

THE DISCIPLINARY AND ETHICS COMMISSION



IN THE MATTER OF
CHRISTOPHER J. ASHER,
Respondent.

CFP Board Case No. 2023-65242

May 8, 2024

ORDER

I. Procedural Background

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) granted Respondent the right to use the CFP[®], CERTIFIED FINANCIAL PLANNER[™],  and  certification marks (“CFP Board marks”) on June 6, 2005. (DEC Book at 13.)¹ He was certified from that date until August 5, 2022, when, as discussed below, CFP Board’s Disciplinary and Ethics Commission (“Commission” or “DEC”) issued an Interim Suspension Order against him. (*Id.* at 70-81.)

On July 8, 2022, CFP Board Enforcement Counsel delivered to Respondent a Notice of Investigation (“NOI”) requesting certain information and documents related to his May 18, 2022 arrest and felony criminal charge of Vehicular Homicide While Impaired. (*Id.* at 68-69.) On July 13, 2022, in CFP Board Case No. 2022-63974, Enforcement Counsel filed a Motion for Interim Suspension Order, requesting that the DEC suspend Respondent’s right to use the CFP Board marks pending the completion of Enforcement Counsel’s investigation into Respondent’s alleged misconduct. (*Id.* at 76-81.) A Hearing Panel of the Commission considered and granted the motion, and issued the Interim Suspension Order on August 5, 2022, finding that Enforcement Counsel had proven by a preponderance of the evidence that Respondent’s conduct posed a significant threat to the public and significantly impinged upon the stature and reputation of the profession and the CFP[®] certification marks. (*Id.* at 73-74.)

On September 5, 2023, Enforcement Counsel delivered to Respondent a Notice of Complaint and Complaint that alleged violations of CFP Board’s *Code of Ethics and Standards of Conduct* (“*Code and Standards*”). (*Id.* at 3-9.) In accordance with Article 3.1 of CFP Board’s *Procedural Rules*, Enforcement Counsel’s Complaint included numbered paragraphs setting forth the grounds for sanction, including a detailed factual description of the conduct and a specific statement of the alleged violations. (*Id.*) Respondent’s Answer, which was filed on October 1, 2023, admitted to the material allegations of the Complaint. (*Id.* at 171-81.)

On February 22, 2024, a Hearing Panel of the Commission convened to review the above-described Complaint. (Transcript of Hearing of Christopher Asher, February 22, 2024 (“Tr.”) at

¹ The DEC Book and any other exhibits to this Order will not be published under Article 17.7 of the *Procedural Rules*.

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1.) Enforcement Counsel appeared for CFP Board; DEC Counsel appeared for the DEC and for the Hearing Panel; Respondent appeared *pro se*.

The Commission considered the Hearing Panel's recommendation and issued its final order on May 6, 2024.

II. Findings of Fact

A. Background

Respondent has passed the following FINRA examinations: (a) Series 7 – General Securities Representative Examination (1998); (b) Series 66 – Uniform Combined State Law Examination (1999); (d) SIE – Securities Industry Essential Examination (2018). (DEC Book at 49.) He holds an Insurance Producer License from the State of Maryland. (*Id.* at 66-67.) From 1998 to 2022 he was employed by various firms in the financial services sector (*id.* at 51); at the time of the hearing in this matter he was not employed, attending to his family's household so that his wife could work full-time outside of the home. (Tr. at 46, 48.)

