

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 30411

This is a summary of a Settlement Agreement entered into at the February 2018 hearings of the Disciplinary and Ethics Commission (“the Commission”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred after January 1, 2009. The Rules in effect at that time under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he was convicted of DUI, Second Offense, his third DUI conviction since 1989.

II. Findings of Fact

Respondent became a CFP® professional in October 2007, and has maintained his certification since that date.

Respondent was convicted of driving while operating under the influence of alcohol in both 1989 and 1991. CFP Board investigated those convictions in 2007 during his initial background check for certification and dismissed the matter with caution. Specifically, CFP Board cautioned Respondent on "the importance of complying with the laws, rules and regulations of all applicable governing agencies, including CFP Board, and of governing [himself] in a manner which reflects positively on the financial planning profession."

In January 2016, Respondent yet again drove while operating under the influence of alcohol. He was convicted in 2017, and sent to jail for his conduct. Respondent represents that the most recent drunk driving incident occurred after he attended a networking event sponsored by his high school alumni association, at which he consumed alcohol. On the ride home, he came to a stop light and side swiped the car in front of him while trying to squeeze by to make a right turn. There were no injuries.

After failing the roadside tests and breathalyzer, Respondent was charged with DUI, 3rd Offense, and negligent operation of a motor vehicle. In July 2017, Respondent was convicted of a lesser charge, DUI, 2nd Offense, a misdemeanor, and sentenced to a jail sentence of 60 days, probation, and court fees. Respondent represents that he has completed the term of incarceration.

Article 13.1 of the *Disciplinary Rules* provides that a certificate from the clerk of any court of criminal jurisdiction indicating that a Respondent has been convicted of a crime in that court shall conclusively establish the existence of such conviction for purposes of disciplinary proceedings and shall be conclusive proof of the commission of that crime by the Respondent.

As set forth in Article 13.3 of the *Disciplinary Rules*, since Respondent's conviction has been proved, Respondent shall have the right to be heard by the Hearing Panel only on matters of rebuttal of any evidence presented by CFP Board Counsel other than proof of conviction.

III. Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(A) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate Rule 6.5 of the *Rules of Conduct*, which provides that a certificant shall not engage in conduct, which reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks, or upon the profession.

Respondent, a certificant, engaged in conduct, which reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks, and upon the profession when he violated state law by virtue of his conviction for DUI, 2nd Offense in 2017, his third such conviction since 1989. Respondent's alcohol-related convictions reflect adversely on Respondent's integrity and fitness as a certificant, upon the CFP® marks, and upon the profession. Therefore, Respondent has violated Rule 6.5 of the *Rules of Conduct*.

Second Ground for Discipline

Pursuant to Article 3(C) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate the criminal laws of any State.

Respondent was convicted of a criminal misdemeanor. Therefore, there are grounds to discipline Respondent under Article 3(c).

IV. Discipline Imposed

The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Grounds for Discipline. Pursuant to the terms of the Settlement Agreement, the Commission issued to Respondent a public letter of admonition to Article 4.2 of the *Disciplinary Rules*.

In coming to its decision to enter into a Settlement Agreement, the Commission considered the following aggravating factors:

- There were multiple incidents of misconduct;
- The most recent misconduct was considered a second offense criminal misdemeanor, and Respondent served jail time;
- Although the original criminal offense occurred more than 25 years ago, the Respondent was still 38 years of age at the time of the first offense.

In mitigation, the Commission considered the following factors:

- Respondent demonstrated support from his community and employer;
- There was no client harm;
- Respondent admitted to be an alcoholic, and that he is seeking treating through AA.

The Commission also consulted two Anonymous Case Histories (“ACH”). First, the Commission considered ACH 29425, a respondent was convicted of multiple alcohol-related driving offenses. In that case, the Commission issued respondent a private censure. Second, the Commission considered ACH 28988, where respondent pled guilty to his three alcohol-related driving offense. In that case, the Commission issued respondent a public letter of admonition.