

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 30897

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This is a summary of a decision issued following the June 2018 hearings of the Disciplinary and Ethics Commission (“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: (1) incurred 2016 and 2017 IRS tax liens; (2) filed for Chapter 13 Bankruptcy in 2018; and (3) failed to timely and adequately respond to CFP Board’s Notices of Investigation.

II. Findings of Fact

Between 2008 and 2016, Respondent faced personal and financial hardship, causing him to incur various debts and to fall behind on the taxes he owed to the IRS. Although Respondent established an installment plan with the IRS for the outstanding taxes, the IRS filed a tax lien against Respondent in May 2016 for \$91,603.84, which he stated he was unaware of until July 2017. Respondent did not disclose the 2016 IRS lien to CFP Board when he first learned of it, although he admitted that he should have.

In November 2017, CFP Board discovered Respondent’s 2016 IRS tax lien during a routine background check. The next day, CFP Board sent a Notice of Investigation (“NOI”) to Respondent by certified mail, requesting information about the lien. Respondent did not respond to CFP Board by the NOI’s December 2017 due date.

Later in December 2017, the IRS filed another tax lien against Respondent in the amount of \$89,950. Respondent stated that he did not learn about the 2017 IRS tax lien until January 2018, when he met with the IRS to discuss an installment plan. A few days later, Respondent filed for bankruptcy under Chapter 13.

Having not received a response from Respondent to its first NOI about the 2016 IRS tax lien sent to him in November 2017, CFP Board sent a second NOI to Respondent by certified in January 2018. When CFP Board sent an email to all CFP® professionals on January 18, 2018 regarding changes to its Privacy Policy, Respondent responded to that communication the next day, disclosing both his 2016 and 2017 IRS tax liens and his Chapter 13 bankruptcy filing. In late January 2018, Respondent’s response was forwarded internally to CFP Board staff that had sent the NOI to Respondent.

Although Respondent claims that he responded to the second NOI prior to its February 5, 2018 deadline, CFP Board stated that it did not receive a response to the second NOI until March 2018. In his March 2018 response, Respondent described a number of personal and financial hardships that he and his family experienced during the years leading up to and after the 2016 IRS lien including that his former wife was not able to work due to an injury, that his son had medical issues requiring home schooling, and that Respondent had to take time from work to care for his elderly and ailing mother and father; however, Respondent did not acknowledge or describe the 2017 IRS tax lien nor the Chapter 13 bankruptcy that he had disclosed to CFP Board in January 2018. Thereafter, CFP Board followed up with Respondent several times, but Respondent provided only two documents in response to its requests during its investigation

(copies of his federal liens), which Respondent forwarded to CFP Board three and a half months after the first NOI. When asked about his failure to respond timely to CFP Board in his testimony at the hearing, Respondent acknowledged his failure and stated that he was “not in a good spot.”

Respondent’s Chapter 13 filing was dismissed upon a motion by the Chapter 13 Bankruptcy Trustee for the U.S. District Bankruptcy Court for the District of State A in June 2018. Although the Court’s Notice of Dismissal does not state the reason for the dismissal, the Motion to Dismiss filed by the Chapter 13 Bankruptcy Trustee asserted that the bankruptcy case should be dismissed for Respondent’s “want of prosecution,” unreasonable delay, and failure to enter into or satisfy a payment plan, among other reasons.

### 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 or fitness as a certificant, upon the CFP® marks, or upon the profession.

Respondent, a certificant, engaged in conduct which reflects adversely on his fitness as a certificant, upon the CFP® marks, and upon the profession when he incurred the 2016 and 2017 IRS tax liens, both of which remain outstanding and for which no current payments have been established. Therefore, Respondent violated Rule 6.5 of the *Rules of Conduct*.

#### *Second Ground for Discipline*

Pursuant to Article 3(f) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that show a “[f]ailure to respond to a request by CFP Board staff, or obstruction of...CFP Board staff in the performance of its or their duties.”

Respondent, a certificant, failed to respond to CFP Board staff’s requests for information and obstructed CFP Board staff in the performance of its duties when he failed to provide all correspondence between Respondent and the IRS regarding the tax liens. Although the Commission does not believe that Respondent’s intention was to deceive CFP Board, he failed to respond with its requests during CFP Board staff’s investigation and provided non-responsive or evasive answers to direct questions about this issue during his testimony. Thus, Respondent violated Article 3(f) of the *Disciplinary Rules*.

### IV. Discipline Imposed

The Commission found that Respondent’s conduct violated Rule 6.5 of the *Rules of Conduct*, providing grounds for discipline under Articles 3(a) and 3(f) of the *Disciplinary Rules*.

After careful consideration of the evidence in Respondent’s matter, the Commission has decided to issue Respondent a suspension for one year and one day pursuant to Article 4.3 of the *Disciplinary Rules*.

In arriving at its decision, the Commission determined that the applicable Sanction Guidelines recommended:

1. A Private Censure for Conduct 17 (Failure to Respond to a CFP Board Request for Information or Notice of Investigation); and
2. A Public Letter of Admonition for Conduct 21 (Judgment)

ACH 30897

-2-

The Commission then consulted *Anonymous Case Histories* (“ACHs”) to determine if any ACHs contained precedent that warranted a deviation from the Sanction Guidelines. The Commission focused on ACH 29430, which involved a CFP® professional who had an outstanding IRS tax lien and other similar facts. In that matter, the CFP® professional stated that he believed he had reported the lien to CFP Board, but CFP Board had no record of the disclosure. According to the CFP® professional, the lien was the result of difficult personal circumstances. He had not filed taxes in several years and entered into a payment plan, but stopped paying when he encountered additional issues with income. The Commission issued a suspension of a year and one day, citing no mitigating factors, despite the fact that the CFP® professional had identified personal issues, but citing several aggravating factors, including the fact that the CFP® professional had failed to disclose the tax lien to CFP Board, that he had failed to provide evidence of a current payment plan with the IRS, and that he provided a minimal explanation of the circumstances of the tax lien itself.

The Commission then reviewed the aggravating and mitigating factors with respect to Respondent 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 failure to answer requests and questions of CFP Board, and his evasiveness both before and during the hearing.
2. Respondent’s continuing inability to manage his finances.
3. Respondent’s failure to provide evidence of or satisfy a payment plan with respect to the IRS tax liens.

In mitigation, the Commission considered that some of Respondent’s financial problems were the result of family health issues.

The Commission determined that neither a Private Censure nor Public Letter of Admonition would be a suitable sanction and that the ACHs reviewed and the aggravating factors considered warranted an upward deviation from the Sanction Guidelines. The Commission determined that the circumstances justified a suspension of one year and one day, which the Commission hopes will provide the Respondent with adequate time to show progress towards financial recovery. The Commission requested that, to the extent the Respondent petitions for reinstatement at the end of his suspension, that he demonstrate that he is able to provide evidence of timely responses to any and all requests from CFP Board, provide proof that all bankruptcy arrangements have been agreed-upon and are being satisfied, and demonstrate that he has made and is satisfying a payment plan with the IRS with respect to his tax liens.