B. Respondent's Criminal Charges, Conviction, and Addiction Treatment

The facts underlying this matter are not in dispute. On the evening of May 17, 2022, after consuming several alcoholic beverages while playing golf, Respondent struck and killed a highway worker, Ms. G., as he was driving home from the golf course. (Tr. at 14-15.)²

Earlier that day, Respondent had left work early to coach his child's team's last game of the season. (*Id.* at 67; DEC Book at 126.) The game ended at approximately 4:15 p.m. and, after handing out awards to the graduating players, Respondent departed to a local golf course for a golf league match scheduled to start at 5:30 p.m. (DEC Book at 126.) Respondent warmed up for approximately 30 minutes, then ordered a vodka tonic from the golf course bar. (*Id.*) He took the drink to go and met his golf partner for their tee time. (*Id.*) Respondent had two additional drinks during the round of golf, and one more drink at the golf course bar after the round was finished. (*Id.*) Respondent testified consistently that when he left the golf course to drive home at approximately 10:00 p.m. he did not feel impaired. (Tr. at 31, 45, 50.)

Respondent was first involved in a minor rear-end collision with another vehicle. (*See* DEC Book at 173.) Although summoned, the police did not respond quickly. (*Id.*; *see* also Tr. at 44.) Respondent and the other driver waited at the scene; however, Respondent grew impatient and because he and the other driver determined that there had been no damage to either of their cars, they both left the scene without waiting for the police any longer. (Tr. at 44-45.) Shortly thereafter, Respondent struck Ms. G while attempting to turn into his neighborhood. (DEC Book at 103.)

² The incident was the subject of local media coverage. (*See* DEC Book at 98-109 (collecting reports from various Maryland media outlets).)

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Respondent remained at the scene and tended to Ms. G. until EMS personnel arrived. (Tr. at 31.) When police arrived at the scene Respondent was taken into custody; his breathalyzer results from that evening reflected a blood alcohol content of .15 – nearly twice the legal limit. (*Id.* at 14-15.) Respondent was charged with multiple crimes, including negligent manslaughter, a felony. (*Id.* at 15.) On December 22, 2022, he pleaded guilty to the felony charge and a traffic violation, and, on March 16, 2023, he was sentenced to ten years’ incarceration in state prison. (DEC Book at 161-65.) The Court suspended all but 15 months of his sentence. (*Id.*) After serving eight months (Tr. at 42), he was released and is now subject to five years’ supervised probation. (DEC Book at 161-65.)

After his release on bail, but before his guilty plea and incarceration, Respondent entered a 28-day residential treatment program for alcohol addiction. (Tr. at 33-34.) After completion of the residential program, Respondent voluntarily enrolled in intensive outpatient treatment for three months and has been engaged in continuing care through the same outpatient facility. (*Id.* at 35; DEC Book at 150.) He testified that he currently attends Alcoholics Anonymous meetings, both in-person and virtual, almost daily. (Tr. at 35.)

C. Respondent’s Failure to Report his Criminal Charges Within 30 Days

It is not disputed that Respondent failed to report his May 2022 criminal charges to CFP Board in accordance with the *Code and Standards*. Respondent testified that he entered residential addiction treatment within 48 hours of his June 6, 2022 release from jail (*id.* at 33),³ and that those two days were a very emotionally fraught time for him and his family during which “reaching out to CFP Board did not come to [his] mind.” (*Id.* at 34.) Respondent credibly testified that, during residential treatment, he had limited phone access and no Internet access. (*Id.* at 33; DEC Book at 174.)⁴ He testified that it was not until shortly after he was released from residential treatment on July 6, 2022, that he was able to communicate with CFP Board and FINRA to report his arrest. (DEC Book at 174; *see also* Tr. at 18.) The record in this matter supports his assertion and reflects Respondent’s cooperation with Enforcement Counsel and his compliance with both the July 8, 2022 NOI and the August 5, 2022 Interim Suspension Order. (*See* DEC Book at 121-40, 174.)

D. Respondent’s Demeanor and Credibility

Throughout these proceedings, Respondent’s sincere remorse, humility, and acceptance of responsibility for his actions all were evident. He has consistently acknowledged the gravity of his conduct, starting with his January 3, 2023 email updating Enforcement Counsel about the status of his criminal case:

On December 22, 2022 I plead guilty to the felony charge of negligent manslaughter. I’ve accepted accountability for my actions from the onset. And I realize that my mistake had the worst of all possible consequences – the loss of life.

