

THE DISCIPLINARY AND ETHICS COMMISSION



IN THE MATTER OF
JUSTIN G. WARD, CFP®,
Respondent.

CFP Board Case No. 2022-63711

May 13, 2024

ORDER

I. Procedural Background

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) granted Respondent the right to use CFP Board certification marks, including the CFP®, CERTIFIED FINANCIAL PLANNER™,  and  certification marks (“CFP Board marks”), on December 16, 2014, and he has been certified since that date (DEC Book at 12, 265.)¹

On April 22, 2022, CFP Board Enforcement Counsel delivered to Respondent a Notice of Investigation (“NOI”) requesting certain information and documents related to his Chapter 7 bankruptcy filing and misdemeanor charge. (DEC Book at 54-56.) On June 1, 2022, Enforcement Counsel delivered to Respondent a second NOI (*id.* at 57), and, on July 14, 2022, sent Requests for Documents and Information. (*Id.* at 58-61.)

On August 15, 2022, Enforcement Counsel sent Respondent a Notice of Failure to Cooperate (“Notice”) for failure to respond to its July 14, 2022 Requests for Documents and Information. (*Id.* at 62.) The Notice stated that Respondent had 14 days to cure the failure. (*Id.*) When Respondent did not cure his failure within 14 days, Enforcement Counsel delivered to Respondent a Notice of Complaint and Complaint on September 15, 2022, which alleged grounds for sanction for failure to cooperate. (*Id.* at 63-71). When Respondent did not Answer the September 15, 2022 Complaint, Enforcement Counsel issued Respondent an Administrative Order of Revocation (“AOR”) on December 1, 2022 pursuant to Article 4.2 of the *Procedural Rules* in place at the time. (*Id.* at 72-75.) However, as described below, the AOR was later withdrawn by Enforcement Counsel and the investigation continued.

On September 5, 2023, Enforcement Counsel delivered to Respondent a Notice of Complaint and Complaint that alleged a violation of CFP Board’s *Code of Ethics and Standards of Conduct* (“*Code and Standards*”) and the predecessor *Rules of Conduct* and set potential hearing dates in February 2024. (*Id.* at 1-6.) On September 26, 2023, Respondent filed an Answer, in which admitted most of the allegations and provided a statement to the Commission. (*Id.* at 265-269.)

¹ The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*.

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On February 22, 2024, a Hearing Panel of the Commission convened by video conference to review the above-described CFP Board Complaint. (Transcript of Hearing of Justin G. Ward, February 22, 2024 (“Ward Tr.”) at 1.) After the hearing, the Hearing Panel requested additional information from the parties, to which Enforcement Counsel responded on March 1, 2024. (*See* Exhibit A.) The Commission considered the Hearing Panel’s recommendation and issued its final order on May 13, 2024.

II. Findings of Fact

A. Background

Respondent has passed the (a) Series 7 – General Securities Representative Examination (2009); (b) Series 66 – Uniform Combined State Law Examination (2009); and (c) SIE – Securities Industry Essentials Examination (2016). (DEC Book at 43, 265.)

Respondent is not currently associated with a firm as an investment advisor representative or broker and has not been since 2016. (*Id.* at 46, 51, 265.) During his testimony, he described that he now owns his own business and advises donors on charitable giving. (Tr. at 40.)

Respondent’s 2020 Chapter 7 Bankruptcy Filing

On January 2, 2020, Respondent filed a Voluntary Petition for Chapter 7 Bankruptcy Protection in the Western District of Texas United States Bankruptcy Court. (DEC Book at 77.) Respondent attributed the need to file for bankruptcy to complications in exiting a personal and joint business following the death of his father in 2016. (*Id.* at 76, 265.) Respondent described the joint business as an oil and gas company and stated that he co-signed a loan with his father used to finance drilling. (Tr. at 37-38, 49). The bankruptcy filing identified the creditor for the “loan” as ██████████ “Clearing Services” with a claim of more than \$450,000. (DEC Book at 122.) Respondent stated in testimony that the judgment was for his father’s margin loan about which he had little information. (Tr. at 48.) The Respondent also described that he and his father each took out ten-year term life insurance policies to protect one another in the event of one of their deaths. (*Id.* at 9.)

