

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 27332

This is a summary of a Settlement Agreement entered into at the February 2014 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 after January 1, 2009. The Rules in effect at that time under the *Rules of Conduct* were Rules 1.1 through 6.5.

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when the State charged him with felony possession of child pornography, which he later pleaded down to felony unauthorized access to a computer.

II. Findings of Fact

Respondent disclosed on his Renewal Application a 2007 Foreclosure Action (“Foreclosure”) and that State charged him with the possession of child pornography, a Second Degree Felony (Felony Charge”).

In November 2011, CFP Board opened an investigation into the two matters. In December 2011, CFP Board mailed a Notice of Investigation (“NOI”) to Respondent requesting a detailed written statement and documentation related to the Foreclosure and Felony Charge. In January 2012, Respondent’s attorney provided CFP Board with a copy of the charging documents and a statement asserting Respondent’s 5th Amendment protection as grounds for refusal to offer any additional information regarding the Felony Charge. CFP Board is not a state actor and, therefore, the assertion of the constitutional privilege against self-incrimination was not an exception to the requirement that Respondent provide the requested information.

In January 2012, Respondent mailed CFP Board a detailed written statement and documentation related to the Foreclosure.

In February 2012, CFP Board sent a Second Request for NOI Response (“2nd Request”) to Respondent requesting a detailed written statement regarding the Felony Charge and a narrative explanation of the events leading to the Felony Charge. In email correspondence to CFP Board, Respondent’s attorney insisted upon Respondent’s right to assert his 5th amendment protection in the course of a CFP Board investigation and declined to provide a substantive response to the 2nd Request.

In October 2013, CFP Board mailed Respondent and his attorney a Request for Additional Information (“RFAI”) requesting a detailed written statement and documentation related to the current disposition of the Felony Charge Matter. In October 2013, Respondent’s attorney, sent correspondence to CFP Board indicating that he no longer represented Respondent and that Respondent would not be providing a response to CFP Board.

CFP Board subsequently learned that in October 2011, the County Sheriff arrested nine men, including Respondent, on charges stemming from a child pornography sweep. In November 2011, the state formally charged Respondent with one felony count of possession of child pornography. In January 2013,

Respondent entered a plea of *Nolo Contendere* with State on the charge of unauthorized computer access, a felony. Later in January 2013, State finalized the conviction and sentenced Respondent to three years of felony probation. The term of Respondent's probation is January 2013 to January 2016. Respondent failed to report the conviction to CFP Board within 30 days as required by Article 13.2 of the *Disciplinary Rules*.

III. Rule Violations

- A. *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.*

Respondent failed to cooperate fully with CFP Board's Professional Review Operations and Requirements when he failed to provide CFP Board with all information and documentation requested in the December 2011 NOI, February 2012 2nd Request, and October 2013 RFAI. Thus, Respondent violated *Rules of Conduct* Rule 6.1.

- 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.*

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 respond to multiple CFP Board requests for information and documentation; and 2) entered a plea of *Nolo Contendere* with State on the charge of unauthorized computer access, a third-degree felony. Thus, Respondent violated *Rules of Conduct* Rule 6.5.

IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a), 3(c), 3(e) and 3(g) of CFP Board's *Disciplinary Rules and Procedures* ("Disciplinary Rules"). Article 3(a) of CFP Board's *Disciplinary Rules* provides grounds for discipline for any act or omission that violates the *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rules 6.1 and 6.5 of the *Rules of Conduct*. Article 3(c) of the *Disciplinary Rules* establishes grounds for discipline for any act or omission that violates the criminal laws of any state or of the United States. The Commission found grounds for discipline under Article 3(c) because Respondent pleaded *Nolo Contendere* to felony unauthorized computer access. Article 3(e) of the *Disciplinary Rules* establishes grounds for discipline for any act or omission that violates CFP Board's *Disciplinary Rules*. The Commission found grounds for discipline under Article 3(e) because Respondent failed to disclose his *Nolo Contendere* plea to the felony charge of unauthorized computer access in accordance with Article 13.2 of the *Disciplinary Rules*. Article 3(f) of the *Disciplinary Rules* establishes grounds for discipline for failure to respond to a request by CFP Board staff. The Commission found grounds for discipline under Article 3(f) because Respondent failed to respond to CFP Board's requests for information. The Commission and Respondent entered into a Settlement Agreement in which Respondent consented to the Findings of Fact and Rule Violations. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a 5-year suspension, pursuant to Article 4.3 of the *Disciplinary Rules*.

The Commission considered no mitigating factors.

The Commission considered as an aggravating factor that Respondent failed to provide the full terms of his probation to CFP Board.

In arriving at its decision, the Commission consulted *Anonymous Case Histories* (“ACHs”) 22868 and 21350 and *Sanction Guidelines* 10 (Conviction Within the Last 10 Years of a Felony or Any Misdemeanor Involving Fraud, Misrepresentation or Crimes of Moral Turpitude Involving Probation Only) and 29 (Revocation or Suspension of a Non-Financial Professional License or Certification).

The DEC reviewed Respondent’s request that the date of the settlement agreement’s execution be retroactive to March 2012, the date CFP Board’s interim suspension of his right to use the CFP® marks began. The DEC decided that consistent with Section 14.2 of the *Disciplinary Rules and Procedures* and the language of the settlement offer he signed, Respondent’s suspension became effective as of the date of execution of the offer by CFP Board.