

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 21702

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This is a summary of a decision issued following the February 2009 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. Issues Presented

Whether a CFP<sup>®</sup> certificant (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) was found to have engaged in a fraudulent transfer of real property; 2) was sanctioned for intentional spoliation of data from his computers in violation of a court protective order; and 3) did not pay enrollment fees for a continuing education (“CE”) course he attended, and did not provide proof of payment upon CFP Board’s request.

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

A. *Grievance*

In September 2007, the president (“Grievant”) of a company that provided CE courses for CFP<sup>®</sup> certificants (“Company”) filed a grievance with CFP Board. According to Grievant, in July 2007, Respondent attended a course but did not pay the enrollment fee. Respondent received continuing education credit from CFP Board for completing the course even though he had not paid the required enrollment fee.

According to Grievant, the Company contacted Respondent on numerous occasions regarding payment. Respondent informed CFP Board that he had paid the enrollment fee and submitted a credit card statement showing a payment made to a similarly-named company. Grievant claimed that he did not receive the payment. In August 2008, CFP Board sent a Notice of Investigation (“NOI”) to Respondent requesting a letter from his credit card provider verifying that the billing reference number for the company on the statement was that of the Company. In February 2009, Respondent amended his Answer to the NOI to admit that he had failed to pay for the course.

B. *Judgment Lien*

While conducting a background check on Respondent in connection with the above grievance, CFP Board discovered a 2008 judgment lien against Respondent relating to the proceeds from several real estate transactions with a debtor (“Debtor”). Respondent had answered “no” when asked on his Renewal Declaration whether he had been a defendant in any civil proceeding.

In October 2005, Debtor filed a Chapter 7 bankruptcy petition in a United States Bankruptcy Court (“Court”). A Bankruptcy Trustee (“Trustee”) was appointed. In December 2006, the Clerk of the Court entered a Chapter 7 discharge for Debtor. The Trustee, as plaintiff, filed a proceeding to revoke Debtor’s discharge and named Respondent as a defendant.

The Trustee alleged that the Respondent was not entitled to proceeds which rightfully belonged to creditors. The Trustee claimed that within two years of filing the bankruptcy petition, Debtor transferred his interest in two properties to Respondent, with the intent to delay, hinder and defraud creditors. According to the Trustee, Debtor retained possession and control of the properties while concealing his real interest in the assets. Debtor reportedly admitted that he received a kickback from Respondent on the sale of one of the properties. The transfer of the properties constituted conveyances of substantially all of the Debtor’s valuable assets, which led to the Debtor’s insolvency because the sum of his debts exceeded all of his assets.

Under a protective order agreed to by the parties in the proceeding, computer experts examined Respondent’s computers at his place of business. The computer experts discovered a software utility designed to perform destruction of data on Respondent’s computers. The program had been run at 11:18 P.M. the night before the scheduled computer examination. In April 2008, the Court granted the Trustee’s motion to sanction Respondent for intentional spoliation of data from his computers in violation of the protective order.

In June 2008, the Court granted judgment in favor of the Trustee and against Respondent. The Court adopted most of the Trustee’s proposed findings of fact and conclusions of law, and found that the transfers of Debtor’s interests in two real properties were fraudulent and voidable. The Court found that the Trustee could recover from Respondent, for the benefit of Debtor’s estate, sums representing the value of Debtor’s interests in the properties received by Respondent.

### III. Commission’s Analysis and Conclusions Regarding Rule Violations Pertaining to the Grievance

A. *Rule 602 – A CFP Board designee shall show respect for other financial planning professionals, and related occupational groups, by engaging in fair and honorable competitive practices.*

The Commission found that Respondent failed to show respect for other financial planning professionals because he: 1) failed to pay the fees for the CE course; and 2) failed to provide CFP Board, at CFP Board’s request, with proof of having paid the fees. Thus, Respondent violated Rule 602.

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 by failing to provide evidence that he had paid for the CE course, Respondent engaged in conduct reflecting adversely on a CFP Board designee’s integrity or fitness, upon the marks, and upon the profession. Thus, Respondent violated Rule 607.

