

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1965 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 103 DB 2013
v.	:	
	:	Attorney Registration No. 39650
JAMES ALLEN STEINER,	:	
Respondent	:	(Allegheny County)

ORDER

**PER CURIAM**

**AND NOW**, this 7<sup>th</sup> day of August, 2015, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 18, 2015; it is hereby ORDERED that James Allen Steiner is suspended from the Bar of this Commonwealth for a period of one year retroactive to December 16, 2013, and he shall comply with all the provisions of Pa.R.D.E. 217.

It is further ORDERED that Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola  
As Of 8/7/2015

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1965 Disciplinary Docket No. 3
Petitioner	:	No. 103 DB 2013
v.	:	Attorney Registration No. 39650
JAMES ALLEN STEINER	:	(Allegheny County)
Respondent	:	

REPORT AND RECOMMENDATIONS OF  
THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES  
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Order dated December 16, 2013, the Supreme Court of Pennsylvania placed James Allen Steiner on temporary suspension pursuant to Rule 214(d)(2), Pa.R.D.E. Office of Disciplinary Counsel filed a Petition for Discipline against Respondent on June 4, 2014. Respondent filed an Answer to Petition for Discipline on June 30, 2014.

A disciplinary hearing was held on September 30, 2014, before a District IV Hearing Committee comprised of Chair Craig L. Fishman, Esquire and Members

Angela M. Heim, Esquire and Nicola V. Henry-Taylor, Esquire. Respondent was represented by Craig E. Simpson, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on February 9, 2015, concluding that Respondent violated the Rules as contained in the Petition for Discipline and recommending that he be suspended from the practice of law for a period of one year, retroactive to December 16, 2013.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on April 23, 2015.

## II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is James Allen Steiner. He was born in 1954 and was admitted to practice law in the Commonwealth of Pennsylvania in 1983. His attorney registration mailing address is 1230 Hulton Road, Oakmont PA 15139.

3. Respondent has no record of discipline in Pennsylvania.

4. By Order of the Supreme Court dated December 16, 2013, Respondent was placed on temporary suspension pursuant to his conviction in the United States District Court for the Western District of Pennsylvania of the crime of conspiracy to commit wire fraud. PE 1

5. The conspiracy in which Respondent was involved concerned fraudulently obtaining mortgage financing for the purchase of real estate. PE 6, p. 34

6. Respondent's co-conspirators, through a series of misrepresentations, recruited individuals to purchase property when they could not legitimately qualify for loans to do so. PE 6, p. 34

7. In order to obtain mortgages, the borrowers submitted fraudulent loan applications which overstated the purchase price and the amount of the down payment being made. PE 6, p. 34

8. Respondent was not the originator or planner of the mortgage fraud. N.T. 17

9. Respondent's criminal conduct was as follows:

a. In 2007, Respondent handled the closings for six (6) properties financed by the sub-prime divisions of Chase Bank through a local mortgage broker (N.T. 17-18);

b. While preparing the first case for closing, Respondent was advised that the buyer would need no money to close (N.T. 19);

c. Respondent prepared a settlement sheet showing a credit to the buyer to zero out all costs to the buyer, but was advised by the broker, seller and Chase Bank that the credit was not to appear on the settlement

sheet and that the closing would not be authorized until the credit was removed (N.T. 19, 48-49);

d. Chase Bank assured Respondent that what it was instructing him to do was proper (N.T. 19, 48-49);

e. Although he had reservations about the transaction, Respondent did not speak to any of the partners at his law firm about his concerns but, instead, proceeded to close this transaction, as well as five (5) more transactions between June 2007 and October 2007 (N.T. 19-23, 24, 41-42, 49);

f. When he handled these six (6) closings, he was aware that putting false information on the settlement sheets was a violation of the Real Estate Settlement and Procedures Act (N.T. 21-22, 42, 47);

g. Respondent was not directly compensated to handle these six (6) transactions, and he received no monetary or pecuniary gain from these six (6) transactions (N.T. 23);

h. After handling these six (6) transactions in the manner requested by his client, Respondent ceased these activities, claiming that he finally "put it all together" that the deposits were being faked. (N.T. 24-25)

10. In 2007, Respondent was not aware of any criminal investigation into these fraudulent real estate transactions. N.T. 27

11. From October 2007 through March 2011, Respondent conducted approximately 2,000 unrelated real estate closing transactions without incident. N.T. 26, 28-29