³ Respondent avers that entry into a treatment program was one of the conditions of his release. (*See* DEC Book at 173.)

⁴ Respondent’s 30-day deadline to self-report expired on June 17, 2022, while he was in the rehabilitation facility.

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It's a burden I carry with me forever and a result of a mistake that I deeply regret having made. I'm not yet certain how I can make amends for such a tragedy. However, I am determined to share my experience with others in hopes of preventing others from injuring themselves or others. As this incident relates to my ability to be a Financial Advisor and Certified Financial Planning Practitioner, I recognize that this conduct is not acceptable.

(DEC Book at 127.)

Likewise, his opening statement at hearing unflinchingly accepted responsibility and expressed remorse:

We're obviously here because of the events that occurred on the evening of May 17, 2022. I caused an accident that resulted in the worst possible outcome. A life was lost. I am both responsible and remorseful. This is a cross that I will bear for the rest of my days. I recognize that my subsequent conviction reflects adversely on my judgment and my CFP certification. I acknowledge violation of our discipline rules. I am totally accountable. I do not make any excuses.

(Tr. at 17.)⁵

He also testified, consistently and credibly, that while he found his breathalyzer results to be surprising given his height, weight, and consumption levels (*see, e.g., id.*, at 31-32, 50, 66), he would not dispute the 0.15 blood alcohol content finding or its consequences.⁶ He accepted responsibility in the underlying criminal matter as well: "I chose not to take [my criminal] case to trial because I was clearly responsible. I acknowledge my guilt and accept that I am completely accountable for my actions." (*Id.* at 29.)

Respondent has reflected on the time he spent in jail and its positive influence on his life:

The time I spent away was deserved punishment for my crime. However, during that time I came to realize that I had previously taken many things in my life and relationships for granted. And now I have a greater humility and an improved ability to really listen, to see life through a different lens.

⁵ Respondent's earlier cooperation with Enforcement Counsel's investigation and acceptance of responsibility also is apparent from pre-complaint materials contained in the DEC Book. (*See, e.g., DEC Book at 126-128.*)

⁶ Enforcement Counsel attempted to impeach Respondent on the subject of the number of drinks he had consumed, referencing an Alcoholics Anonymous website concerning Blood Alcohol Content ("BAC") calculations (Tr. at 64) that, while presumably available before the parties' Article 10.3 deadline, had not been included in the DEC Book or otherwise provided or referenced prior to the hearing. The website did not account for Respondent's specific height, weight, or other physical characteristics that are known to affect alcohol metabolism and BAC. The Hearing Panel found the use of this non-specific information to be objectionable and did not place weight on it, (Tr. at 69-71) and the Commission agrees.

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There is no doubt that this whole experience has greatly increased my sensitivity to the struggles that others face. While it's not a journey that I wish upon anyone, I can embrace the plan that God has in store for me. I pride myself for my honesty and integrity. I accept responsibility for my actions. And I work hard every day to improve myself and the lives of those with whom I interact.

(Tr. at 43.)

Respondent values the CFP® certification marks, and understands the serious implications that his conviction holds for his suitability to hold those marks, yet he anticipates using his knowledge and experience to help others:

[PANEL MEMBER]: [W]hat do the CFP [certification] marks mean to you? And if we decided not to do a revocation for you, how would you put the credentials to work and how would you represent our trade and our marks while you're out in the community?

[RESPONDENT]: Good question. Well, it's a prestigious accreditation, no question. And I've learned that now that I do have a felony conviction, it's looked down upon as I search for employment. And I've done a lot of soul searching, as you can imagine, where do I think I can best help others? I have experience in our industry, and I think I can put into practice the use of financial planning methodologies and approach to assist, now not as a fiduciary but as a supporting member of a team of people that are working to that end. That, I think, still is possible if I were able to retain the credentials. You know, I don't want to jump to any conclusions because, you know, I don't know how this is going to unfold. I recognize the seriousness of what transpired and the aggravating factor of someone having passed away, that is significant, unquestionably. But I do believe I am -- my history and my attitude going forward, I would be a representative of these marks and of our organization in a positive way and not someone that, I think, you wouldn't want on your team.

