CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 28694

This is a summary of a decision issued following 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 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. <u>Issue Presented</u>

Whether a CFP® professional ("Respondent") violated CFP Board's *Standards of Professional Conduct* when she filed for Chapter 7 Bankruptcy in 1992 and again in 2012.

II. <u>Findings of Fact Relevant to the Commission's Decision</u>

<u>1992 Chapter 7 Bankruptcy</u>

Respondent filed a Chapter 7 Petition for Bankruptcy in the U.S. Bankruptcy Court of State ("Bankruptcy Court 1") in December 1992. In June 1993, the Bankruptcy Court 1 discharged Respondent's bankruptcy.

According to Respondent, she filed a Chapter 7 Petition for Bankruptcy due to financial and marital circumstances. Respondent's husband at the time was a general contractor. They had been unable to successfully manage their finances while trying to support her husband's contracting business during the real estate downturn. Respondent and her husband separated in mid-1991 and lost their home to foreclosure in early 1992. Their divorce was finalized in June 1992.

<u>2012 Chapter 7 Bankruptcy</u>

Respondent filed a Chapter 7 Petition for Bankruptcy in another U.S. Bankruptcy Court of State ("Bankruptcy Court 2") in December 2012. In April 2013, Bankruptcy Court 2 discharged Respondent's bankruptcy.

According to Respondent, she and her husband filed a Chapter 7 Petition for Bankruptcy because their combined income had deteriorated through no fault of their own. Their combined income for 2006 through 2009 was approximately $275,000 annually. It is currently approximately $160,000 annually. The reduction of income was due to the loss of about $35,000 in annual income from Respondent's employer at the time, Firm ("Firm"), and the reduction of her husband's income from Hospital of about $70,000 annually due to corporate downsizing.

Respondent and her husband put their house up for sale in February 2011, hoping of selling it and resolving that financial obligation. Their home was valued at approximately $635,000 with loans of $965,000 outstanding. Their bank accepted their petition to do a short sale, but it did not accept any offers from potential buyers. According to Respondent, they had been unable to sell their home due to problems with leaks in their pool and ground erosion of the property. These concerns caused Respondent and her husband to decline a loan modification offer from the bank due to their inability to make the necessary repairs to the home.

Respondent stated that she and her husband had spent all emergency funds they had accumulated to deal with a personal financial crisis several months prior to the bankruptcy filing. At the time of filing, Respondent and her husband used lines of credit to cover bills and student loans and fees. After Respondent graduated from University in January 2011, she and her husband drastically reduced their spending. Respondent's income from Firm ceased in late 2011, and she and her husband made further reductions in their expenses.

According to Respondent, she and her husband considered several factors when deciding to file for bankruptcy. If their bank foreclosed on their home and sold the property for less than the loans outstanding on them, they would be held personally liable for the difference. This amount was over $300,000 and the bank could have a 1099 filed for the entire difference for up to four years following the sale of the property. Respondent and her husband were not willing to take a chance on this situation occurring.

Respondent also cited the problems with the condition of their property as another factor when considering bankruptcy. Respondent stated that their home has been shifting and settling with new cracks inside the home and breaks in concrete outside the home. Estimated repair costs were $110,000, which Respondent and her husband did not have. These problems were part of the reason for the lack of sales opportunities for their home. Respondent stated that potential buyers wanted to buy it and make a profit, while the bank would not accept the offers being made.

In her October 2013 statement to CFP Board, Respondent stated that their financial situation has improved since their bankruptcy. Prior to the bankruptcy, she and her husband were trying to maintain several large credit card payments, two automobile loans, insurance costs and student loans, as well as utilities, food, insurance payments and other expenses. These costs were approximately $5,000-$6,000 per month. Their income is $7,000 per month. Respondent's credit card payments were discharged in the bankruptcy and her husband turned in his car ($700/month plus insurance), lowering their current monthly expenses to approximately $3,500-$4,000. Respondent also stated that they sold their house in a short sale with escrow closing within weeks of the hearing.

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.

CFP Board's Complaint alleged that Respondent's 1992 Bankruptcy filing demonstrated an inability to manage her personal finances and was conduct that reflects adversely on her integrity and fitness as a CFP Board designee, on the marks, and the profession. The Commission determined, however, that the 1992 Chapter 7 Bankruptcy occurred 22 years ago, which was 19 years before Respondent became a CFP® professional. The Commission did not find that Respondent engaged in conduct that reflects adversely on her integrity and fitness as a CFP® professional, upon the marks, and the profession with respect to the 1992 Chapter 7 Bankruptcy. Thus, Respondent did not violate 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 2012, Respondent filed for Chapter 7 Bankruptcy. The Commission determined that the 2012 Bankruptcy was Respondent's second filing in 20 years, demonstrating a continued inability to manage her personal finances. As a result, Respondent engaged in conduct that reflects adversely on her integrity and fitness as a CFP Board designee, on 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 6.5 of the *Rules of Conduct.* Pursuant to Article 4.3 of the *Disciplinary Rules*, the Commission issued the Respondent a one year suspension of her right to use the CFP® marks. The Commission also ordered Respondent to complete six hours of remedial education in the area of General Principles of Financial Planning from CFP Board's Principle Topics List.

While considering the degree of sanction to impose, the Commission consulted Anonymous Case Histories ("ACH's") 23271, 28137, 28337, 28477, 28278 and 27018 and *Sanction Guideline* 1 (Two or More Bankruptcies).

The Commission considered the following mitigating factors:

1. Respondent's conduct did not result in client harm;
2. Respondent maintained a clean disciplinary record; and
3. Respondent's first bankruptcy was over 20 years ago.

The Commission considered as an aggravating factor that the record did not demonstrate that Respondent truly exhausted all efforts to better manage her finances prior to filing her second bankruptcy, as she testified that there was some neglect on her part in handling her finances.