2018); (c) Series 31³ – Futures Managed Funds Examination (2005); (d) Series 65 – Uniform Investment Adviser Law Examination (2005); and (e) Series 63 – Uniform Securities Agent State Law Examination (2014). (DEC Book at 20.)

Respondent is not currently registered with a member firm. (*Id.* at 18, 22.) Respondent was previously registered and employed as a financial solutions advisor with Firm-1 from 2017 to 2021 and was registered and employed as a wealth planning specialist with Firm-2 from 2014 to 2017. (*Id.*)

Between October 2021 and some time prior to August 2023, Respondent was employed as a financial planner at a small comprehensive financial services firm, but stated during the hearing that he had recently been terminated by his employer and he has remained unemployed since the termination. (Tomczyk Tr. at 22, 29, 40.) Respondent stated he is seeking a position with a government agency to utilize his background in taxation. (*Id.* at 28, 39.)

In his Response to the NOI, Respondent stated: “I have been CFP® professional since 2011, it has been an honor to proudly display these letters.” (DEC Book Supp. at 5.) During the hearing, Respondent stated: “I have done everything ... to the rules in the way it's supposed to be.... I consider myself an asset to the financial planning professional and consider myself pretty ethical.” (Tomczyk Tr. at 19.)

B. Respondent’s 2022 Chapter 13 Bankruptcy

On November 14, 2022, Respondent and his wife (“Debtors”) jointly filed for Chapter 13 Bankruptcy in the U.S. Bankruptcy Court for the District of New Jersey, Bergen County, case number 22-19051-VFP (“2022 Bankruptcy”). (*Id.* at 29-112.) Debtors’ joint bankruptcy filings indicated a combined total monthly income of \$1,200, which Respondent stated was solely from New Jersey Family Medical Leave and IRA withdrawals, totaling a combined monthly income, after expenses of \$1.95 (one dollar and ninety-five cents).⁴ (*Id.*; see also Tomczyk Tr. at 31.) As part of the bankruptcy filing process, Respondent was required to complete a credit counseling course, which he stated was: “a position I feel that a CFP® professional should never have been in.” (Tomczyk Tr. at 26.)

Debtors also noted in their bankruptcy petition, dated November 14, 2022, that Respondent would be getting an additional part-time job to supplement Debtors’ income. (DEC Book at 83.) However, there is no indication in the record that Respondent subsequently obtained any employment, part-time or

³ Respondent stated his Series 31 license had been inactive since 2005. (Tomczyk Tr. at 27.)

⁴ Respondent’s bankruptcy filing indicated a combined total monthly income of \$6,920.72 and combined total monthly expenses of \$6,918.77, as well as \$668.652.72 in combined total assets and \$631,357.57 in combined total liabilities. (DEC Book at 36.)

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otherwise. As noted above, Respondent was unemployed at the time of his hearing on this matter on August 9, 2023, and Respondent indicated he was still looking for work as of October 2, 2023, nearly one year after filing the 2022 Bankruptcy petition. (Exhibit C at 8.)

In addition to the 2022 Bankruptcy, Respondent's public BrokerCheck Report by the Financial Industry Regulatory Authority, Inc. ("FINRA") indicates Respondent settled a \$12,523.44 debt with one creditor for 10% of that amount (\$1,252.34), while another creditor obtained a Civil Lien against Respondent in the amount of \$10,255.92. (*Id.* at 25, 27.)

1. Respondent Defaults on the Chapter 13 Bankruptcy Plan

On January 26, 2023, the Bankruptcy Court ordered a Chapter 13 Bankruptcy Plan, which required Debtors to pay \$1,629.06 per month. (*Id.* at 213-219.) On February 8, 2023, the Bankruptcy Court dismissed and vacated any discharge that was granted, citing Debtor's failure to comply with the terms of the Chapter 13 Bankruptcy Plan. (*Id.* at 120-122.) Respondent did not provide any explanation as to why he was unable to comply with the terms of the Chapter 13 Bankruptcy Plan. (Tomczyk Tr. at 53: "you can't give us any insight into why it was dismissed? MR. TOMCZYK: No.") Court records indicate Debtors had made only one payment of \$1,629.06 pursuant to the Chapter 13 Bankruptcy Plan. (*Id.* at

123-127.) At the hearing Respondent stated that the plan had been reinstated at some point, that he was current on the plan as of July 2023—one month before the hearing—and he would soon be making his August payment. (Tomczyk Tr. at 54.) On October 11, 2023, Respondent submitted a Bankruptcy Statement in connection with his Motion indicating he had made payments of \$1,629.06 in July, August, and September 2023, and Respondent stated he intended to make a payment for October. (Exhibit I.) The Hearing Panel and the Commission were satisfied that Respondent's Bankruptcy Statement demonstrated Respondent's Chapter 13 Bankruptcy Plan had been reinstated and that Respondent was current with the terms of the Bankruptcy Plan.

