

IN THE SUPREME COURT OF PENNSYLVANIA

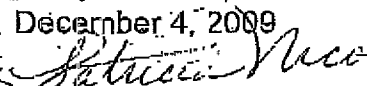
OFFICE OF DISCIPLINARY COUNSEL, : No. 1430 Disciplinary Docket No. 3
Petitioner :
v. : No. 159 DB 2008
JAY MARC BERGER, : Attorney Registration No. 26642
Respondent : (Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 4th day of December, 2009, there having been filed with this Court by Jay Marc Berger his verified Statement of Resignation dated September 2, 2009, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

ORDERED that the resignation of Jay Marc Berger is accepted; he is disbarred on consent from the Bar of the Commonwealth of Pennsylvania retroactive to August 13, 2009; and he shall comply with the provisions of Rule 217, Pa.R.D.E. Respondent shall pay costs, if any, to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As of: December 4, 2009
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1430 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 159 DB 2008
v.	:	
	:	Attorney Registration No. 26642
JAY MARC BERGER	:	
Respondent	:	(Montgomery County)

RESIGNATION BY RESPONDENT

Pursuant to Rule 215
of the Pennsylvania Rules of Disciplinary Enforcement

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1430 Disciplinary Docket No. 3
: :
JAY MARC BERGER : :
: : Board File No. C2-07-286
: :
: : Attorney Registration No. 26642
: : (Montgomery County)

RESIGNATION
UNDER PENNSYLVANIA RULE OF DISCIPLINARY ENFORCEMENT 215

Jay Marc Berger hereby tenders his unconditional resignation from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E 215, and further states as follows:

1. He is a formerly admitted attorney, having been admitted to the bar of the Commonwealth of Pennsylvania on or about November 23, 1977. His attorney identification number is 26642. By Order dated December 15, 2007, the Pennsylvania Supreme Court transferred Mr. Berger to inactive status.
2. He desires to submit his resignation as a member of the bar.
3. His resignation is freely and voluntarily tendered; he is not being subjected to coercion or duress and he is fully aware of the implications of submitting this resignation.
4. He is aware that disciplinary proceedings have been instituted against him pursuant to Pa.R.D.E. 214 pursuant to his conviction in Federal Court of mail fraud involving a financial institution.
5. He acknowledges that he pled guilty to one count of mail fraud involving a financial institution in violation of 18 U.S.C. § 1341.

Re: Office of Disciplinary Counsel
v. JAY MARC BERGER
No. 1430 Disciplinary Docket No. 3
No. 159 DB 2008
Attorney Registration No. 26642
(Montgomery County)

RECORD OF PRIOR DISCIPLINE

None

6. He acknowledges that he has been sentenced to seventy-eight (78) months imprisonment in the Fort Dix Correctional Facility in New Jersey followed by five (5) years of supervised probation.
7. He acknowledges that the material facts which form the allegations contained in the Federal Indictment and which form the basis of his guilty plea are true. A true and correct copy of the Information is attached hereto and Marked Exhibit A.
8. He is desirous of submitting this resignation statement as he acknowledges that the underlying facts in the criminal matter are serious enough to warrant significant discipline.
9. He acknowledges that the conviction constitutes a per se ground for discipline under Pa. R.D.E 203 (b) (1)
10. He acknowledges that under Pa. R.D.E 214 (f) (1), he would be entitled to the institution of a formal proceeding before a hearing committee in which the sole issue to be determined would be the extent of the discipline imposed.
11. He acknowledges that by submitting the within resignation he is knowingly, voluntarily and intelligently waiving the right to have a disciplinary hearing pursuant to Pa. R.D.E 214 (f) (1).
12. He submits the within resignation because he knows that he could not successfully defend himself against the charges of professional misconduct that will be brought in connection with his conviction.
13. He is fully aware that the within resignation statement is irrevocable and that he can only apply for reinstatement to the practice of law pursuant to the provisions of Pa. R.D.E 218.

14. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has not retained, consulted with and acted upon the advice of counsel in connection with his decision to execute the within resignation.
15. His sentence is currently under appeal and he may attack all or part of the guilty plea only insofar as it relates to the *length* of his sentence and not the relevant facts leading to the criminal conviction; nonetheless, he wishes to voluntarily resign at this time rather than wait the outcome of the appeal, in part as an act of contrition and as an acknowledgement to the Disciplinary Board and the Court that he recognizes that it is appropriate to do so under these circumstances.
16. It is understood that the statements made herein are subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Signed this 2d day of SEPTEMBER, 2009

Jay Marc Berger

Jay Marc Berger

Respondent

Attorney Registration No. 26642

Witness:

Kyle Harris
KYLE HARRIS

WK

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL NO. 07cr155
v.	:	DATE FILED: FILED MAR 21 2007
JAY BERGER	:	VIOLATION:
	:	18 U.S.C. § 1341
	:	(mail fraud affecting a financial institution-1 count)

INFORMATION

COUNT ONE

THE UNITED STATES ATTORNEY CHARGES THAT:

At all times material to this information:

1. Defendant JAY BERGER was a mortgage broker, a settlement agent and an agent for title insurance companies, including Fidelity National Title Insurance Company of New York (Fidelity) and Stewart Title Guarantee Corporation (Stewart). Defendant JAY BERGER found mortgages and refinancing opportunities for homeowners, handled real estate closings and home refinancing settlements, and obtained title insurance for clients.