IV. Commission's Analysis and Conclusions Regarding Rule Violations Pertaining to the Judgment Lien

- 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 noted that the Court: 1) granted judgment in favor of the Trustee and against Respondent; and 2) found that the real property transfers from Debtor to Respondent were fraudulent. Based on the Court's findings, the Commission found that Respondent engaged in the fraudulent transfer of real property. As a result, the Commission found that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. Thus, Respondent violated Rule 102.

- B. *Rule 201 – A CFP Board designee shall exercise reasonable and prudent professional judgment in providing professional services.*

The Commission noted from the Court's findings that: 1) Debtor transferred his interests in two real properties to Respondent within two years of filing a bankruptcy petition; 2) Debtor intended to delay, hinder and defraud his creditors; 3) Debtor retained possession and control of the properties while concealing his real interest in the assets; and 4) Debtor reportedly admitted that he received a kickback from Respondent on the sale of the properties. The Commission also noted that the transfer of the properties constituted conveyances of substantially all of Debtor's valuable assets resulting in insolvency because the sum of his debts exceeded all of his assets. Based on the above, the Commission determined that Respondent participated in the fraudulent transfer of real property from Debtor to Respondent. According to Commission, by participating in the fraudulent transfer of property, Respondent failed to exercise reasonable and prudent professional judgment in providing professional services. Thus, Respondent violated Rule 201.

- C. *Rule 606(a) and (b) – In all professional activities a CFP Board designee shall perform services in accordance with: (a) Applicable laws, rules and regulations of governmental agencies and other applicable authorities; and (b) Applicable rules, regulations and other established policies of CFP Board.*

The Commission noted that the Court: 1) found that the transfer of Debtor's interest in real property to Respondent was a fraudulent conveyance under federal law; and 2) sanctioned Respondent for intentional spoliation of data from his computers in violation of a protective order. The Commission found that Respondent violated applicable laws, rules and regulations of government agencies and other applicable authorities. Thus, Respondent violated Rule 606(a).

The Commission also found that because Respondent violated Rules 102, 201, 607 and triggered Article 3(a) grounds for discipline, Respondent violated rules, regulations and policies of CFP Board. Thus, Respondent violated Rule 606(b).

*D. 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 determined that Respondent intentionally removed data from his computer files based on: 1) computer experts' determination that a software utility designed to destroy data had been used on Respondent's computers; 2) computer experts' determination that data had been destroyed on Respondent's computers at 11:18 P.M. the night before experts were scheduled to perform the computer examination; and 3) the Court's sanction of Respondent for intentional spoliation of data from his computers in violation of the protective order. The Commission found that by intentionally removing data from his computer files, Respondent engaged in conduct which reflects adversely upon his integrity and fitness as a CFP Board designee. Thus, Respondent violated Rule 607.

#### V. Discipline Imposed

Article 3(a) of CFP Board's *Disciplinary Rules and Procedures* ("*Disciplinary Rules*") provides grounds for discipline for any act which violates the provisions of the *Code of Ethics*. The Commission noted that on Respondent's Renewal Declaration, he answered "no" to being a defendant in any civil proceeding despite the fact that he was a defendant in the proceeding to revoke Debtor's discharge. The Commission determined that Respondent's actions led to *Code of Ethics* rule violations which provides grounds for discipline under Article 3(a).

Article 3(f) of the *Disciplinary Rules* provides grounds for discipline for failure to respond to a request by CFP Board without good cause. The Commission found grounds for discipline under Article 3(f) because Respondent failed to respond to a request by CFP Board during its investigation, without showing good cause.

Based on the violations discussed above, the Commission suspended Respondent from using CFP® certification marks for one year and one day, effective on the date of the order. The Commission also ordered Respondent, during the period of his suspension, to take 10 hours of continuing education ("CE") courses in ethics, in addition to the 30 hours of CE required to meet his renewal requirements.

The Commission considered no mitigating factors. The Commission considered the following aggravating factors:

1. Respondent expressed no remorse and acknowledged no wrongdoing;
2. Respondent's testimony revealed evidence of other rule violations; and
3. Respondent had no financial planning practice in his business model.