C. Respondent's Circumstances Precipitating the 2022 Bankruptcy Filing

Respondent stated during the hearing that he was "a big spender back in the day" but was not any longer. (Tomczyk at 22, 24-25.) Yet, Respondent also then cited examples of his recent overspending. (*Id.* at 24: "I have overspent at times recently ... I have two little kids ... and I might splurge for them..."; *id.* at 25: "with COVID ... the \$600-a-week unemployment ... enabled the spending"; *id.* at 25-26: "I was in a car accident several years ago [and] there was a small settlement ... in 2018 or '19 ... that enabled this....") Respondent also stated that he and his family did not ever adjust to his change in income when his salary was significantly decreased after being moved to a different branch in 2018: "MR. TOMCZYK: To be honest with you, I mean, looking back on it, we didn't really adjust it too well.... [ENFORCEMENT COUNSEL]: You didn't adjust? MR. TOMCZYK: Right." (Tomczyk Tr. at 43-44.)

In addition to his spending habits, Respondent stated that the 2022 Bankruptcy was precipitated in large part by (1) his family's medical debts and (2) the actions of his "soon-to-ex-wife." (DEC Book at 31.)

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1. *Family Medical Debts*

Respondent’s public regulatory disclosures state: “My wife had more than 15 surgeries since the onset of COVID. This situation was caused by the aggressive effect of losing her entire income, the increased corresponding expenses including childcare, and the newly acquired medical debt, as well as the impact of inflation.” (DEC Book at 26.) Among those medical debts, Respondent stated his wife underwent a spinal fusion and his infant daughter underwent an emergency appendectomy, causing the family to pay the out-of-pocket maximum (\$13,000) under Respondent’s health insurance plan every year since 2020, which was debt that Respondent mostly carried on credit cards. (*Id.* at 33, 47-48.)

However, Respondent was unable to provide satisfactory answers to the Hearing Panel as to explain why certain medical debts were not covered by his insurance carrier—for example, when asked why his insurance plan did not cover the \$19,000 cost of his daughter’s emergency appendectomy, Respondent stated: “I really don't know.... You know what I think it was, as I think about it? What I believe happened is ... something to do with preauthorization. That's my guess, though....” (*Id.* at 38; DEC Book at 58.) Regardless, Respondent’s bankruptcy petition indicated large amounts of debt on several credit cards that were opened between 2011 and 2016 and closed in 2019—prior to when most of the medical debt could have accumulated, which Respondent also faltered in trying to explain. (DEC Book at 51-52, 57; *see also* Tomczyk Tr. at 46-51.)

2. *Domestic Violence Relationship*

Respondent stated that another contributing factor to the 2022 Bankruptcy was that he has been in “a domestic violence relationship” for several years, and when his wife did not like Respondent’s spending, he and their two children “paid for it with her abuse” and “psychological torture.” (*Id.* at 20-21, 46.) According to Respondent, a restraining order was issued against his spouse on March 31, 2023, and his spouse has very limited visitation rights with their children as a result. (*Id.*)

Respondent stated that despite the restraining order, his wife had broken into their house, causing Respondent to incur additional legal fees, and these events caused Respondent to lose his job, because: “I [had] to leave my team in the middle of tax season and not come back.” (*Id.* at 29, 31.) Respondent explained that he had otherwise been a good employee and was well-liked by his employer and received a \$5,000 raise within six months of his termination. (*Id.* at 40.)

While Respondent stated that he bears “a lot of the responsibility” for the 2022 Bankruptcy, he also stated the 2022 Bankruptcy never would have happened if not for his wife’s actions. (*Id.* at 22; *see also id.* at 54: “I don't think financial planning is a problem; I think my wife was the problem”; *see also id.* at 44: “I do blame my wife for a lot of this....”) Respondent specifically explained that he didn’t want to give the Hearing Panel and the Commission impression that he *always* blames others for his actions, which emphasized to the Commission Respondent’s belief that the 2022 Bankruptcy was primarily attributable to his wife’s actions. (*Id.* at 41: “I don't want the panel to think that I always take the perspective that, when something's my fault, it's really someone else's fault. If I'm wrong, I admit.”)