2. Defendant JAY BERGER owned United Mortgage Service Company (United Mortgage), a mortgage broker, and Imperial Abstract and Settlement Company (Imperial), a title insurance agency. Defendant JAY BERGER also worked with United Settlement Services (United Settlement), a title agency owned by his wife. All three of these companies are located at 7 Bala Avenue, Suite 202, Bala Cynwyd, Pennsylvania 19004.

A TRUE COPY CERTIFIED TO FROM THE RECORD

DATED: 8-20-08

ATTEST: [Signature]

DEPUTY CLERK, UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

EXHIBIT "A"

3. As a settlement agent and agent for title insurance companies, defendant JAY BERGER was obligated to disburse funds from real estate transactions, including home refinancing transactions, as detailed on the HUD 1 form. These requirements included, among other things, the obligation to pay off existing mortgages on the property with monies received from the financial company or financial institution from whom the homeowner was obtaining new financing. Any excess funds were to be distributed to the homeowner.

4. Any failure to pay off existing mortgages after a refinancing settlement would impact on the homeowner, the finance companies holding the existing mortgage, the finance companies holding the new mortgage, and the title insurance companies involved in the refinancing. If the original mortgage was not satisfied:

(a) the homeowner would be obligated to pay both the existing and new mortgages, in many cases more than doubling the debt on the home;

(b) the homeowner's credit rating might be adversely affected, because the homeowner's credit report would reflect both the existing mortgage and the new mortgage;

(c) the finance company holding the existing mortgage would be placed at greater risk that the homeowner, now having two mortgages, could not afford to repay the loan;

(d) the finance company holding the new mortgage would not be able to obtain any funds from the sale of the property in the event of foreclosure until after the holder of the existing mortgage received all of the money it was owed, despite the fact that the new mortgage company had already paid the money to retire the existing mortgage;

(e) both the finance company holding the existing mortgage and the company holding the new mortgage would face an increased risk that the homeowner would default on one

or both of the mortgages, because the homeowner would have obligations on two mortgages instead of one; and

(f) the title insurance company would be at increased risk that it would be liable for the amount of at least one of the outstanding mortgages, because it was unlikely that a homeowner could afford to pay both mortgages, and because the value of the home would probably not be sufficient to satisfy both the new and the existing mortgage in the event of foreclosure.

THE SCHEME

5. From at least April 2000 through December 2004, in the Eastern District of Pennsylvania and elsewhere, defendant

JAY BERGER

devised and intended to devise a scheme to defraud Washington Mutual Bank, FA, a financial institution insured by the Federal Deposit Insurance Corporation (FDIC), FDIC Number 32633, and homeowners R.C., T.F., L.B., D.S., S.G., A.D., M.P., A.O., B.M., J.G., M.A.M. and P.S., finance companies G.E. Capital Mortgage Services (GE), Associates Home Equity Services, Inc. (Associates), Chase Manhattan Mortgage (Chase Manhattan), Wendover Financial Services (Wendover), Fairbanks Capital Corp. (Fairbanks), Countrywide Home Loans (Countrywide), Equicredit, Wells Fargo, Irwin Mortgage Corporation (Irwin), EMC Mortgage Corporation (EMC), Option One Mortgage (Option One), US Bank, Pennsylvania Business Bank, WMC, Litton Loan Servicing (Litton), and GMAC Mortgage Corporation (GMAC), and title insurance companies Fidelity and Stewart, and to obtain money and property by means of knowingly false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

6. Defendant JAY BERGER fraudulently handled settlements for mortgage refinancing, causing losses to financial institutions and finance companies, homeowners and title insurance companies of approximately \$4,617,670.15.

7. Defendant JAY BERGER would not pay off existing mortgages as stated on the HUD 1 form after settlements, but would instead keep those funds for himself.

8. After settlement for the refinancing of a homeowners mortgage, defendant JAY BERGER would divert funds intended to pay off the existing mortgage to a bank account he controlled, after which he would usually send a change of address request to the holder of the client's existing mortgage, instructing the holder of the existing mortgage to forward all correspondence either to defendant JAY BERGER's office, 7 Bala Avenue, Suite 202, Bala Cynwyd, Pennsylvania 19004, or to P.O. Box 344, Bala Cynwyd, Pennsylvania, 19004, a post office box controlled by defendant JAY BERGER.

