

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 27546

This is a summary of a decision issued following the October 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 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 he violated the terms of his probation from a 2009 Domestic Protection Order (“DPO”), resulting in his arrest under a State Statute.

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

In January 2012, Respondent disclosed the violation of a 2009 DPO on his Renewal Application, which was previously reviewed by CFP Board in a prior disciplinary case. According to Respondent’s statement to CFP Board, he was arrested in May 2011 and found guilty of having violated the terms of his probation from his previously disclosed 2009 DPO violation. Respondent’s 2011 probation violation resulted from two separate acts. First, Respondent’s friend contacted Respondent’s ex-girlfriend (“Ex-girlfriend”) on Respondent’s behalf. Respondent stated he did not ask his friend to make this unsolicited contact. The District Court (“Court”) held Respondent accountable for this indirect contact, even though Respondent’s friend provided a statement to the Court confirming that Respondent did not ask her to call Ex-girlfriend.

Second, Respondent emailed a friend on Facebook about Ex-girlfriend and the first alleged probation violation. The terms of Respondent’s probation prohibited Respondent from posting anything about Ex-girlfriend on the Internet. The Court ordered Respondent to complete 50 hours of community service, extended his probation for 18 months and placed Respondent on electronic house arrest for 120 days. Respondent completed his community service in November 2011 and his electronic house arrest in September 2011. Respondent also stated that all fines and penalties ordered by the Court have been paid. Respondent is on probation until December 2012.

The Commission also reviewed similar allegations that had been previously dismissed with a caution by CFP Board.

Prior Case 1

In March 2010, Respondent disclosed on his Renewal Application that he violated a DPO issued against him. In March 2010, CFP Board opened an investigation and mailed an NOI to Respondent requesting information and documentation relating to his violation of the DPO. In April 2010, Respondent’s attorney (“Respondent’s attorney”) responded on Respondent’s behalf.

According to Respondent’s attorney, in 2008, Respondent became romantically involved with Ex-girlfriend. In the spring of 2009, Ex-girlfriend told Respondent she wished to end the relationship. In September 2009, Respondent visited Ex-girlfriend’s home in an attempt to reconcile with her, which was

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unsuccessful. Respondent damaged some shrubs and plants at her home. Shortly thereafter, Ex-girlfriend filed for a DPO against Respondent. The DPO was issued in September 2009.

On two occasions in September 2009, Respondent emailed Ex-girlfriend, continuing to express his romantic feelings for her, despite the issuance of the DPO. Respondent's attorney stated that any contact with an individual covered by a DPO, even an expression of love, is considered a violation of the DPO. As a result of this violation, Respondent reached a plea agreement with the Assistant District Attorney so he could ensure he would not have to serve jail time. Respondent pleaded guilty to a violation of the DPO and injury to personal property (the shrubs and plants). Respondent agreed to pay restitution for the personal property damage and was serving probation, which was scheduled to end in a few months. In April 2010, CFP Board dismissed Respondent's matter, cautioning him as to the importance of not engaging in conduct that reflects adversely on his integrity and fitness as a CFP® professional, upon the CFP® marks, and upon the profession.

Prior Case 2

In December 2007, CFP Board received an anonymous grievance against Respondent. The grievant alleged that Firm terminated Respondent in 2006 "under, once again, a cloud of sexual harassment, theft of client records and accusations of 'selling away.'" In February 2008, Respondent disclosed his Firm Internal Review and Termination on his Renewal Application. According to Respondent's Form U5 of his Central Registration Depository ("CRD") record, Firm terminated Respondent for "human resources related issues."

In October 2008, CFP Board opened an investigation and mailed an NOI to Respondent requesting information and documentation relating to his Firm termination. In December 2008, Respondent's attorney responded on his behalf. Respondent's attorney stated that in September 2006, Firm received complaints from a female employee regarding Respondent. Firm placed Respondent on administrative leave during its investigation. According to Respondent's attorney, Respondent denied this employee's request for vacation. After receiving Respondent's denial, the same employee asked another broker for time off, alleging it was for a funeral. The broker granted the employee's leave. Respondent learned that this employee had given a different story to obtain time off, and he began an inquiry. Respondent's attorney stated that the female employee's allegations regarding Respondent's inappropriate conduct was a pre-emptive effort to deflect an investigation into her own behavior. Respondent's attorney stated that Firm investigated the allegations and ultimately directed Respondent to return to work.

After returning from administrative leave, Firm terminated Respondent for inappropriate conduct and allegations of selling away. Respondent's attorney stated both allegations were without merit. In December 2008, CFP Board dismissed Respondent's matter, cautioning him as to the importance of not engaging in conduct that reflects adversely on his integrity and fitness as a CFP® professional, upon the CFP® marks, and upon the profession.

Prior Case 3

In February 2006, Respondent disclosed his involvement in a 2004 NASD Arbitration on his Initial Application. As a result of a routine background check, CFP Board discovered a 1992 criminal matter on Respondent's CRD. According to Respondent's CRD, in August 1992, Respondent was charged with one count of Indecent Assault, Article 134 of the Uniform Code of Military Justice. Respondent pleaded not guilty. According to Respondent's Form U4, he ended an affair with a female soldier who claimed he assaulted her as retribution for ending the affair. In November 1992, Respondent was found not guilty, but given a reprimand for conduct unbecoming an officer and poor judgment. As a result, Respondent

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lost \$500 of pay for two months. Respondent failed to disclose the criminal matter on his Initial Application. In January 2006, CFP Board dismissed Respondent's matter, cautioning him as to his disclosure obligations as a CFP Board designee.

III. Commission's Analysis and Conclusions Regarding Rule Violations

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

The Commission determined that Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP® professional when he violated the terms of his probation from the 2009 DPO, which resulted in his arrest under State law. The Commission considered that CFP Board had previously cautioned Respondent three times, once regarding disclosure and twice regarding his conduct that reflected adversely on the CFP® marks. In each of the three cautions, CFP Board advised Respondent that the dismissal letter could be taken into consideration by the Commission in determining any appropriate action should disciplinary violations occur in the future. The Commission determined that CFP Board's prior cautions to Respondent were ineffective, as Respondent continued to engage in conduct that reflects adversely on the CFP® marks. Therefore, Respondent violated Rule 6.5.

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 *Rules of Conduct*. The Commission found grounds for discipline under Article 3(a) because Respondent violated Rule 6.5 of the *Rules of Conduct*. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a suspension of one year and one day.

While considering the degree of sanction to impose, the DEC consulted *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 24 (Misdemeanor Criminal Convictions). The DEC applied *Sanction Guideline* 10 to Respondent's conduct because it determined that Respondent engaged in a crime of moral turpitude. The Commission determined to issue a higher sanction than that recommended by the *Sanction Guidelines* due to the multiple charges relating to the same conduct and the fact that CFP Board cautioned Respondent several times for the same type of conduct. The Commission determined that Respondent needed to demonstrate prior to reinstatement that he has no further problems complying with his DPO. Therefore, the DEC issued a suspension of one year and one day.

In imposing a one year and one day suspension, the DEC considered as mitigating factors that:

- 1) Respondent's conduct did not harm any clients; and
- 2) Respondent is under the care of a physician to assist him in complying with the DPO.

The DEC considered in aggravation that:

- 1) CFP Board cautioned Respondent on three previous occasions regarding his conduct with women, yet Respondent continued to engage in similar conduct;
- 2) Respondent failed to take responsibility for the second violation of the DPO during his testimony; and
- 3) Respondent failed to disclose his violations of the DPO to CFP Board.