

CERTIFIED FINANCIAL PLANNER BOARD OF STANDARDS, INC.

ANONYMOUS CASE HISTORIES
NUMBER 29970

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 Initial Application for Certification (“Application”) in this case was filed after September 14, 2012. CFP Board’s *Fitness Standards for Candidates and Professionals Eligible for Reinstatement* (“*Fitness Standards*”) were in effect at that time.

I. Issue Presented

Whether a candidate for CFP® certification could be certified when she filed for Chapter 7 Bankruptcy in 2003 and Chapter 13 Bankruptcy in 2004.

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

Respondent submitted an Initial Application for CFP® Certification to CFP Board in August 2015 (“Application”). On her Application, Respondent disclosed to CFP Board that she had filed for Chapter 7 Bankruptcy in 2003. CFP Board discovered that Respondent had also filed for Chapter 13 Bankruptcy in 2004. In September 2015, CFP Board mailed a Notice of Investigation (“NOI”) to Respondent. In her NOI response of September 2015, Respondent provided documentation and a statement regarding the 2003 and 2004 bankruptcies.

As a result of CFP Board’s investigation into Respondent’s matter, CFP Board Counsel determined that Respondent’s conduct was presumed to be unacceptable and issued a Notice to Commence Petition for Consideration of the *Fitness Standards* in December 2015.

In December 2015, Respondent filed a Petition for Consideration pursuant to the *Fitness Standards* and in February 2016, a Hearing Panel of the Commission convened to review Respondent’s Petition for Consideration.

2003 Chapter 7 Bankruptcy

In February 2003, Respondent filed for Chapter 13 Bankruptcy protection in the United States Bankruptcy Court in State 2 (“Bankruptcy Court”). In May 2003, Respondent converted her petition from Chapter 13 to Chapter 7. The Bankruptcy Court discharged Respondent’s Chapter 7 Bankruptcy in October 2003.

Respondent said that from 1993 to 2003, she operated up to nine franchises in State 1 and State 2. Respondent owned the franchises with a partner who managed the operational aspects of the franchises while Respondent managed the finances of the franchises. In 2002, Respondent became ill and had to take leave from the franchises. During her leave due to illness, Respondent’s partner did not do a good job of managing the finances of the franchises. Respondent took steps to mitigate the actions of her partner by relinquishing control of three of the franchises in State 1, selling one store in State 2 and closing two remaining stores. Despite these actions, Respondent still had a franchise agreement in effect and faced the possibility of legal action for closing the stores.

Respondent met with an attorney regarding her legal situation. The attorney advised Respondent to seek bankruptcy protection. As stated above, Respondent initially filed for Chapter 13 Bankruptcy, but later converted it to a Chapter

7 Bankruptcy after consultation with her attorney. According to Respondent, she discharged one debt over \$15,000, which was the result of a loan on an automobile.

2004 Chapter 13 Bankruptcy

In September 2004, Respondent filed for Chapter 13 Bankruptcy protection in Bankruptcy Court. That same day, Respondent filed a proposed Chapter 13 Plan Summary. According to the plan summary, Respondent would pay \$205 per month for 60 months. The plan allowed holders of secured claims, Bank 1 and Bank 2, to retain their mortgage liens against Respondent's home. Respondent agreed to continue to make direct payments to Bank 1 and Bank 2 in the amount of \$960 and \$230, respectively. In October 2004, the Bankruptcy Court issued an "Order Confirming Plan," which allowed Respondent to make monthly payments of \$210 for 60 months. Respondent indicated that she was not aware that she had filed for Chapter 13 Bankruptcy in 2004.

Respondent's Finances Since the Bankruptcy Filings

Respondent indicated that she now maintains a credit score in the high 700s. Respondent indicated that she has personal and retirement savings, assets and very little debt. Respondent's net worth statement indicated that she had a net worth in September of 2015 of approximately \$344,000. Respondent also reported approximately \$15,000 of positive monthly cash flow. Respondent indicated that she currently owns a home and two cars. Respondent was also offered a Limited Partnership with Firm in 2014, which became effective in 2015. Respondent's tax returns indicated that she had approximately \$126,000 in income in 2013 and \$108,000 in income in 2014.

III. Commission's Determination on Respondent's Fitness

Under CFP Board's *Fitness Standards*, conduct that is may reflect adversely upon the profession or upon the CFP® marks may bar an individual from becoming certified unless the individual petitions the Commission for consideration and the Commission grants the petition. Upon consideration of the facts in this matter, the Commission hereby grants Respondent's Petition for Consideration after determining Respondent's conduct did not reflect adversely on her fitness, upon the profession or the CFP® certification marks.

In reaching its decision, the Commission noted that Respondent was not aware that she had filed for two bankruptcies. The Commission noted that the second bankruptcy appeared to arise from the same set of financial circumstances and appeared to be a "clean-up" of debts remaining from the original bankruptcy, most notably secured claims in the form of mortgage liens on Respondent's home.

The Commission noted in mitigation that:

1. Respondent was a successful business person prior to her bankruptcies and has become successful after the bankruptcies.
2. Respondent currently has a credit score in the high 700s and owns her home and two cars.
3. Respondent has been able to build a successful career at Firm.
4. Respondent's bankruptcy was primarily the result of her illness.

The Commission did not note any aggravating factors.

The Commission reviewed *Anonymous Case History* 28638 in reaching its decision.