

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 31122

This is a summary of a decision issued following the October 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. Issue Presented

Whether a petitioner whose CFP® certification was administratively relinquished (“Respondent”), could be certified when he inaccurately reported continuing education credits to CFP Board.

II. Findings of Fact

On July 19, 2012, CFP Board granted Respondent the right to use the CFP® marks. Respondent remained certified until October 31, 2014, at which point the Respondent lapsed into a *Not Certified* status due to the non-payment of certification renewal fees. On February 20, 2014, Respondent’s status became “Administratively Relinquished,” requiring Respondent to apply for reinstatement to be able to use the CFP® marks. Respondent submitted a Reinstatement Application for CFP® Certification on February 2, 2018 (“Application”) and, in connection with his Application, self-reported various continuing education hours (“CE”) that were required for certification. As a result of his completion of these CE credits, Respondent was able to reinstate his CFP® certification on February 28, 2018.

On March 19, 2018, CFP Board notified Respondent that it had conducted an audit of the CE that he had self-reported in connection with his Application and that it had discovered various irregularities. As a result, CFP Board denied Respondent credit for certain self-reported CE courses and informed him that he had a CE deficiency that needed to be remedied by April 2, 2018. When Respondent failed to complete his CE requirements by April 2, 2018, Respondent was again Administratively Relinquished.

Respondent filed his Petition for Consideration with CFP Board (“Initial Petition”) on September 10, 2018 and requested a telephonic appearance before the Commission. After CFP Board suggested that his Initial Petition did not contain enough detail, Respondent submitted an updated Petition for Consideration (“Revised Petition”) on September 20, 2018.

At the hearing, Respondent explained that he allowed his CFP® certification to lapse for non-payment of fees in 2014 because of “oversight and error.” Also at the hearing, Respondent admitted that, after his certification lapsed in 2014, he did not cease using the CFP® marks as he should have on various websites, including on his firm’s website in his biography, on LinkedIn, and in his email signature. In fact, Respondent used the marks while relinquished in correspondence with CFP Board. In an email from Respondent to CFP Board on September 10, 2018, Respondent’s signature line does not include the CFP® designation. However, an email from Respondent to CFP Board about 90 minutes later on the same day does include the CFP® designation in his signature line.

Respondent submitted an Intent to Reinstate form online to CFP Board on November 1, 2017. On November 3, 2017, CFP Board emailed Respondent and informed him that, prior to a deadline of February 28, 2018, he must complete various tasks to reinstate his certification, including completing a CFP Board-approved Ethics CE course (2 CE hours) and completing 75 general CE hours.

As described above, Respondent submitted his Application on February 2, 2018. On February 6, 2018, Respondent (or his assistant) accessed his CFP Board online account. The “My CFP® certification” screen informed Respondent that he had a current CE reporting period of November 1, 2012 to July 31, 2018. The screen also informed Respondent of the total CE hours required during that period, the total CE hours that had been accepted during that period, the total number of hours outstanding during that period, the number of hours pending review, and whether Respondent met the Ethics CE requirement. Also visible on this screen were Respondent’s two prior CE reporting periods of “7/16/2010- 7/18/2012” and “7/19/2012 – 10/31/2012.”

After clicking “View/Report CE”, Respondent arrived at a page in his account that provided a summary of his CE profile and a CE summary that listed of the courses that had been reported in the current CE reporting period. Below the list was a button to report CE. After clicking that button, Respondent was taken to a screen that allowed him to search for CE courses. Using this search function, Respondent could search for courses using either the program identification number or the CE Sponsor Name. Upon finding the course, Respondent had to enter the date he completed the CE course and to affirm that the submission was “true, accurate and complete” to the best of his knowledge.” Respondent further agreed that CFP Board had the right to audit the CE course and to cooperate with any request for information and documents.

On February 6, 2018, Respondent self-reported that he had completed 54.5 credit hours (44.5 of which fell within the current CE reporting period). On February 28, 2018, Respondent again accessed his CFP Board account. Respondent proceeded through the same process outlined above to self-report that he had completed the following CE courses for a total of 43.5 credit hours (16 of which fell within the current CE reporting period). As a result of self-reporting the hours listed above, Respondent was able to reinstate his CFP® certification on February 28, 2018.