Respondent’s father’s life insurance policy was unexpectedly denied after his death in 2016. (DEC Book at 76, 265) Respondent was left as the responsible party for the business and after unsuccessfully trying to negotiate his exit, Respondent filed for Chapter 7 bankruptcy protection on the advice of counsel.² (*Id.* at 76, 265.) Respondent admitted that he and his father should have established the business as a limited liability company, which could have shielded him from the need to file a personal bankruptcy. (Tr. at 38.) Respondent’s bankruptcy filing does not reflect a significant amount of other debt, and the documentation submitted by Respondent about his current personal finances demonstrates financial stability. (DEC Book at 151-191.) Although the Commission was concerned that Respondent was unaware of the circumstances of the “loan” that

² The Hearing Panel and Commission found credible Respondent’s statement that, had he received payment from his father’s life insurance policy, he would have been able to repay the business loans, avoiding the need to file for bankruptcy. (Tr. at 42.)

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he co-signed with his father, there is no evidence in the record that shows that Respondent received a financial benefit from his co-signing for the obligation.

Respondent's 2020 Chapter 7 bankruptcy filing was discharged on May 12, 2020. (DEC Book at 158, 265.)

Respondent's Relevant Misdemeanor Conviction

On April 3, 2019, Respondent was arrested and charged with a misdemeanor that is a "Relevant Misdemeanor" pursuant to the *Code and Standards*.³ (*Id.* at 192, 266.) On January 5, 2022⁴, Respondent entered a plea of *Nolo Contendere* to the Relevant Misdemeanor charge in County Court as part of Deferral of Adjudication of Guilt and Supervision Order ("Deferral Order"). (*Id.* at 195, 266.) As part of the Deferral of Adjudication of Guilt and Supervision Order, Respondent was placed on 12 months of probation. (*Id.* at 195, 266.) Respondent completed the term of his probation on January 5, 2023.⁵ (*Id.* at 198-201, 266.)

Respondent Submitted an Inaccurate Ethics Declaration to CFP Board

On January 24th, 2020, Respondent finalized a Renewal Application for CFP® certification by completing an Ethics Declaration and answering "No" to Question 4, which asked whether Respondent "or an organization in which you had material participation, ever filed a petition for bankruptcy?" (*Id.* at 33.) Respondent's "No" answer was inaccurate as Respondent knew he had filed for bankruptcy on January 2, 2020, 22 days prior. (*Id.* at 77.) Respondent failed to report his 2020 bankruptcy filing to CFP Board. (*Id.*)

Respondent states in his Answer that he did not understand that the filing of the bankruptcy triggered his obligation to report his bankruptcy to CFP Board. (*Id.* at 266.) The Hearing Panel did not find this credible, and the Commission agrees. Respondent admitted during testimony that he understood that once filed, creditors would be stayed from enforcing relevant judgments and debt collection – indicating that he did understand the filing date was significant. (Tr. at 42.) During his testimony, Respondent changed his response – admitting he answered incorrectly, likely he just "clicked through," and did not try to excuse the conduct. (*Id.* at 43.) He expressed regret for his conduct and admitted that he understood such disclosures are necessary for transparency to the public. (*Id.* at 43-44.)

³ Standard E.1.b. of the *Code and Standards* defines a "Relevant Misdemeanor" as a criminal offense that is not a felony, for conduct involving fraud, theft, misrepresentation, or other dishonest conduct, crimes of moral turpitude, violence, and/or second or more alcohol and/or drug-related offense.

⁴ Respondent testified that the delay in his prosecution stemmed from the COVID pandemic. (Tr. at 35.)

