

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29217

This is a summary of a Settlement Agreement entered into at the February 2015 hearings of the Disciplinary and Ethics Commission (“DEC”) of Certified Financial Planner Board of Standards, Inc. (“CFP Board”). The conduct at issue in this case occurred after January 1, 2009. Rules 1.1 through 6.5 of the *Rules of Conduct* were in effect.

I. Issues Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he: 1) filed for Chapter 7 Bankruptcy in 2010, which was his second bankruptcy within the span of 14 years; and 2) failed to disclose his second bankruptcy to CFP Board on his renewal application.

II. Findings of Fact

1997 Chapter 7 Bankruptcy

Respondent filed a Chapter 7 Petition for Bankruptcy in State in May 1997. In August 1997, State discharged Respondent’s Bankruptcy. According to Respondent, he was in a car accident and received a traffic ticket. He bought the other party a new bumper to resolve the matter. Over 3 years, the other party filed numerous claims with their property and casualty insurance for expenses relating to gym memberships, massage therapists and chiropractors. The insurance company rejected some of these claims and the other party sued the company. The insurance company sued Respondent because he had received the ticket. Respondent said he filed for bankruptcy because he could not afford to hire an attorney to fight the case, his annual salary was approximately \$30,000, he had depleted his savings a year earlier to buy a home, and he incurred significant medical expenses.

2010 Chapter 7 Bankruptcy

Respondent filed a Chapter 7 Petition for Bankruptcy in State in September 2011. In March 2011, State discharged Respondent’s Bankruptcy. According to Respondent, he and his wife began the process of divorce in 2008. As part of the settlement, Respondent was to continue paying all debts and expenses – averaging \$4,000 to \$4,500 a month – until June 2009 in lieu of child support and maintenance payments. Respondent would then list their house for sale and, once sold, begin paying child support and maintenance payments. Respondent was also responsible for paying a \$7,000 tax bill from the Internal Revenue Service. In May 2008, Respondent purchased a book of business from another advisor. Respondent said that the financial crisis in 2008 and 2009 cut his fee-based revenue nearly in half. Respondent had a significantly underwater mortgage and could not get a buyer for the house in a short sale for two years.

A year after the divorce was final, Respondent re-married but began divorce proceedings again a few months later. His second wife sued him seeking maintenance payments. The court case lasted two years and cost him approximately \$70,000. During that time Respondent renegotiated payments with first ex-wife so he was paying a total of \$2,600 per month in maintenance and child support from the first divorce and attorney’s fees for the second divorce. Respondent’s average annual income was \$60,000 to \$70,000. Respondent eventually sold his advisory practice and took a job at a school. Respondent said his failure to report the second bankruptcy to CFP Board was purely an oversight.

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 trademarks and professional review operations and requirements.*

In 2013, Respondent failed to disclose to CFP Board that he filed for a second Chapter 7 Bankruptcy in 2010. As a result, Respondent did not abide by the terms and conditions required to renew his certification. Thus, Respondent violated Rule 6.1 of the *Rules of Conduct*.

- 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 his second filing in 14 years. 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* 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’s conduct violated Rules 6.1 and 6.5 of CFP Board’s *Rules of Conduct*. CFP Board and Respondent entered into a Settlement Agreement wherein Respondent admitted to the alleged rule violations and proposed discipline. Based on the terms of the Settlement Agreement, the Commission issued to Respondent a Public Letter of Admonition, pursuant to Article 4.2 of the *Disciplinary Rules*.

In agreeing to this settlement, the Commission considered as an aggravating factor that Respondent’s cash flow at the time of the hearing was negative and he had substantial liabilities on his balance sheet.

The Commission did not cite any mitigating factors.

In arriving at its decision, the Commission consulted Anonymous Case Histories (“ACH”) 28278, 28337 and 27018. The Commission also consulted *Sanction Guideline 1* (Two or more bankruptcies). The Commission noted that Respondent had two bankruptcy filings over the span of 14 years. They elected to discount the first bankruptcy because it was filed prior to Respondent’s employment in the financial services industry. The Commission reviewed the ACH’s cited above, which supported the Commission’s decision to discount the first bankruptcy in instances where the bankruptcy occurred several years prior to the matter at hand and/or prior to Respondent’s entry into the financial services industry.