On March 19, 2018, CFP Board staff notified Respondent that it had conducted an audit of the CE he had self-reported and that it had found several irregularities with respect to the courses. First, the audit found that, in two instances, Respondent was able to receive CE credit for a course twice by self-reporting the same course using different program identification numbers and/or different course names. Second, Respondent attempted to self-report a CE course he took in an earlier CE reporting period five different times before finally figuring out how to manipulate CFP Board’s system to receive credit in the current CE reporting period. Third, Respondent self-reported an Ethics course that he had already received CFP Board CE credit for in an earlier CE reporting period. Fourth, Respondent self-reported a course that did exist. Respondent took a different course on December 15, 2014 that was not eligible for CFP Board CE credit, so he entered it into CFP Board’s system using the name of a CFP Board-approved course name and program identification number to gain credit.

CFP Board told Respondent on March 19, 2018 that the irregularities identified caused him to have a deficiency of 28 CE hours. However, unaware at the time of the above-described efforts to manipulate the system, CFP Board informed Respondent it would roll over 26 CE hours of this deficiency to Respondent’s new CE reporting period ending on January 31, 2020. CFP Board informed Respondent that he would need to complete a CFP Board-approved Ethics course and have the CE sponsor report the course to CFP Board by April 2, 2018 because, as described above, the Ethics course he self-reported had been previously credited to a prior CE reporting period.

On April 2, 2018, Respondent sent an e-mail to CFP Board staff stating, “I just completed the Ethics course, and I did select for it to be reported by the sponsor.” However, CFP Board staff replied as follows:

“[Respondent],

Thank you for sending this over. However, the course you’ve completed is not a CFP Board approved Ethics course. The only CFP Ethics course that RegED offers is ‘Ethics for the CFP® Professional, 5th edition.’ As a result, you will become ‘Not Certified’ and be administratively relinquished.”

As described above, soon thereafter, on April 20, 2018, CFP Board sent Respondent the Notice informing him that CFP Board had concluded that his reporting of CE hours may reflect adversely upon the profession or the CFP® certification marks and that he was permitted to petition the Commission for a hearing at which the Commission would hear his case and determine whether or not his conduct would permanently or temporarily bar him from certification.

Then, on May 24, 2018, CFP Board informed Respondent that it had commenced an investigation regarding his CE reporting and requested information from him regarding five courses that CFP Board believed Respondent inaccurately reported. Respondent responded on or about June 21, 2018, providing certain information about the courses. With respect to two of the courses, Respondent stated that the information was incorrectly inputted by his assistant because the dates of completion column on the copy of the course transcript his assistant was using to input the courses was “cut off.” Respondent otherwise stated that he did not have information to respond to CFP Board’s questions about the courses.

When Respondent filed his Initial Petition on September 10, 2018, he stated that his assistant reported the CE on his behalf. Respondent stated further that the assistant took all of the CE transcripts she could find and reported all of the courses on them, including any duplicates “assuming they would be audited and filtered out.” Respondent said: “I made the error of not monitoring this better before submission to make sure duplicates were not uploaded accidentally. I apologize for this, my mistake.” When Respondent filed a Revised Petition ten days later, adding additional explanation with respect to his entering of CE courses, including that his assistant was working with CFP Board staff “hand-in-hand” the entire time” and stating that a named CFP Board staff member told her to leave duplicates on the website because CFP Board staff “would look and remove any duplicates and/or courses that did/would not count.” He further said: “We were instructed that our method of uploading everything was okay, and not an issue or ‘falsely reporting’ CE ... We were in touch the entire time with several people trying to clarify what would work and what would not work. We were under the impression what we were doing was okay per exhibit A as one of several communications stating or implying so.” As Exhibit A to the Revised Petition, Respondent attached an email to him dated March 19, 2018 from the identified CFP Board staff member letting Respondent know of the CE audit and the irregularities found.

After submitting the Revised Petition, Respondent later provided documents to CFP Board that he had not previously produced that confirmed that he was actively involved in the reporting of his CE, and not solely relying on his assistant. Although the documents demonstrate that Respondent and his assistant spoke to and/or emailed CFP Board during this time, none of the documents show that Respondent spoke to or otherwise communicated with the particular staff member identified in his Revised Petition at the time that the CE was entered into CFP Board’s system in February 2018. At the hearing, Respondent admitted that he made a mistake in stating that the identified staff member gave him or his assistant direction in February 2018 while he or his assistant was entering the CE credits.