⁵ On May 18, 2023, the Relevant Misdemeanor conviction became subject to an Order Prohibiting Public Disclosure of Criminal History Record Information ("Order"). (DEC Book at 198-201, 266.) At the request of the Hearing Panel, Enforcement Counsel provided information confirming that the Order does not alter the fact of the Relevant Misdemeanor conviction nor the conclusive effect of the Deferral Order under Article 7.1. of the *Procedural Rules*, nor does the Order apply to CFP Board given that it only prevents state agencies from disseminating information about Respondent's criminal history record relating to the offense that gave rise to the deferred adjudication. (*See Exhibit A.*)

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Respondent's Initial Failure to Cooperate

As noted above, Respondent received an AOR for his failure to Answer the September 15, 2022 Complaint issued to him, which was later withdrawn. Enforcement Counsel and Respondent both stated at the hearing that, after receiving the AOR, Respondent contacted Enforcement Counsel, stated that he had not received the earlier communications directed to him from CFP Board (and, had actually received materials for another Respondent, which the Hearing Panel and the Commission found concerning), agreed to cooperate, and did so cooperate. (Tr. at 26, 32.) Enforcement Counsel stated that the AOR was then withdrawn, and the investigation proceeded, leading to the September 5, 2023 Complaint. (*Id.* at 27.)

III. Discussion of Respondent's Misconduct

To impose a sanction on Respondent, the Commission must find grounds for sanction. The Commission found grounds for sanction under the *Procedural Rules* because it determined that Respondent violated CFP Board's *Code and Standards* and *Rules of Conduct*, as discussed below. The Commission made its decision based on the authority granted to it in Article 12 of the *Procedural Rules*.

First Ground for Sanction

Enforcement Counsel alleges in its Complaint that there are grounds to sanction Respondent for a violation of Standard E.2.a. of CFP Board's *Code and Standards*, which provides that a CFP® professional may not engage in conduct that reflects adversely on his or her integrity or fitness as a CFP® professional, upon the CFP® marks, or upon the profession. Such conduct includes, but is not limited to, conduct that results in a Felony or Relevant Misdemeanor conviction, or admission into a program that defers or with holds the entry of a judgment of conviction for a Felony or Relevant Misdemeanor.

Article 7.1 of the *Procedural Rules* provides that a record from any court of criminal jurisdiction indicating that Respondent has been convicted of a crime in that court or admitted into a program that defers or withholds entry of a judgment of conviction ("Criminal Conviction"), is conclusive proof of the commission of the crime and that Respondent engaged in the criminal conduct that led to the Criminal Conviction.

The County Court is a court of criminal jurisdiction. The Deferral Order is a record indicating that Respondent has entered into a program that defers or withholds the entry of a judgment of conviction for a Relevant Misdemeanor. Therefore, this record conclusively establishes the commission of the underlying crime and that Respondent engaged in the criminal conduct for purposes of this disciplinary proceeding.

Respondent was a CFP® professional at all times relevant to this violation.

Therefore, there are grounds to sanction Respondent for a violation of Standard E.2.a. of the *Code and Standards*.

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Second Ground for Sanction

Enforcement Counsel alleges in its Complaint that there are grounds to sanction Respondent for a violation of Rule 6.5 of CFP Board's *Rules of Conduct*, which provides that 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.

Conduct that reflects adversely in violation of Rule 6.5 includes a personal bankruptcy or business bankruptcy filing or adjudication. Respondent filed for Chapter 7 Bankruptcy on January 2, 2020, which was his first bankruptcy filing.

Conduct that reflects adversely in violation of Rule 6.5 includes submitting an inaccurate ethics declaration to CFP Board. Respondent submitted an inaccurate ethics declaration on January 24, 2020, when he answered "No" to Question 4 which asked, "have you, or an organization in which you had material participation, ever filed a petition for bankruptcy?" despite having filed for bankruptcy just 22 days prior to completing the application.

Respondent was a CFP® professional at all times relevant to this violation.

Therefore, there are grounds to sanction Respondent for a violation of Rule 6.5 of the *Rules of Conduct*.

IV. The Commission's Decision

Pursuant to Article 12.3 of CFP Board's *Procedural Rules*, the Commission's final order must impose a sanction if the Commission finds a violation that does warrant a sanction. The Commission has discretion to order a sanction among those applicable sanctions set forth in Article 11.1.

