

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 24452

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 for conduct occurring prior to January 1, 2009 were Rules 101 through 705 of CFP Board’s *Code of Ethics*. The Rules in effect for conduct occurring on or after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s *Rules of Conduct*.

I. Issues Presented

Whether a CFP[®] professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) failed to satisfy his payment obligations for a least five CFP[®] professionals who provided instructor services for his consulting company (“Company”); 2) breached his contract with University A and B, resulting in outstanding debt obligations to University A and B; and 3) filed for Chapter 13 Bankruptcy.

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

In October 2007, Respondent agreed with CFP[®] Professional A to act as a tax instructor for Registered Programs provided by Company. According to CFP[®] Professional A’s grievance, Respondent agreed to pay her \$2,000 for acting as an instructor. CFP[®] Professional A provided all services required of her, but was never paid the agreed-upon fees.

In October 2007, Respondent also contracted with CFP[®] Professional B to act as an instructor for Registered Programs provided by Company. According to the Letter of Agreement CFP[®] Professional B signed, he would teach 10 estate planning courses in exchange for \$2,000. CFP[®] Professional B provided all services required of him under the Letter of Agreement signed with Company, but was never paid the agreed-upon fees. Respondent repeatedly expressed his intent to pay CFP[®] Professional A and CFP[®] Professional B the instructor fees owed to them by Company, but was unable to do so due to financial hardship.

In addition to the outstanding balances Respondent owed to CFP[®] Professional A and CFP[®] Professional B, University A made the following direct payments to instructors employed by Respondent:

1. \$2,000 to CFP[®] Professional C for Fall 2009 classes;
2. \$6,479.50 to CFP[®] Professional D for 2009 and 2010 classes;
3. \$3,614 and \$3,162.25 to CFP[®] Professional E for Spring and Summer 2010 classes, respectively; and
4. \$2,000 to CFP[®] Professional F for a 2007 course.

In addition to the direct payments made by University A, at the time of the hearing, Respondent had an outstanding obligation due to CFP[®] Professional E.

University A Debt

In August 2001, Respondent entered into an agreement (“2001 Agreement”) with University A pursuant to which Respondent would assist University A in providing courses for Registered Programs. Pursuant to the 2001 Agreement, University A was responsible for collecting all fees and tuition paid by students for the Registered Programs courses. Respondent was entitled to 80% of the fees and tuition and University A was entitled the remaining 20%. University A and Respondent were responsible for their own costs associated with offering and conducting the Registered Programs courses. From July 2001 through June 2004, University A collected approximately \$600,000 in tuition and fees. Respondent was entitled to \$500,000 in tuition and fees. During that period, University A covered certain expenses and fees that were the responsibility of Respondent. As of July 2004, Respondent owed University A \$60,000.

In November 2004, Respondent entered into a second agreement (“2004 Agreement”) with University A to provide Registered Programs courses. All of the terms were identical to the 2001 Agreement, except that University A reserved the right to retain 5% of the gross fees and tuition to apply towards Respondent’s outstanding balance owed to University A. From July 2004 through September 2010, University A collected \$350,000 in tuition for Registered Programs courses provided by Respondent. Under the terms of the 2004 Agreement, Respondent was entitled to approximately \$260,000 in tuition. On July 1, 2010, Respondent owed University A \$6,500.

University B Debt

In October 2003, Respondent entered into an agreement with University B pursuant to which Respondent would assist University B in providing courses for Registered Programs. Pursuant to the agreement, Respondent was responsible for collecting all fees paid by students for the Registered Programs courses. University B was entitled to 20% of all gross fees collected by Respondent. From Fall 2003 through Fall 2006, Respondent collected approximately \$425,000 in tuition. Accordingly, Respondent owed University B a total of \$90,000. At the time of the hearing, Respondent had paid University B \$50,000, leaving an outstanding balance of \$40,000. In January 2008, University B terminated its relationship with Respondent due to his failure to pay University B its share of the fees generated by the Registered Programs courses.

In February 2009, University B filed a Complaint for Damages alleging breach of contract, fraudulent inducement, unjust enrichment, conversion and tortious interference. Respondent did not respond to University B’s Complaint for Damages and University B has not pursued the matter.

2009 Chapter 13 Bankruptcy

Since 1995, Respondent's main source of income was derived from directing Registered Programs. As enrollments began to decline, revenues and cash flow Respondent received from Company started to decline. In March 2005, in an effort to increase his cash flow, Respondent accepted a position as Managing Director of a small investment advisor. In October 2005, the investment advisor was sold, and Respondent's position was eliminated. Respondent was unable to secure new employment until March 2006.

While Respondent was struggling with his employment, he assumed the financial obligations of his daughter after her divorce. To meet the financial obligations of his daughter, Respondent states that he drained his resources.

Respondent asserted that in the fourth quarter of 2007, enrollment in the Registered Programs provided by Company declined nearly 36%. This decline exacerbated an already tenuous cash flow. Respondent was unable to pay the expenses generated by the educational programs and meet his other financial obligations.

In March 2009, Respondent filed for Chapter 13 Bankruptcy. In June 2009, the Bankruptcy Court issued an Order confirming Respondent's Chapter 13 Bankruptcy plan.

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: 1) failed to satisfy his payment obligations to CFP® Professional A, CFP® Professional E and CFP® Professional F; and 2) breached his contract with University A and B, resulting in outstanding debt obligations to University A and B. Thus, Respondent violated *Code of Ethics* Rule 607.

B. *Rule 6.5 – A certificant shall not engage in any 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 Respondent engaged in conduct that reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks and upon the profession when he: 1) failed to satisfy his payment obligations to CFP® Professional C, CFP® Professional D and CFP® Professional E; and 2) filed for Chapter 13 Bankruptcy, which demonstrated an inability to manage his personal financial affairs. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

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 Rule 607 of the *Code of Ethics* and Rule 6.5 of the *Rules of Conduct*. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a one year and one day suspension.

The Commission did not consider any mitigating factors.

The Commission cited the following aggravating factors:

1. Respondent was teaching a CFP[®] Registered Program and holding himself out as an expert in financial planning, yet was unable to manage his own finances;
2. Respondent breached multiple contracts; and
3. Respondent discharged \$185,000 in unsecured debt as part of his \$455,000 in total debt.