12. In or about February or March 2011, Respondent was contacted by the federal government about the fraudulent real estate transactions, and he cooperated fully with the investigation of same. N.T. 29-30; RE-D

13. On October 15, 2012, an Information was filed against Respondent in the United States District Court for the Western District of Pennsylvania, charging him with one (1) count of wire fraud conspiracy in violation of 18 U.S.C. §§ 1349 and 1343 related to the above-mentioned real estate transactions. PE-2; PE-3

14. On November 13, 2012, pursuant to a plea agreement, Respondent entered a plea of guilty to the Information. PE-4; PE-5; PE-6, pp.8-9, 14

15. On May 23, 2013, the Honorable Nora Barry Fischer of the United States District Court for the Western District of Pennsylvania sentenced Respondent to probation for one (1) year for his conviction of wire fraud conspiracy. PE-9; PE-10

16. Prior to his suspension, Respondent was an associate with the law firm of Hergenroeder and Heights in Pittsburgh for thirty years and concentrated in real estate matters. N.T. 16-17

17. Respondent was a highly respected and well-regarded practitioner. N.T. 52-54, 57-59; RE-C

18. Robert Arcovio, Esquire credibly testified on behalf of Respondent, who he has known since 1972. He characterized Respondent as "one of the most honest guys I know." Mr. Arcovio testified that the fraudulent real estate transactions are not the type of conduct that is typical of Respondent. Mr. Arcovio further testified that he has referred clients with real estate or tax issues to Respondent, and he would have no hesitation in doing so again. N.T. 53-55.

19. John W. McTiernan, Esquire credibly testified on behalf of Respondent, who he has known for 30 years. Mr. McTiernan testified that he holds Respondent in the "highest esteem" and believes that Respondent has been fully rehabilitated following the events described above. Mr. McTiernan also testified that in the event Respondent is permitted to practice law again, he will have no hesitation referring clients to him regardless of the criminal conviction. N.T. 59-61

20. More than fifty (50) of Respondent's friends, family members, professional and business colleagues, and members of the community in which Respondent resides submitted character reference letters to the Honorable Nora Barry Fischer prior to Respondent's criminal sentencing. (RE-C) The individuals who submitted these letters spoke highly of Respondent on both personal and professional levels. Additionally, these letters show that Respondent has been open and forthcoming with these individuals as to the charges against him and his involvement in the transactions.

21. Respondent testified on his own behalf.

22. Respondent accepted full responsibility for his misconduct and expressed sincere remorse. N.T. 38-41

23. Prior to and following his guilty plea, Respondent fully cooperated with the government's investigation; he assisted in obtaining indictments and/or convictions of others more involved in the transactions; and, he is scheduled to testify against other co-conspirators in 2015. N.T. 29-30; RE-D

24. Throughout his adult life, Respondent has been actively involved in community activities including but not limited to: coaching, umpiring, and organizing tournaments for a local athletic association; working with Meals on Wheels; working on

an advisory committee for renovations to a local high school; participating with Riverview Relay for Life; and, teaching a weekly "basics of law course to sixth graders which included a mock trial demonstration." N.T. 36-38

### III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rule of Disciplinary Enforcement:

1. The crime for which Respondent was convicted is a felony, punishable by imprisonment for not more than twenty (20) years.
2. Respondent's conviction is an independent basis for discipline pursuant to Rule 203(b)(1), Pa.R.D.E.

### IV. DISCUSSION

The only issue for our consideration in the instant matter is the appropriate level of discipline for Respondent, whose criminal conviction of wire fraud conspiracy conclusively establishes the violation of Rule 203(b)(1), Pa.R.D.E. After considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa.D. & C. 4<sup>th</sup> 115 (2004), we recommend that Respondent be suspended from the practice of law for one year, retroactive to the date of his temporary suspension.

The underlying facts supporting Respondent's conviction are relatively straightforward. Respondent was the closing officer on six real estate closings. He

submitted or caused the submission of settlement statements to lenders, representing that the borrowers in those transactions had made payments related to the purchase of properties when he and his co-conspirators knew they had not. Respondent entered a plea of guilty to one count of conspiracy to commit wire fraud and was sentenced to probation for one year. With this sentence, the criminal justice system fulfilled its purpose of punishing Respondent for his misconduct. Pennsylvania's disciplinary system serves a different purpose. Disciplinary sanctions are intended not to punish but to protect the public from unfit attorneys and preserve public confidence in the legal system. *Office of Disciplinary Counsel v. Stern*, 526 A.2d 1180 (Pa. 1987)

This matter is ripe for the determination of discipline. In briefs to the Hearing Committee, Petitioner sought a suspension for one year and one day, while Respondent urged suspension for no more than one year. The Hearing Committee has recommended a one year suspension, and neither party has excepted to this recommendation.