After carefully considering the evidence in Respondent's matter and the violations found, the Commission determined to issue to Respondent an **Order of Public Censure**.

CFP Board issued its non-binding *Sanction Guidelines* that are intended to serve as guidance for determining appropriate sanctions. The Commission considered the following *Sanction Guidelines*:

1. Conduct 1(a): One Personal or Business Bankruptcy (Public Censure).
2. Conduct 10: Conviction Within the Last 10 Years of a Felony or Any Relevant Misdemeanor Involving Probation Only (Public Censure).
3. Conduct 22: Inaccurate Ethics Declaration (Public Censure).

The Commission then reviewed the aggravating and mitigating factors in this case to determine whether there were any material factors relevant to this matter, and, if so, what weight those factors may have in its decisions.

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The Commission considered in mitigation that:

1. There was no evidence of harm to clients.
2. Respondent's testimony demonstrated regret for his conduct, apology for his conduct, and appreciation for the importance of transparent reporting for the benefit of the public.
3. Respondent may have avoided filing for bankruptcy, but relied upon advice of counsel that he should do so.
4. The Relevant Misdemeanor was an isolated incident, and the Commission believes there is little chance of repeat behavior.

The Commission considered the following aggravating factors:

1. Respondent was not credible in describing why he did not disclose the bankruptcy on his Ethics Declaration, leading the Commission to believe he was attempting to conceal it.

The Commission then consulted *Case Histories* (referred to as "ACHs" or "CHs") and specifically cited CH 42626, CH 27921, and CH 25291.

In CH 42626, the respondent had a single bankruptcy that was the direct result of financial and emotional abuse by an ex-spouse, and not because respondent was unable to handle their financial affairs. Given that the respondent was no longer in contact with the ex-spouse, the Commission did not believe the circumstances would occur again, and respondent had rebuilt their savings and not incurred additional debt, the Commission dismissed the matter. The Commission did not find this *Case History* particularly relevant to the instant matter given the unique circumstances. Further, that matter had a single ground for sanction (a single bankruptcy) when two grounds for sanction (bankruptcy and adverse conduct due to a Relevant Misdemeanor) have been found here and Respondent did not allege any coercion or abuse that led to the circumstances of the bankruptcy.

In CH 27921, the Commission issued a Public Censure after the respondent filed Chapter 7 bankruptcy as a result of her resignation from a previous broker-dealer to start her own practice, which resulted in reduction of revenue. The respondent also had debts related to medical bills for a special-needs child, compounding the financial difficulties. The Commission did not cite any aggravating or mitigating factors. In the instant matter, and unlike CH 27921, there are two grounds for sanction, but several mitigating factors to support a Public Censure.

Finally, in CH 25921, the Commission issued a Public Letter of Admonition (the predecessor to a Public Censure) after the respondent filed Chapter 7 and Chapter 11 bankruptcies simultaneously. The Commission found multiple mitigating factors including: 1) respondent took steps to avoid filing for bankruptcy protection, including selling his business; 2) respondent did not discharge personal debts and continued to spend his finances within his means; 3) letters of recommendation submitted for respondent; 4) respondent was not practicing as a CFP® practitioner; and 5) respondent's bankruptcy was the result of a nationwide collapse in the construction industry. In the instant case, like in CH 25921, Respondent's bankruptcy was caused by a business-related

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debt, he did not discharge all personal debts in his bankruptcy as he could have, he has shown that he is rebuilding his finances and keeping debt to a minimum, and he is not currently acting as a financial advisor. However, the instant matter involved multiple grounds for sanction, unlike in CH 25921.

The Commission considered that there were two grounds for sanction, which both carried a recommended sanction of a Public Censure. However, the Commission determined not to “stack” the recommended sanctions to a sanction greater than a Public Censure given the nature, number, and weight of the aggravating and mitigating factors. Thus, after considering the violations found, the aggravating and mitigating factors, and the relevant Case Histories, the Commission determined that a **Public Censure** is appropriate.

Ordered by:

The Disciplinary and Ethics Commission

CFP Board

May 13, 2024