Respondent's assistant testified at the hearing that, because she was up against a deadline to reinstate Respondent's certification in February 2018, she first worked off of Respondent's CE transcripts and uploaded courses to CFP Board's system. She recalled that the transcript she originally worked from had incomplete date information because a printing error caused the date column to be cut off, which she said explained why some of the dates inputted for CE courses were incorrect. She further testified that, after initially inputting CE courses for Respondent on February 6, 2018, she logged onto the system again and could not find the courses that she had entered because they were "no longer visible." She stated that she contacted CFP Board and was informed that it was looking into a possible technical issues on Respondent's account. Respondent's assistant also testified that CFP Board told her to continue uploading courses and assured her that "everything was in order." However, she confirmed during the hearing that CFP Board never told her to enter the same courses multiple times with different dates, names or program numbers to obtain CE credit or to meet the February 28, 2018 deadline.

Respondent also testified about confusion during February 2018 regarding whether or not he had met his CE requirements; however, documentary evidence is clear that Respondent knew as late as February 27, 2018 that he had not met his CE requirements and that he understood he needed to self-report additional courses to meet his deadline of February 28, 2018. Further, as described above, the irregularities identified in CFP Board's audit of Respondent's CE credits were all the result of Respondent's self-reporting of CE courses on February 28, 2018.

III. Commission's Determination on Respondent's Fitness

CFP Board has established specific *Fitness Standards for Candidates and Professionals Eligible for Reinstatement* ("*Fitness Standards*") to ensure that an individual's conduct does not reflect adversely on his or her fitness for CFP® certification, on the profession or on the CFP® certification marks. Under CFP Board's *Fitness Standards*, Respondent's conduct may reflect adversely on the profession and the CFP® certification marks and will bar Respondent from becoming certified unless Respondent petitions the Commission for consideration. Under the *Fitness Standards*, Respondent has the burden to demonstrate that his conduct does not reflect adversely on his fitness for CFP® certification, the profession or the CFP® marks.

The Commission determined that Respondent's conduct reflected adversely on his fitness for CFP® certification, the profession and the CFP® marks. Therefore, the Commission denied Respondent's Revised Petition but will allow Respondent to re-apply for CFP® certification after two years. The Commission found that Respondent intended to mislead CFP Board when he or his assistant (acting as his agent) self-reported CE hours for courses using multiple inaccurate course names, inaccurate program identification numbers, and reporting periods to secure a reinstatement of his certification. The Commission also found that Respondent seemed to lack an appreciation or understanding of his obligations to the CFP® marks and to CFP Board. The Commission hopes that Respondent will benefit from additional time away from his certification to fully grasp the significance of the marks and his responsibilities.

In arriving at its decision, the Commission considered *Anonymous Case History* ("*ACH*") 28898 in which a CFP® professional was suspended for six months plus remedial CE for a CE violation. In that case, the Commission cited as an aggravating factor that it appeared that the CFP® professional intended to deceive CFP Board regarding the completion of his CE. The Commission also reviewed ACH 23408, in which a Respondent was suspended for a year for a CE violation. There, the Commission cited the fact that the violation involved an Ethics violation as an aggravating factor.

The Commission did not consider any mitigating factors. The Commission noted in aggravation that:

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1. The Respondent continued to use the CFP® marks on his website, in his email signature, and on other industry websites after letting his certification lapse.
2. Respondent's conduct reflected an intent to mislead CFP Board by reporting CE courses using multiple inaccurate course names, inaccurate program identification numbers, and CE reporting periods. Although Respondent blamed this matter on a lack of organization rather than an attempt to deceive, the Commission did not find this explanation to be credible.
3. Respondent failed, repeatedly, to comply with deadlines.
4. Having previously held the CFP® certification, the Respondent should have been aware of his responsibility to the marks. Instead, Respondent appeared to have a relaxed attitude regarding his responsibility in all matters related to his failure to comply.

Therefore, the Commission denied Respondent's Petition for Consideration but with the right to reapply after December 10, 2020.