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3. *Respondent's Lack of Documentary Evidence*

As described below, Respondent eventually provided some evidence of the restraining order against his wife, but he did not present any witnesses or affidavits or any other evidence of his wife's abuse or spending habits to corroborate his testimony that his inability to manage his financial affairs was attributable to his wife's spending habits or abuse. (*See* DEC Supp. at 3-6.)

In addition, Respondent did not produce certain documents and information in response to Enforcement Counsel's NOI—including requests for Respondent's 2021 Tax Return and Respondent's 2022⁵ Tax Return—and when the Chair of the Hearing Panel asked for Respondent's tax returns, Respondent reiterated that he will not provide them. (*Id.* at 42.) In his Response to the NOI and during the hearing, Respondent explained that he is unable to provide his 2021 and 2022 Tax Returns or any other documentation or information requested by CFP Board on the advice of his counsel. (DEC Supp. at 5.) Yet, Respondent's and his wife's joint tax returns and joint medical and consumer debt documentations do not seem like documents or information that Respondent would need to keep confidential in contemplation of divorce or any other proceedings to which his wife is a party, and Respondent did not at the time of the NOI or the Hearing Panel's requests, present any evidence of the advice of his counsel, or of the existence of any divorce proceedings, or of his continued representation by counsel in any matter. Furthermore, Respondent failed to disclose the 2022 Bankruptcy to CFP Board within 30 days as required. (*Id.* at 61-62: "I'm guilty of that. I'm sorry.").

Altogether, Respondent's lack of documentation appeared to be evasive, called into question much of Respondent's testimony, and caused the Hearing Panel to find that Respondent was not credible. The Commission agreed.

4. *Respondent's Motion and Documents Supplementing the Record*

On October 2, 2023, more than one month after the hearing, Respondent filed a Motion to supplement the record with certain of the requested information described above, and DEC Counsel later added Respondent's 2021 and 2022 Tax Returns, Bankruptcy Statement, and Application to Amend Domestic Violence Complaint to the record. (Exhibit C.)

Among those documents, Respondent's Application to Amend Domestic Violence Complaint was undated, unsigned, and had not been filed with the relevant criminal court (and by nature was still only an "application" for relief) ("Application"). (Exhibit F.) Although, the Application was probative in that it appeared to document Respondent's spouse's abusive conduct, appeared to indicate that Respondent had retained counsel in the apparent domestic violence case against his wife, and appeared to indicate that

⁵ Respondent stated that he previously produced his 2022 Tax Return to CFP Board, but the record at the time of the hearing did not contain Respondent's 2022 Tax Return, nor evidence that Respondent had provided his 2022 Tax Return to Enforcement Counsel in response to Enforcement Counsel's NOI, and Respondent did not attempt to provide his 2022 Tax Return to the Commission until more than one month following the hearing. (Tomczyk Tr. at 30; Exhibit C; Exhibit H.) The parties' communications in connection with Respondent's Motion show that Respondent may have provided his 2022 Tax Return to CFP Board "for the limited purpose of obtaining a fee waiver", but Respondent did not provide his 2022 Tax Returns to Enforcement Counsel in response to the NOI and did not provide his 2022 Tax Returns to the Hearing Panel or the Commission until more than one month after the hearing. (Exhibit C.)

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Respondent had filed a Domestic Violence Complaint Restraining Order on March 30, 2023 (however the Application did not conclusively establish that a criminal court had issued a restraining order against his spouse). (Exhibit F.)