(Tr. at 46-47.)

Lastly, Respondent testified impressively and at length about his community involvement and charitable works, both before and after the accident. (*Id.* at 36-39 (recounting Respondent's local community leadership positions; local and international charitable activities).) Likewise, the character reference letters contained in the record speak of Respondent – his integrity, sincerity, generosity and overall character – in glowing terms. (*See* DEC Book at 166-170.) In particular, one of his clients and fellow Rotary club members wrote:

The Four-Way Test of Rotary, tenets to which I aspire, includes the following questions:

- Is it the truth?
- Is it fair to all those concerned?

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- Will it build goodwill and better friendships?
- Will it be beneficial to all concerned?

Chris applied these principles to both his personal and professional life. As a member of Rotary, Chris served many roles and eventually president. His leadership and dedication to serving those in need was obvious, generating much needed funding and hands-on support for our programs.

(DEC Book at 169.)

Before the accident, Respondent was active in his religious community, in the business community and as a youth sports coach. (Tr. at 36-39.) While in detention he assisted other inmates by writing letters to judges and attorneys, tutoring them in math for the GED exam and assisting them with preparing business plans for implementation upon their release. (*Id.* at 42.) He also was elected to represent the inmates on his tier in expressing their concerns regarding facility issues and inmate needs. (*Id.*) While his more recent philanthropic efforts have embraced service to those in addiction recovery (*id.* at 36), it was evident that his community commitment has only been enhanced, rather than caused by, the accident and the terrible consequences that flowed from it.

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*, 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's Complaint alleged there are grounds to sanction Respondent for a violation of Standard E.2.a. of the *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 Maryland Circuit Court for Anne Arundel County is a Maryland court of criminal jurisdiction. The Criminal Hearing Sheet (DEC Book at 161) is a record indicating that Respondent has entered a guilty plea for a Felony. 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.

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Respondent was a CFP® professional at all times relevant to this alleged violation. The Criminal Hearing Sheet (*id.*) evidences Respondent's act of Negligent Manslaughter Auto/Boat and a violation of Maryland law. Therefore, there are grounds to sanction Respondent for a violation of Standard E.2.a. of the *Code and Standards*.

Second Ground for Sanction

Enforcement Counsel's complaint alleged that there are grounds to sanction Respondent for a violation of Standard E.3.a. of the *Code and Standards*, which provides that a CFP® professional must provide written notice to CFP Board within thirty (30) calendar days after the CFP® professional, or an entity over which the CFP® professional was a Control Person, has been charged with, convicted of, or admitted into a program that defers or withholds the entry of a judgment or conviction for, a Felony or Relevant Misdemeanor.

Respondent was a CFP® professional at all times relevant to this violation. Respondent admitted that he did not disclose his May 2022 criminal charges to CFP Board within 30 days. Therefore, there are grounds to sanction Respondent for a violation of Standard E.3.a of the *Code and Standards*.

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 Respondent a **Three-Year Suspension, retroactive to the issuance of the August 5, 2022 Interim Suspension Order.** This sanction will require Respondent to file a Petition for Reinstatement under CFP Board's *Procedural Rules*, and to appear before a future DEC to demonstrate his rehabilitation and fitness generally, including his ongoing recovery from alcohol addiction, his ongoing remorse and contributions to society, his profession, family and friends.

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

- Conduct 9: Conviction within the last 10 years of a Felony or any Relevant Misdemeanor involving a jail sentence (Suspension for at least One Year and One Day).
- Conduct 14(a): Failure to Disclose to CFP Board (Private Censure).

