

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 28412

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This is a summary of a decision issued following the October 2013 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. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he entered a plea of guilty on two felony charges and was sentenced to three years’ probation and a \$10,000.00 fine for: 1) participating personally, substantially and willfully in a matter as an employee of the Internal Revenue Service (“IRS”) in which he and an organization with whom he was negotiating employment had a financial interest; and 2) willfully disclosing tax return information to another as an employee of the IRS.

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

In September 2012, a Special Agent with the Treasury Inspector General for Tax Administration in Southern District Court filed a Complaint against Respondent. The complaint alleged, among other things, that Respondent, while an employee of the IRS, conducted an audit of an international bank (“Bank 1”), related to approximately \$1 billion in allegedly unreported income. Respondent oversaw negotiations between Bank 1 and the IRS that led to a proposed settlement agreement. During the time of both the audit and settlement negotiations, unbeknownst to the IRS, Respondent applied for, interviewed for and accepted a position with Bank 1. Additionally, Respondent disclosed confidential IRS information to a non-IRS employee. Specifically, Respondent revealed the identity of a bank he was auditing to an individual who was not employed by the IRS.

In March 2013, Respondent submitted a plea agreement to the Southern District Court wherein he entered a plea of guilty for:

1. Participating personally, substantially and willfully in a matter as an employee of the IRS in which he and an organization with whom he was negotiating employment had a financial interest, in violation of Title 18, United States Code, Section 208.
2. Willfully disclosing tax return information to another as an employee of the IRS, in violation of Title 26, United States Code, Section 7213.

All parties agreed, consented to and finalized the plea agreement in March 2013. In July 2013, the Southern District Court sentenced Respondent to three years of probation for violating criminal conflict of interest laws and illegally disclosing confidential audit information during the time he was an IRS employee and a \$10,000.00 fine.

### III. Commission's Analysis and Conclusions Regarding Rule Violations

- A. *Rule 3.1 – A certificant shall treat information as confidential except as required in response to proper legal process; as necessitated by obligations to a certificant's employer or partners; as required to defend against charges of wrongdoing; in connection with a civil dispute; or as needed to perform services.*

The Commission determined that Respondent failed to treat information as confidential except as required in response to proper legal process; as necessitated by obligations to a certificant's employer or partners; as required to defend against charges of wrongdoing; in connection with a civil dispute; or as needed to perform services when he willfully disclosed tax return information to another as an employee of the IRS. Respondent admitted to this conduct when he filed a guilty plea in federal court. Thus, Respondent violated Rule 3.1 of the *Rules of Conduct*.

- B. *Rule 3.2 – A certificant shall take prudent steps to protect the security of information and property that is within the certificant's control.*

The Commission determined that Respondent failed to take prudent steps to protect the security of information and property that was within his control when he willfully disclosed tax return information to another as an employee of the IRS. Respondent admitted to this conduct when he filed a guilty plea in federal court. Thus, Respondent violated Rule 3.2 of the *Rules of Conduct*.

- C. *Rule 5.1 – A certificant shall perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's Code of Ethics.*

The Commission determined that Respondent failed to perform professional services with dedication to the lawful objectives of the employer/principal and in accordance with CFP Board's *Code of Ethics* when he: 1) participated personally, substantially and willfully in a matter as an employee of the IRS in which he and an organization with whom he was negotiating employment had a financial interest; 2) willfully disclosed tax return information to another as an employee of the IRS; and 3) violated Rules 3.1, 3.2, and 6.5 of the *Rules of Conduct*. Thus, Respondent violated Rule 5.1 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 reflected adversely on his integrity and fitness as a certificant, upon the CFP® marks, and upon the profession when he entered a plea of guilty on two felony charges and was sentenced to three years' probation and a \$10,000.00 fine for: 1) participating personally, substantially and willfully in a matter as an employee of the IRS in which he and an organization with whom he was negotiating employment had a financial interest; and 2) willfully disclosing tax return information to another as an employee of the IRS. Thus, Respondent violated Rule 6.5 of the *Rules of Conduct*.

### IV. Discipline Imposed

The Commission found grounds for discipline under Articles 3(a) and 3(c) 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 3.1, 3.2, 5.1 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 or of the United States. The Commission found grounds for discipline

under Article 3(c) because Respondent entered a guilty plea to two felony charges. Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued a five-year suspension.

The Commission cited in mitigation that Respondent had no prior disciplinary actions.

The Commission cited the following as aggravating factors:

1. One day after the payment to the IRS of the penalty, which was 70% of the amount allocated by the bank, the target of the investigation hired Respondent, which was indicative of undue influence;
2. Respondent's use of power in the influencing of the IRS settlement while negotiating employment represented a conflict of interest;
3. Following his departure from the IRS, Respondent violated the IRS's processes and procedures by attempting to influence the remaining audit issues through improper contact with IRS employees;
4. Respondent was charged with multiple felony counts; and
5. Respondent's previous employer terminated him for violation of its policies and practices.

While considering the degree of sanction to impose, the Commission did not consult any *Anonymous Case Histories* ("ACH") as there were no ACHs that were similar to Respondent's matter. The Commission also consulted *Sanction Guidelines* 7 (Conflict of Interest), 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 12 (Employer Policies Violation). The Commission determined that Respondent violated federal laws and his statement to CFP Board did not exhibit any remorse or admission of wrongdoing. While the plea of guilty resulted in sentencing at the low end of the range of potential outcomes, the Commission determined that the guilty plea to two felonies while an employee of the United States Government, coupled with the abuse of his power in a position of public trust for personal gain, warranted a five-year suspension.