CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24285

This is a summary of a decision issued following the June 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 and after January 1, 2009. The Rules in effect under the *Code of Ethics and Professional Responsibility* ("*Code of Ethics*") were Rules 101 through 705 and 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) failed to repay the balance due on a promissory note Respondent entered into with his employer; and 2) filed for Chapter 7 Bankruptcy, demonstrating an inability to manage his personal finances.

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

In February 2006, Respondent received a loan from his employer, and executed a Promissory Note ("Note") to secure the loan. In December 2007, Respondent ended his employment with his firm. Pursuant to the terms of the Note, Respondent's departure from his firm accelerated his outstanding indebtedness. Respondent failed to repay the balance due on the outstanding Note.

In March 2009, Respondent's firm filed a Statement of Claim against Respondent alleging Respondent failed to repay the balance due on the Promissory Note. Respondent filed his Answer in August 2009. Respondent stated that from March 2006 through December 2007, Respondent suffered significant health problems. According to Respondent, his firm offered no assistance for helping Respondent deal with his health problems. Respondent then met with his branch manager. Respondent stated that his branch manager told him that no job was worth risking his health, and that he should do what was best for his family. Respondent also stated that his branch manager indicated the firm would waive at least a portion, if not all, of his obligation under the Note. Respondent resigned from his firm in December 2007.

In June 2010, the FINRA Arbitration Panel ruled against Respondent and awarded Respondent's firm compensatory damages, as well as interest, costs and attorneys' fees. In August 2010, FINRA notified Respondent of FINRA's intent to suspend his registration for failure to pay the sums due under the Award. Respondent responded to FINRA stating he had a *bona fide* inability to pay the Award. In September 2010, FINRA advised Respondent it determined he demonstrated an inability to pay the sums due pursuant to the Award. FINRA also advised Respondent it would continue to monitor his financial condition and would issue a Notice of Intent to Suspend should Respondent fail to pay all or part of the Award if his financial condition improved.

In November 2010, Respondent filed a Chapter 7 Petition for Bankruptcy. Respondent stated he filed for bankruptcy due to his: 1) wife's unemployment for a year and a half; 2) involvement in his firm's lawsuit; and 3) inability to pay current debts. Respondent stated he consulted with a bankruptcy attorney about available options and decided filing for bankruptcy was the best option for his family. In February 2011, the Court discharged Respondent's bankruptcy. Respondent stated that after the discharge, his family was able to maintain a positive cash flow and his wife was able to find part-time employment.

III. Commission's Analysis and Conclusions Regarding Rule Violations

A. 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 engaged in conduct that reflects adversely on his integrity or fitness as a CFP Board designee, upon the marks, and upon the profession when he failed to repay the balance due on the Promissory Note he entered into with his firm. Thus, Respondent violated Rule 607.

B. Rule 6.5 – A certificant shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession

The Commission found that as a CFP® professional, Respondent is held to a higher standard of care than the average business professional. Respondent filed for Chapter 7 Bankruptcy, demonstrating an inability to manage his personal finances. As a result, Respondent engaged in conduct that reflects adversely on his integrity or fitness as a certificant, upon the CFP® marks, and upon the profession. Thus, Respondent violated Rule 6.5.

IV. Discipline Imposed

The Commission found grounds for discipline under Article 3(a) of the *Disciplinary Rules*. Article 3(a) provides grounds for discipline for a violation of the *Code of Ethics*. The Commission found Article 3(a) grounds for discipline because Respondent violated the *Code of Ethics* Rules discussed above.

Based on the above rule violations and grounds for discipline, the Commission issued an Order to Suspend for one year Respondent's right to use the CFP® marks pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission considered the following mitigating factors: 1) Respondent's health issues caused him to leave his job; 2) Respondent's Arbitration did not involve any clients; and 3) Respondent's financial situation is now improved.

The Commission also considered the following aggravating factors: 1) Respondent could have complied with FINRA's budget recommendations; 2) Respondent paid none of his firm's debt after leaving his firm when he had the ability to pay at least a portion of it; and 3) Respondent could have taken other steps to avoid filing for bankruptcy.