

ANONYMOUS CASE HISTORIES
NUMBER 29538

This is a summary of a decision issued following the February 2016 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: 1) filed Chapter 7 Bankruptcy in 1990 and again in 2014; and 2) informed CFP Board on multiple renewal applications for CFP® certification that he had not been a defendant or respondent in a civil action including, but not limited to, a lawsuit, arbitration or mediation relating to his professional activities when in 2009, Respondent was a defendant in a class action lawsuit concerning his professional activities.

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

1990 and 2014 Chapter 7 Bankruptcies

Respondent filed the second Chapter 7 Bankruptcy in December 2014 and received a discharge in May 2015. In that proceeding, Respondent reported approximately \$429,000 in assets and \$1,332,000 in liabilities, including a federal tax liability of approximately \$803,000 that represented unpaid income tax from 2007, 2009 and 2010. Respondent represented that he accumulated the tax liabilities because of significant income tax penalties and interest charges, expensive divorces in 2003 and 2009, and a significant drop in income from 2011 to the present. Respondent’s cash flow statements show a 19.3% decrease in monthly gross income from approximately \$35,110 in 2013 to \$28,330 in 2014.

The bankruptcy filing in 2014 was Respondent’s second bankruptcy filing. Respondent contends that he filed the first such proceeding in 1990, after he invested \$50,000 in a tax shelter that the Internal Revenue Service later determined was subject to tax recapture, resulting in a \$200,000 tax liability. Respondent represented that the documentation concerning the 1990 bankruptcy was no longer available.

Failure to Disclose to CFP Board

All CFP® professionals are required to complete an Ethics Declaration in which they are asked to make representations regarding their professional conduct since their last renewal. In applying to renew his CFP® certification in 2010, 2011 and 2013, Respondent completed his Ethics Declaration by representing to CFP Board that he had not been a defendant or a respondent in a civil action including, but not limited to, a lawsuit, arbitration or mediation relating to his professional activities.

In January 2015, CFP Board received an anonymous complaint alleging that Respondent, in fact, had a civil judgment entered against him as a result of his professional activities. CFP Board subsequently discovered that Respondent entered into a settlement agreement in 2009 to settle a class action lawsuit filed against Respondent related to his recommendation of investments in DL Fund, which turned out to be a Ponzi-type scheme. The settlement agreement required Respondent to pay \$365,000. Respondent represented that he had paid \$310,000 of that obligation, with another \$55,000 still due.

III. Commission's Analysis and Conclusions Regarding Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(a) of the *Disciplinary Rules and Procedures* (“*Disciplinary Rules*”), there are grounds to discipline Respondent for acts or omissions that violate Rule 6.5 of the *Rules of Conduct*, which provides that a certificant shall not engage in conduct that reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.

The Commission found that Respondent filed for Chapter 7 Bankruptcy in 1990 and again in 2014. Both bankruptcy filings occurred while Respondent was a CFP® professional. Filing for two personal bankruptcies is conduct that reflects adversely on Respondent’s integrity, fitness as a certificant, upon the CFP® marks, and upon the profession. Therefore, Respondent’s conduct violated Rule 6.5 of the *Rules of Conduct*.

Second Ground for Discipline

Pursuant to Article 3(g) of the *Disciplinary Rules*, a CFP® professional shall not make any false or misleading statement to CFP Board.

The Commission found that in applying to renew his CFP® certification in 2010, 2011 and 2013, Respondent informed CFP Board that he had not been a defendant or respondent in a civil action including, but not limited to, a lawsuit, arbitration or mediation relating to his professional activities. However, in 2009, Respondent was a defendant in a class action lawsuit concerning his professional activities. Respondent’s false and misleading disclosures on the renewal applications provided grounds for discipline under Article 3(g).

IV. Discipline Imposed

The Commission determined that Respondent’s conduct violated Rule 6.5 of the CFP Board’s *Rules of Conduct*, which provided grounds for discipline pursuant to Articles 3(a) and 3(g) of the *Disciplinary Rules*. Pursuant to Article 4.4 of the *Disciplinary Rules*, the Commission issued Respondent an Order to Permanently Revoke Respondent’s right to use the CFP® marks.

The Commission cited as aggravating factors that:

1. Respondent filed two bankruptcies, one in 1990 due to a \$200,000 tax recapture on a \$50,000 tax shelter and one in 2014, due to a \$800,000 tax debt;
2. Respondent failed to pay income taxes in 2007, 2009 and 2010;
3. Respondent’s conduct occurred while holding himself out publically as “Financial Planning [Expert]” on a local radio show;
4. Respondent was previously investigated in 2010 for a State tax lien, resulting in a dismissal with caution;
5. Respondent was the subject of a class action lawsuit in 2009 for selling an investment to clients that was later determined to be a Ponzi scheme; and
6. Respondent’s income is sufficient to meet his obligations, as evidenced by his largest debts being income tax-related.

The Commission cited in mitigation that Respondent is still paying victims of the class action lawsuit due to involvement in a Ponzi scheme and he is also completing a repayment plan for his State taxes.

The Commission consulted *Sanction Guideline 1* (Two or More Bankruptcies). The Commission also reviewed *Anonymous Case Histories* 26870, 26970 and 28137. In arriving at its decision, the Commission determined that revocation was consistent with the *Sanction Guidelines* and previous case histories.