

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 21350

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This is a summary of a decision issued following the February 2011 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 prior to January 1, 2009. The Rules in effect at that time under the *Code of Ethics and Professional Responsibility* (“Code of Ethics”) were Rules 101 through 705.

I. Issue Presented

Whether a CFP<sup>®</sup> professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when adjudication was withheld on his no contest plea to a third-degree felony for transmitting materials harmful to a minor.

II. Findings of Fact Relevant to the Commission’s Decision

In January 2007, one of Respondent’s colleagues (“Grievant”) informed CFP Board about Respondent’s December 2006 arrest related to a sting operation involving on-line sexual predators of minors. Grievant stated that Respondent was dismissed by his broker-dealer for lying about the circumstances surrounding the sting operation. In December 2006, Respondent’s broker-dealer permitted Respondent to resign after he provided false answers to his sales manager relating to the circumstances of his arrest. In January 2007, CFP Board opened an investigation into Respondent’s conduct.

In December 2006, Respondent was charged with two counts of third-degree felony in the State: 1) soliciting a child via computer, a violation of State criminal law; and 2) transmission of material harmful to minors, a violation of State criminal law. The arrest followed online communications between Respondent and a State deputy sheriff posing as a minor.

In April 2008, Respondent pleaded no contest in State Court (“Court”) to the second count, transmission of material harmful to minors. In May 2008, in accordance with Respondent’s no-contest plea, the Court issued an order withholding adjudication. The Court also sentenced Respondent to: 1) two years of community control; 2) psychosexual counseling; and 3) one year of probation. Although Respondent pleaded no contest to a felony, Respondent’s Attorney asserted in his June 2010 response to CFP Board that under State law, an adjudication of guilt withheld plea does not constitute a criminal conviction.

When contacted by CFP Board staff via telephone, the State Department of Law Enforcement stated that adjudication withheld is not equivalent to a conviction under State law, and that Respondent was neither guilty nor not guilty. However, the State Department of Law Enforcement still considers Respondent a sex offender in the State.

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In March 2005, the State Supreme Court decided in Name vs. State that a no-contest plea followed by an adjudication of guilt withheld is a conviction for purposes of sentencing.

### III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *Rule 102 - In the course of professional activities, a CFP Board designee shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly make a false or misleading statement to a client, employer, employee, professional colleague, governmental or other regulatory body or official, or any other person or entity.*

The Commission found that according to Respondent's Central Registration Depository record, his broker-dealer permitted Respondent to resign after he provided false answers to his sales manager relating to the circumstances of his arrest. By providing false answers to his employer, Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, or knowingly made a false or misleading statement to his employer. Thus, Respondent violated Rule 102.

- B. *Rule 607 – A CFP Board designee shall not engage in any conduct which reflects adversely on his or her integrity or fitness as a CFP Board designee, upon the marks, or upon the profession.*

The Commission found that Respondent is held to a higher standard than other professionals. Respondent was arrested and charged in a sting operation involving on-line sexual predators, and pleaded no contest to transmitting material harmful to minors, a felony. Respondent's broker-dealer allowed Respondent to resign because he made false statements to his sales manager relating to the circumstances of his arrest. By pleading no contest to transmitting materials harmful to minors and by making false statements to his employer, Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and upon the profession. Thus, Respondent violated Rule 607.

### IV. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules") provides grounds for discipline for any act or omission that violates the *Code of Ethics*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 102 and 607 of the *Code of Ethics*. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a five-year suspension.

The Commission considered as mitigating factors:

1. Respondent sought counseling and was released from probation.
2. Respondent had no prior arrests or convictions.
3. Respondent was released from probation early.
4. Respondent was in a stable relationship.

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The Commission considered as aggravating factors:

1. The gravity of Respondent's criminal offense and the restrictions of his probation.
2. The nature of Respondent's conduct, which reflects adversely on his integrity and fitness as a certificant, upon the CFP<sup>®</sup> marks, and upon the profession.

V. Appeals Committee Decision

Respondent appealed the Commission's decision. The Appeals Committee affirmed the Commission's factual findings and discipline.