

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES  
NUMBER 28519

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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 prior to and after January 1, 2009. The Rules in effect for conduct occurring before January 1, 2009 were Rules 101 through 705 of CFP Board’s *Code of Ethics and Professional Responsibility* (“*Code of Ethics*”). The Rules in effect for conduct occurring after January 1, 2009 were Rules 1.1 through 6.5 of CFP Board’s *Rules of Conduct*.

I. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he filed for Chapter 7 Bankruptcy in 1996 and again in 2010.

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

*1996 Chapter 7 Bankruptcy*

Respondent filed a Petition for Chapter 7 Bankruptcy in the U. S. Bankruptcy Court (“Court”) in June 1996. In September 1996, the Court discharged Respondent’s Bankruptcy. According to Respondent, he and his wife were married in 1991. At that time, both Respondent and his wife were working full-time, and Respondent was also attending college part-time. Respondent worked for Waste Management, making a little over minimum wage. Respondent’s employer told him that the prospects of increasing his earnings were not good unless Respondent finished his degree. Respondent’s wife worked for a health insurance auditing firm. Respondent was responsible for paying for his school expenses. In order for Respondent to continue attending school, he and his wife began utilizing credit cards. Respondent was unable to obtain student loans, as he was only attending school part-time.

In January 1995, Respondent’s wife gave birth to their daughter. After her maternity leave, she returned to work. In late 1995, however, she was laid off due to her company’s downsizing. At that point, Respondent and his wife reviewed their debt situation. Respondent stopped going to school and got a part-time job delivering newspapers. However, Respondent’s income did not make up for the loss of his wife’s full-time salary. Respondent’s wife’s prospects were not good, as the few positions she was able to find were part-time. After taking into account the cost of child care, those positions would not have provided enough income to replace the income that she earned with her full-time position.

Respondent and his wife then went to a financial professional for counseling. After reviewing their situation and the job prospects for Respondent’s wife, the counselor told them that the best course of action would be to file for bankruptcy. Respondent and his wife considered a Chapter 13 filing. They could not manage the repayment plan, however, because they would not have enough income left to pay their rent and provide for basic needs. They then filed a Petition for Chapter 7 Bankruptcy.

## *2010 Chapter 7 Bankruptcy*

Respondent filed a Petition for Chapter 7 Bankruptcy in the Court in May 2010. In August 2010, the Court discharged Respondent's Bankruptcy. According to Respondent, he entered the insurance industry in 1999. For the next eight years, he worked as an agent for an Illinois insurance company. During this time, Respondent tried to build his business, taking on debt in order to market for new clients. In 2007, Respondent realized that the company he worked for was slowly losing market share. At that time, Respondent had put approximately \$50,000 into the business. Respondent knew that because his income was declining, he needed to find a position with a steady salary.

In October 2007, Respondent obtained a position with a different insurance carrier as a training manager. His salary was enough to cover household expenses and Respondent's business debts. Respondent's cash flow at the time was close to one dollar in for every dollar out. Respondent and his wife were able to set aside approximately four months of emergency funds. At that time, Respondent's employer promised him a twenty percent raise in salary after being with the firm for one year.

In June 2008, Respondent had a massive heart attack and was not able to work for two months. During this time, Respondent's family had to use over fifty percent of their emergency funds because Respondent did not have short-term disability with his employer. In October 2008, Respondent's employer informed him that he would not receive the promised salary increase due to the downturn of the economy and other factors. Respondent's employer also told Respondent that if business improved, he would consider giving Respondent a raise in October 2009. During 2008 and 2009, Respondent and his family cut back on their expenses. They cut everything that was non-essential out of their lives. Respondent also looked at the possibility of obtaining a part-time job, but was unable to find one.

In June 2009, Respondent's employer informed him that the firm was experiencing financial difficulty, and could no longer employ him. Respondent's last day was July 30, 2009. Respondent immediately began looking for work, and in August 2009 went on unemployment while looking for a new position. During this time, Respondent and his family depleted the remainder of their emergency funds and fell behind on their bills.

In January 2010, Respondent accepted a sales position with an insurance company. At that time, Respondent's employer promised that he would eventually have a book of business, but for the time being, he would be commission only. Respondent and his wife continued to pay as much as they could, but kept falling farther behind on paying off their debts. They then met with friends who were financial planners to go over all their bills and cash flow. The planners' advice was to file for bankruptcy. Since Respondent was doing insurance sales again, he thought that not having old debt would give his family the opportunity to pay their mortgage and give them the ability to start building a decent cash flow. Filing for bankruptcy also gave Respondent the ability to have money for marketing and building a new book of business while he waited for the book of business his employer promised him.

