

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 27222

This is a summary of a decision issued following the June 2012 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 both prior to and after January 1, 2009. The Rules in effect for conduct occurring prior to January 1, 2009 under the *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”) were Rules 101 through 705. The Rules in effect for conduct occurring after January 1, 2009 were *Rules of Conduct* 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) incurred a 2006 IRS Tax Lien; 2) failed to complete required CE, resulting in a 2004 Insurance License Suspension; 3) filed for Chapter 13 Bankruptcy in 2004; 4) filed for Chapter 13 Bankruptcy in 2002; 5) filed for Chapter 13 Bankruptcy in 1998, which Respondent converted to Chapter 7 Bankruptcy; and 6) failed to provide documentation requested by CFP Board.

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

In October 2011, CFP Board mailed a Notice of Investigation (“NOI”) to Respondent's address of recording requesting a written statement from Respondent and documentation relating to the: 1) 2011 Civil Judgment; 2) 2010 DUI and Drivers License Suspension, which Respondent did not report to CFP Board until September 2011; 3) 2006 IRS Tax Lien; 4) 2004 Insurance License Suspension; 5) 2004 Chapter 13 Bankruptcy Filing; 6) 2002 Chapter 13 Bankruptcy Filing; and 7) 1998 Chapter 13 Bankruptcy filing, which Respondent converted to a Chapter 7 Bankruptcy filing. Respondent did not submit a response to the NOI.

On December 21, 2011, CFP Board mailed a 2nd Notice of Investigation (“2nd NOI”) via Certified Mail Return Receipt to Respondent's address of record requesting documents and a written statement regarding the: 1) 2011 Civil Judgment; 2) 2010 DUI and Drivers License Suspension; 3) 2006 IRS Tax Lien; 4) 2004 Insurance License Suspension; 5) 2004 Chapter 13 Bankruptcy Filing; 6) 2002 Chapter 13 Bankruptcy Filing; and 7) 1998 Chapter 13 Bankruptcy filing, which Respondent converted to a Chapter 7 Bankruptcy filing. Respondent did not submit a response to the 2nd NOI.

Respondent responded to CFP Board’s complaint, but failed to provide any of the requested documentation.

III. Commission's Analysis and Conclusions Regarding Rule Violations

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

The Commission determined that Respondent engaged in conduct that reflects adversely upon his integrity and fitness as a CFP Board designee upon the marks, and upon the profession when he: 1) incurred a 2006 IRS Tax Lien; 2) failed to complete required CE, resulting in a 2004 Insurance License Suspension; 3) filed for Chapter 13 Bankruptcy in 2004; 4) filed for Chapter 13 Bankruptcy in 2002; and 5) filed for Chapter 13 Bankruptcy in 1998, which Respondent converted to Chapter 7 Bankruptcy. The Commission noted that the issues raised in CFP Board's NOI were serious, however, Respondent failed to provide evidence to address these issues and/or to indicate he had moved beyond these issues. Further, the Commission determined that Respondent's conduct and his failure to adequately address the conduct are not indicative of a professional in the financial planning profession. Thus, Respondent violated *Code of Ethics* Rule 607.

- B. *Rule 6.1 - A certificant shall abide by the terms of all agreements with CFP Board, including, but not limited to, using the CFP® marks properly and cooperating fully with CFP Board's trademark and professional review operations and requirements*

According to Article 6.2 of the *Disciplinary Rules*, CFP Board shall give written notice to a Respondent that he or she is under investigation and of the general nature of the allegations. Respondent has 30 calendar days from the date of the notice to respond. According to Article 6.2(a), failure to respond within 30 days will result in the matter being referred to a hearing panel. In October 2011, CFP Board mailed a Notice of Investigation ("NOI") to Respondent's address of record requesting a written statement from Respondent and documentation relating to the: 1) 2011 Civil Judgment; 2) 2010 DUI and Drivers License Suspension; 3) 2006 IRS Tax Lien; 4) 2004 Insurance License Suspension; 5) 2004 Chapter 13 Bankruptcy Filing; 6) 2002 Chapter 13 Bankruptcy Filing; and 7) 1998 Chapter 13 Bankruptcy filing, which Respondent converted to a Chapter 7 Bankruptcy filing. Respondent did not submit a response to the NOI.

Although not required by the *Disciplinary Rules*, CFP Board then took the additional step of providing Respondent a second opportunity to respond when it sent a second request for response in December 2011. Respondent failed to respond. The Commission determined that given the seriousness of the issues raised in the NOI and the lack of depth of Respondent's response to the charges asserted, Respondent failed to meet the minimum standards of Rule 6.1. Thus, Respondent violated Rule 6.1 of the *Rules of Conduct*.

C. *Rule 6.4 - A certificant shall notify CFP Board in writing of any conviction of a crime, except misdemeanor traffic offenses or traffic ordinance violations unless such offense involves the use of alcohol or drugs, or of any professional suspension or bar within ten (10) calendar days after the date on which the certificant is notified of the conviction, suspension or bar*

The Commission determined that Respondent failed to notify CFP Board in writing of his 2010 DUI conviction until within 10 calendar days. Thus, Respondent violated Rule 6.4 of the *Rules of Conduct*.

D. *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 determined that Respondent engaged in conduct that reflects adversely on his integrity and fitness, upon the CFP® marks, and upon the profession when he failed to notify CFP Board of the conviction within the required timeframe. 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* and *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rule 607 of the *Code of Ethics* and Rules 6.1, 6.4 and 6.5 of the *Rules of Conduct*. Article 3(c) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act or omission that violates the criminal laws of any state of the United States. The Commission found grounds for discipline under Article 3(c) based on Respondent's 2010 DUI conviction. Article 3(f) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any failure to respond to the Commission, without good cause shown. The Commission found grounds for discipline under Article 3(f) because Respondent failed to provide the information CFP Board requested. Pursuant to Article 4.4 of the *Disciplinary Rules*, the Commission issued an Order to Revoke Permanently Respondent's right to use the CFP® marks.

In imposing a revocation, the Commission determined that Respondent failed to provide basic materials to refute or clarify the issues raised by CFP Board. Due to Respondent's almost complete lack of response, the Commission relied on Anonymous Case Histories 23348, 25199 and 25439, all of which involved a Respondent's failure to respond to CFP Board's complaint.

The Commission cited as a mitigating factor that Respondent's financial hardships were due, in part, to the costs associated with the hospitalization of Respondent's child.

The Commission cited as an aggravating factor that Respondent failed to provide the Commission with a detailed account of the circumstances that resulted in multiple bankruptcy filings by Respondent.