There is no *per se* discipline in Pennsylvania; however, prior cases involving similar crimes are instructive and are suggestive of a short suspension for Respondent. *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186 (Pa. 1983). While many of the cases reviewed by the Board resulted in disbarment or lengthy suspensions, we conclude that this was attributable to criminal activity that was more serious than the instant crime, coupled with aggravating factors that we do not find present in the instant matter. In *Office of Disciplinary Counsel v. Greene*, No. 169 DB 2007 (2009), Greene conspired with others on at least eight separate matters to defraud lenders out of the proceeds of mortgage loans. Although Mr. Greene claimed he did not gain as much financially as his co-conspirators, he profited by "retaining, along with his

co-conspirators, a substantial portion of the mortgage loan proceeds provided by these lenders." Additionally, he minimally acknowledged responsibility for his actions. Greene was sentenced to 12 months incarceration, supervised release and restitution of approximately \$191,000. Greene was disbarred

In *Office of Disciplinary Counsel v. Buchko*, No. 255 DB 2010 (2013), Buchko engaged in mortgage fraud and was also charged by Office of Disciplinary Counsel with an additional, unrelated count of misappropriation of entrusted funds. Buchko did not appear at the disciplinary hearing, and was ultimately disbarred by the Supreme Court.

Another disbarment matter is that of *Office of Disciplinary Counsel v. John L. Chaffo, Jr.* No. 8 DB 2011 (Pa. 2013). Mr. Chaffo was convicted of two counts of conspiracy to commit wire fraud and one count of wire fraud. Mr. Chaffo participated in a scheme to defraud lenders in 60 real estate transactions over a period of six years. Mr. Chaffo did not acknowledge his guilt and expressed no remorse.

A recent matter resulted in a suspension of five years. In *Office of Disciplinary Counsel v. Robert M. Danenberg*, No. 130 DB 2010 (2014), Danenberg was convicted of one count of wire fraud conspiracy and sentenced to imprisonment of 24 months. He engaged in mortgage fraud with regard to ten different lenders. In addition to participating in the crime himself, he directed five or more employees to take part in his crimes. Respondent agreed that he caused a loss of \$250,000. The Board found mitigating factors, including a clean record of prior discipline, cooperation and expressions of remorse. Dannenberg was suspended for five years, retroactive to his temporary suspension.

The attorney in *Office of Disciplinary Counsel v. Michael Sedor*, No. 225 DB 2005 (2007) was suspended on consent for a period of two years retroactive to his temporary suspension following his conviction of one count of conspiracy to defraud the United States Department of Housing and Urban Development. Sedor was sentenced to imprisonment for seven months followed by supervised release for two years and a fine of \$5,000. His criminal activity included signing HUD-1 forms indicating that funds came from buyers when he knew that the funds had in fact come from another source. Mitigating factors were noted in the form of cooperation, remorse and character references.

We find numerous mitigating factors in the instant matter that persuade us that a short suspension is appropriate. Respondent cooperated in the federal investigation of the mortgage fraud and has been and continues to be involved in the prosecution of other individuals involved in the scheme. Respondent entered a guilty plea and was sentenced to one year of probation for the wire fraud conspiracy, even though the conviction itself carries a maximum penalty of twenty (20) years in federal prison. The facts demonstrate that he was not the originator or planner of the criminal scheme.

Respondent has an unblemished disciplinary record, was sincerely remorseful, and cooperated fully in the disciplinary process. He has a strong record of community activity throughout his adult life. Respondent submitted the credible testimony of two fellow attorneys and letters from over fifty (50) friends, family members and professional colleagues, attesting to his honesty and professionalism, as well as his remorse in regard to this matter.

Based on the above-mentioned factors, we are persuaded that the protection of the public and the integrity of the legal profession will be best served by a suspension of one year, retroactive to the date of Respondent's temporary suspension.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, James Allen Steiner, be Suspended from the practice of law for a period of one year retroactive to December 6, 2013.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

By:   
Lawrence M. Kelly, Board Member

Date: June 18, 2015