Respondent and his wife filed a Petition for Chapter 7 Bankruptcy in April 2010. Respondent stated that he had inadequate cash flow for filing a Chapter 13 Petition. Respondent stated that no debts that exceeded \$15,000 were discharged in his Bankruptcy. During 2010 and 2011, Respondent continued to try to build a book of business, and to wait for the book of business promised to him. In early 2012, Respondent realized that he was never going to obtain the book of business that his employer promised to provide. Respondent began looking for another position, and eventually obtained a sales position with a bank in November 2012. This position gave Respondent a guaranteed base salary with commissions. Since Respondent began working for the bank, his income had been steadily increasing. Respondent stated that what he has gone through personally helps him to better relate to people who are struggling to ensure that they have the funds for their retirement years.

### 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.*

As a CFP® professional, Respondent is held to a higher standard of care than the average business professional. In 1996, Respondent filed for Chapter 7 Bankruptcy. Respondent's filing demonstrated an inability to manage his personal finances. The Commission found that as a result, Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and the profession. Thus, Respondent violated Rule 607 of the *Code of Ethics*.

- 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.*

As a CFP® professional, Respondent is held to a higher standard of care than the average business professional. In 2010, Respondent filed for Chapter 7 Bankruptcy. This Bankruptcy was Respondent's second filing in 14 years, demonstrating a continued inability to manage his personal finances. The Commission found that as a result, Respondent engaged in conduct that reflects adversely on his integrity and fitness as a CFP Board designee, upon the marks, and the profession. 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* or *Rules of Conduct*. 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 two year suspension.

The Commission cited the following mitigating factors:

1. Respondent had a heart attack in 2008 and was laid off in 2009, which were circumstances that were out of his control. After the second bankruptcy, Respondent took proactive steps to improve his financial circumstances, including changing employers and compensation structures in order to establish a steady income.
2. Prior to filing either bankruptcy, Respondent met with financial professionals for guidance. In both instances, he was advised to file Chapter 7 (in the first case, he could not afford the repayment terms under Chapter 13 and, in the second case, he had inadequate cash flow for the court to consider a Chapter 13 filing).
3. There were 14 years between the two filings, and the first bankruptcy was prior to his CFP® certification.
4. There were no customer injuries and Respondent had no customer complaints since joining the industry 22 years ago.
5. Respondent communicated to the Commission that he was not proud of his bankruptcies. The bankruptcies afforded Respondent a foundation from which to work with his clients using empathy, conviction, and openness, as well as a real-world perspective to help him educate his clients about dealing with debt and living within their means. Respondent has been forthcoming with clients in disclosing the fact of his bankruptcies, and has tried to adhere to CFP Board's *Standards*, including those requiring

disclosure. Respondent also admitted that his conduct reflected adversely on the CFP® Marks in violation of Rules 607 and 6.5.

The Commission cited as aggravating factors that:

1. Respondent's bankruptcies resulted in the discharge of similar debt in both cases. In both instances, he owed more on his cars than they were worth and had significant credit card debt. He had very little student loan debt discharged in the first bankruptcy and very little in medical expenses discharged in the second bankruptcy (despite having had a major heart attack two years prior to the bankruptcy). Respondent also had a second mortgage on his primary residence, causing him to owe \$40,000 more than the house was worth.
2. Respondent completely discharged his debts in both bankruptcies.
3. To date, despite the prior discharges of his debt obligations, he and his wife have demonstrated no significant progress in improving their financial affairs, have no financial cushion for failure, and are still barely living within their means. The risk that they might face a third bankruptcy if any part of their current plan (e.g., his health, his currently-salaried position) falls by the wayside is a very real concern to the Commission.

While considering the degree of sanction to impose, the Commission consulted *Anonymous Case Histories* 28137, 27018, 26870 and 26970. The Commission also consulted *Sanction Guideline* 1 (Two or More Personal or Business Bankruptcies). The Commission determined a two-year suspension would be appropriate to allow Respondent adequate time to build an emergency fund, get his oldest daughter through college, and get his middle child out of high school (and presumably into college). As a condition to reinstating his CFP® certification, Respondent must demonstrate that he established an adequate emergency fund and was continuing to improve his cash flows and overall financial circumstances.