

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29915

This is a summary of a Settlement Agreement entered into at the June 2016 hearings of the Disciplinary and Ethics Commission (“the 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. Issue Presented

Whether a CFP® professional (“Respondent”) violated CFP Board’s *Standards of Professional Conduct* when he was convicted of his second DUI misdemeanor.

II. Findings of Fact

2005 DUI Conviction

In August 2005, prior to becoming a CFP® professional, Respondent was convicted of DUI, a misdemeanor, and sentenced to three years of probation and a period of work release. CFP Board reviewed the matter and decided to certify Respondent, but cautioned Respondent to comply with the laws, rules and regulations of all applicable governing agencies, including CFP Board, and to govern himself in a manner that reflects positively on the financial planning profession. CFP Board further notified Respondent that the DWI conviction would be taken into consideration in determining any appropriate action should disciplinary violations occur in the future. (*Id.*)

2015 DUI Conviction

In July 2015, Respondent disclosed to CFP Board that a police officer had arrested and charged him with DUI. Respondent told CFP Board that he drank a few beers at a charity benefit concert. Respondent left the concert and drove to a restaurant. Upon reaching home, a State Police Trooper tapped on Respondent’s window and said that a driver on the local interstate had reported an erratically driven car. The driver’s description of the car matched Respondent’s vehicle. Respondent told the officer that he had dropped a bag of hot food on his lap. Respondent also told the officer that he had not been drinking, when in fact, he did have a few beers earlier that day. Respondent said the officer arrested him after he submitted to field sobriety and Breathalyzer tests.

In November 2015, Respondent pleaded guilty to a misdemeanor and was sentenced to one year of incarceration with work release. Respondent said that pleading guilty allowed him to continue working without interruption due to incarceration. Respondent further stated that he has completed a 28-day DUI treatment program.

III. Grounds for Discipline

First Ground for Discipline

Pursuant to Article 3(a) of the *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 which reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks, or upon the profession.

Article 13.1 of the *Disciplinary Rules* provides that a certificate from the clerk of any court of criminal jurisdiction indicting that a Respondent has been convicted of a crime in that court shall conclusively establish the existence of such conviction for purposes of disciplinary proceedings and shall be conclusive proof of the commission of that crime by the Respondent. CFP Board provided such proof. Thus, the Commission found that Respondent violated state law and was convicted of a DUI misdemeanor in 2015, his second DUI conviction. Respondent's conviction reflects adversely on his integrity and fitness as a certificant, upon the CFP® marks, and upon the profession. Therefore, Respondent violated Rule 6.5 of the *Rules of Conduct*.

Second Ground for Discipline

Pursuant to Article 3(c) of the *Disciplinary Rules*, there are grounds to discipline Respondent for acts or omissions that violate the criminal laws of any State. The Commission found that in 2015, Respondent was convicted of a DUI misdemeanor in violation of State statutes. Therefore, Respondent violated Article 3(c) of the *Disciplinary Rules*.

IV. Discipline Imposed

The Commission determined that Respondent's conduct violated Rule 6.5 of the *Rules of Conduct* and provided grounds for discipline under Articles 3(a) and 3(c) of the *Disciplinary Rules*. The Commission issued Respondent a Private Censure pursuant to Article 4.1 of the *Disciplinary Rules*.

The Commission considered in mitigation that:

1. Respondent reported the DUI to CFP Board within days of the incident occurring;
2. Respondent cooperated with the investigation and has taken actions to address his issues with alcohol; and
3. Respondent took full responsibility for his actions and stated that he was humbled and embarrassed by the situation. The Commission felt he expressed genuine remorse.

The Commission considered as an aggravating factor that Respondent was not truthful when he told the arresting officer that he was not drinking.

In arriving at its decision, the Commission consulted *Anonymous Case Histories* 22203 and 28598. The Commission also consulted *Sanction Guideline* 24 (Misdemeanor Criminal Conviction). The Commission felt that the Private Censure was appropriate given that Respondent's two DUI's were ten years apart and he has been diligent about attending Alcoholics Anonymous meetings and changing his behavior.