In connection with his Motion, Respondent stated: “I feel like the CFP Board is being tone deaf to my mental health traumas. I don’t do drugs and I don’t drink alcohol. I am a victim of the situation. If I were hypothetically a female rape victim, would you have pointed out my specific tardiness to responding with late or incomplete responses?” (Exhibit E at 1.) The Hearing Panel and the Commission provided Respondent with the benefit of any doubts as to the sufficiency of the evidence he provided and empathizes greatly with Respondent’s trauma and the mental health conditions associated with any person suffering abuse from their spouse. However, Respondent’s Application did not evidence that Respondent’s inability to manage his finances was caused by his spouse’s abusive conduct. Among other reasons, Respondent stated on the Application that his spouse’s “alarming behaviors began on Sunday, March 26, 2023...” (Exhibit F at 1), while Respondent and his wife had filed for bankruptcy on November 14, 2022, more than four months prior (DEC Book at 213-219). Even by assuming for the benefit of Respondent, without other documentary evidence, that his spouse’s abuse began before March 26, 2023, Respondent still has the burden of rebutting the presumption that the 2022 Bankruptcy demonstrates an inability to manage responsibly his financial affairs. Respondent’s Application is not evidence sufficient to support his assertion that the 2022 Bankruptcy was caused by his spouse’s domestic abuse (or by his family’s legal and medical debts); Respondent’s Application, while somewhat probative of his spouse’s abuse, does not evidence a nexus between his spouse’s conduct and Respondent’s finances that would be sufficient to rebut the bankruptcy presumption. This is particularly true considering Respondent’s admission that he had a history of being a “big spender”, he cited recent instances of his overspending, and his joint 2022 Bankruptcy filings indicated large amounts of debt on several credit cards that were opened and closed prior to 2019 that Respondent was unable to explain. (DEC Book at 51-52, 57; *see also* Tomczyk Tr. at 22, 24-26, 43-44, 46-51.)

III. Determination Regarding Alleged Grounds for Sanction

Pursuant to Article 12 of CFP Board’s *Procedural Rules*, the Commission must determine whether Respondent violated CFP Board’s *Code and Standards*, or a predecessor rule.

Ground for Sanction

Under Standard E.2.c. of the *Code and Standards*, a “CFP® professional may not engage in conduct that reflects adversely on his or her integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession. Such conduct includes, but is not limited to, conduct that results in ... a personal bankruptcy ... filing or adjudication, unless the CFP® professional can rebut the presumption that the bankruptcy demonstrates an inability to manage responsibly the CFP® professional’s financial affairs.” If the CFP® professional meets her burden of proof and successfully rebuts the presumption, the single bankruptcy as stated in the Complaint for Single Bankruptcy does not violate or provide a ground for sanction under Section E.2 of the *Code and Standards*. If the CFP® professional does not meet his burden of proof or successfully rebut the presumption, the Single Bankruptcy Matter may violate Section E.2. and provide a ground for sanction and the Commission may impose a sanction.

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Respondent was a CFP® professional at all times relevant to this alleged ground for sanction.

Respondent filed for bankruptcy on November 14, 2022. Respondent has no other Bankruptcy Matter, and Enforcement Counsel stated that it has no probable cause to believe that other grounds for sanction exist. Based upon the record, Respondent **has not** met his burden of proof and **did not** successfully rebut the presumption that the 2022 Bankruptcy Matter demonstrates an inability to manage responsibly his financial affairs. The Commission determined that although Respondent may be a victim of domestic violence and may have suffered significant trauma as a result of his spouse's abuse, Respondent did not meet his burden to prove that this abuse was sufficiently connected to his inability to manage responsibly his financial affairs. Furthermore, Respondent's significant consumer debt and stated spending habits existed prior to his family's medical expenses. To the extent Respondent's spouse's conduct and his family's medical debt contributed to the 2022 Bankruptcy, Respondent did not meet his burden to prove that these contributions could sufficiently rebut the presumption that the 2022 Bankruptcy Matter demonstrates an inability to manage responsibly his financial affairs, and Respondent did not rebut that presumption.

Therefore, Respondent violated Standard E.2.c. of CFP Board's *Code and Standards*.

IV. Discussion Regarding Decision

The Commission's final order must impose a sanction if the Commission finds a violation of the *Code and Standards* or a predecessor rule that does warrant a sanction. The Commission found grounds for sanction under the *Procedural Rules* because it determined that Respondent violated CFP Board's *Code and Standards*, as discussed above. The Commission's decision to impose a sanction is based on the authority granted to the Commission in Article 12 of the *Procedural Rules*.

The Commission determined to issue to Respondent a **Public Censure**. A public censure is a written reproach of Respondent that CFP Board publishes in accordance with Article 17.7.

CFP Board 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 1.a.: One Personal or Business Bankruptcy (Public Censure)

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

The Commission cited the following mitigating factors:

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1. Respondent filed for Chapter 13 bankruptcy instead of a Chapter 7 bankruptcy, indicating to the Commission that Respondent is at least attempting to substantially satisfy his existing debts (although, the Commission notes the 2022 Bankruptcy petition indicated significant secured debts, including federal and education loans, and infers much of those debts could not have been discharged in a Chapter 7 bankruptcy);
2. There is no evidence of client harm; and
3. Respondent has no prior disciplinary history.