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The Policy Notes to Conduct 9 counsel that felony conviction for 1) theft, embezzlement, or other financially based crimes; 2) any violent crime; 3) murder or rape; and 4) tax fraud or other tax-related crimes should result in a Revocation or Bar. None of those factors is present here.

The Policy Notes to Conduct 14(a) provide that a sanction greater than a Private Censure may be imposed if it is determined that the Respondent's failure to disclose was intentional. Respondent testified credibly that his failure to disclose his criminal charges during his narrow window of opportunity was an oversight on his part, and the record evidence of his subsequent cooperation with Enforcement Counsel and compliance with the Interim Suspension Order militate against any finding of intent.

The Commission reviewed the mitigating and aggravating 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 decision.

The Commission considered in aggravation that:

1. Respondent's alcohol use and impaired driving caused Ms. G's death; and
2. Respondent received a 10-year jail sentence and five years' supervised probation upon release for his misconduct.

The Commission considered in mitigation that:

1. Respondent is aware of his alcohol addiction and actively involved in rehabilitation activities to maintain his sobriety;
2. This matter arose from Respondent's first criminal offense of any type;
3. Respondent's remorse is palpable, he accepts responsibility for his actions, and has resolved to educate others in an effort to prevent them from making the same mistakes;
4. Respondent has a long history of community service that predates the accident in question, he continued this service while incarcerated, and since his release has expanded it to include alcohol education and addiction awareness;
5. Respondent was cooperative in the investigation of this matter and in complying with the Interim Suspension Order; his failure to timely report his criminal charges to CFP Board arose largely from circumstances that were not within his control; and
6. Respondent has no prior disciplinary history.

The Commission consulted *Case History* ("CH") 39197⁷ in this matter. In that case, decided by the DEC in 2020, a candidate for CFP® certification disclosed that he had entered a plea of no contest to a charge of Vehicular Manslaughter, a 2nd degree misdemeanor, after he caused an accident in which a motorcyclist was killed. A police investigation confirmed that there were no drugs or alcohol in his system at the time of the accident. The candidate was sentenced to 90 days detention, suspended, and one year probation with terms and fines. The candidate completed all

⁷ Case Histories or "CHs" are available on CFP Board's website at <http://www.cfp.net/ethics/enforcement/case-histories>

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of the terms and conditions of his probation. Under CFP Board's *Fitness Standards*, the candidate's misdemeanor conviction was deemed to reflect adversely upon his integrity or fitness, the profession, or the CFP® certification marks, and the candidate was required to file a Petition for Fitness Determination. Upon consideration of the facts in that matter, the Commission accepted the proposed Consent Order and granted the candidate's petition. In contrast, in this matter Respondent was under the influence of alcohol at the time of the accident, pleaded guilty to a felony and was sentenced to 10 years' incarceration, all but 15 months of which were suspended. He is subject to five years' supervised probation. By analogy to the reasoning in CH 39197, if Respondent in this matter were not already certified, he would be presumed to be unfit under the *Fitness Standards* as having a felony conviction for a non-violent crime within the last five years. Continuing the analogy, he would not, however, be subject to an absolute bar for "Conduct Deemed Unacceptable" under the *Fitness Standards*.

After considering the violations found, the aggravating and mitigating factors, and the cited *Case History*, the Commission determined a Three-Year Suspension, retroactive to the issuance of the August 5, 2022 Interim Suspension Order, to be appropriate in light of the numerous mitigating factors present.

Pursuant to Article 14.1 of the *Procedural Rules*, a CFP® professional who has been suspended for a period longer than one year must petition the Commission for reinstatement. The Commission notes that if Respondent determines to seek reinstatement, Respondent will be required to prove by clear and convincing evidence, among other things noted in Article 14, his rehabilitation and fitness for CFP® certification, and compliance with the terms of this order, pursuant to Article 14 of the *Procedural Rules*.

Ordered by:

The Disciplinary and Ethics Commission

CFP Board

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