The Commission cited the following aggravating factors:

1. Although Respondent asserted his family's medical expenses, spousal abuse, and attorney's fees caused his financial instability, Respondent's history of personal financial mismanagement precedes his family's medical expenses and other factors;
2. Respondent declined to provide documents and information responsive to Enforcement Counsel's NOI requests, and although Respondent stated he was acting on the advice of his counsel, Respondent presented no evidence of his counsel's advice;
3. In addition to the 2022 Bankruptcy, Respondent's public BrokerCheck Report by FINRA indicates Respondent settled a \$12,523.44 debt with one creditor for 10% of that amount (\$1,252.34), while another creditor obtained a Civil Lien against Respondent in the amount of \$10,255.92 (*id.* at 25, 27);
4. Respondent admitted that he did not self-report his 2022 Bankruptcy to CFP Board as required; and
5. Respondent almost entirely blamed his spouse and appeared to the Hearing Panel and to the Commission to take almost no accountability for the 2022 Bankruptcy.

The Commission consulted various Case Histories⁶ ("CH's" or "ACHs") to determine if any CHs contained persuasive precedent that should be considered by the Commission. Among the ACHs considered, the Commission cited ACH 42513 and ACH 36228.

In ACH 42513, a CFP® professional filed for Chapter 7 bankruptcy protections after incurring significant medical expenses but failed to provide the Commission with adequate documentation to demonstrate that the bankruptcy resulted from unforeseen medical expenses as opposed to longstanding consumer debt. Specifically, the CFP® professional provided "Account Summaries" of certain credit and medical debts instead of itemizations of those expenses, and pages appeared to be missing from the documents that were provided. During the hearing in that case, a Hearing Panelist asked the CFP® professional why his health insurance didn't pay more of the medical bills to which he replied: "I don't know what to say other than our health insurance is terrible." The Commission determined the CFP® professional failed to rebut the presumption that the bankruptcy filing demonstrated an inability to responsibly manage his financial affairs. Accordingly, the Commission issued to that CFP® professional a Public Censure.

In ACH 36228, a CFP® professional filed for Chapter 13 bankruptcy that he asserted was attributable to significant medical expenses accrued following major back surgeries approximately nine years prior, however the CFP® professional's bankruptcy petition also indicated that he had leased two new luxury

⁶ Case Histories are available on CFP Board's website at <https://www.cfp.net/ethics/enforcement/case-history>.

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cars shortly prior to the bankruptcy filing and owed more than \$20,000 to a department store. The CFP® professional also failed to report the bankruptcy filing to CFP Board and did not appear to the Commission to take any ownership or responsibility for the bankruptcy filing. The Commission in ACH 36228 determined the CFP® professional's medical debt, in light of the CFP® professional's pattern of consumer spending, was not sufficient evidence to rebut the presumption the bankruptcy filing demonstrated an inability to responsibly manage CFP® professional's financial affairs and issued a Public Censure.

Respondent's conduct is similar to the conduct of the CFP® professional's described in ACH 42513 and ACH 36228 in that Respondent did not present sufficient evidence of his family's medical expenses—even less documentation than the CFP® professional in ACH 42513, and similarly could not provide any satisfactory explanations why certain medical procedures were not covered by his insurance carrier; was not able to adequately explain large consumer debts incurred prior to the medical expenses; admitted to having a history of consumer debts; and did not report the 2022 Bankruptcy to CFP Board within 30 days as required.

The Commission concluded that Respondent **has not** met his burden of proof and **has not** successfully rebutted the presumption that his 2022 Bankruptcy Matter demonstrates an inability to manage responsibly his financial affairs. Respondent declined to substantially respond to Enforcement Counsel's NOI and presented very little documentary evidence for the Commission to consider. Furthermore, the Hearing Panel found that Respondent did not make a compelling or credible witness in defense of his 2022 Bankruptcy Matter, the circumstances leading up to the Bankruptcy Matter, or the actions he's taken post-filing of the Bankruptcy Matter to responsibly regain control of his financial affairs, and the Commission agreed. The Commission greatly sympathizes with Respondent as a victim of domestic violence, but Respondent did not meet his burden to prove that his spouse's abuse was sufficiently connected to his inability to manage responsibly his financial affairs.

As a result, and in light of the *Sanction Guidelines*, the weight of the aggravating and mitigating factors, and the Case Histories reviewed, the Commission determined to issue to Respondent an **Order of Public Censure**.

Ordered by:

The Disciplinary and Ethics Commission, CFP Board