9. After settlement for the refinancing of a homeowners mortgage, defendant JAY BERGER would then, in most instances, make at least some payments on the client's existing mortgage in order to prevent immediate foreclosure action against the property.

10. If a homeowner discovered at a later date that an existing mortgage had not been paid off, defendant JAY BERGER would usually falsely tell the homeowner that there had been some type of misunderstanding or clerical error, and that he would take care of the problem.

11. On or about April 21, 2000, after settlement of homeowner R.C.'s home mortgage refinancing defendant JAY BERGER:

(a) failed to forward approximately \$62,542.61 to GE, the holder of the existing mortgage on homeowner R.C.'s home, but instead kept the money for himself, without the knowledge or permission of homeowner R.C., any finance company holding a mortgage on homeowner R.C.'s residence, or Fidelity, the title insurance company for this transaction.

(b) directed GE and subsequent lenders which serviced this mortgage to send future correspondence concerning homeowner R.C.'s mortgage to P.O. Box 344, Bala Cynwyd, Pennsylvania, 19004, a post office box controlled by defendant JAY BERGER, and not known to homeowner R.C.

(c) made several payments on homeowner R.C.'s existing mortgage to GE and subsequent lenders which purchased or serviced this mortgage.

12. On or about May 23, 2001, after settlement of homeowner T.F.'s home mortgage refinancing defendant JAY BERGER:

(a) failed to forward approximately \$121,032.56 to Associates, the holder of the existing mortgage on Homeowner T.F.'s home, but instead kept the money for himself, without the knowledge or permission of homeowner T.F., any finance company holding a mortgage on homeowner T.F.'s residence, or Stewart, the title insurance company for this transaction.

(b) directed Associates and subsequent lenders which purchased or serviced this mortgage to send future correspondence concerning homeowner T.F.'s mortgage to

P.O. Box 344, Bala Cynwyd, Pennsylvania, 19004, a post office box controlled by defendant JAY BERGER, and not known to homeowner T.F.

(c) made several payments on homeowner T.F.'s existing mortgage with Associates and subsequent lenders which purchased or serviced this mortgage.

13. On or about July 13, 2001, after settlement of homeowner L.B.'s home mortgage refinancing, defendant JAY BERGER:

(a) failed to forward approximately \$380,627.45 he received from Washington Mutual, the new mortgage holder, to Chase Manhattan, the holder of the existing mortgage on homeowner L.B.'s home, but instead kept the money for himself, without the knowledge or permission of homeowner L.B., any finance company holding a mortgage on homeowner L.B.'s residence, or Fidelity, the title insurance company for this transaction.

(b) directed Chase Manhattan to send future correspondence concerning homeowner L.B.'s mortgage to defendant JAY BERGER's office, 7 Bala Avenue, Bala Cynwyd, Pennsylvania, 19004, without the knowledge or permission of homeowner L.B.

(c) made several payments on homeowner L.B.'s existing mortgage with Chase Manhattan.

14. On or about April 12, 2004, after settlement of homeowner L.B.'s second home mortgage refinancing, defendant JAY BERGER:

(a) failed to forward approximately \$383,198.23 to Chase Manhattan, which held the original mortgage on homeowner L.B.'s property, which had never been satisfied after the first refinancing of homeowner L.B.'s property, and also failed to forward the money to Washington Mutual, which had been the new mortgage holder at the previous refinancing of

homeowner S.G., any finance company holding a mortgage on homeowner S.G.'s property, or Stewart, the title insurance company for this transaction.

17. On or about April 11, 2002, after settlement of homeowner A.D.'s home mortgage refinancing, defendant JAY BERGER:

(a) failed to forward approximately \$108,656.44 he received from the new mortgage holder to Wendover, the holder of the existing mortgage on homeowner A.D.'s home, but instead kept the money for himself, without the knowledge or permission of homeowner A.D., any finance company holding a mortgage on homeowner A.D.'s residence, or Fidelity, the title insurance company for this transaction.

(b) directed Wendover to send future correspondence concerning homeowner A.D.'s mortgage to P.O. Box 344, Bala Cynwyd, Pennsylvania, 19004, a post office box controlled by defendant JAY BERGER, and not known to homeowner A.D.

(c) made several payments on homeowner A.D.'s existing mortgage with Wendover.

18. On or about June 7, 2002, after settlement of defendant JAY BERGER's own home, defendant JAY BERGER did not forward approximately \$392,761.24 he received from Litton, the new mortgage holder, to Wells Fargo, the holder of the existing mortgage, but instead kept the money for himself, without the knowledge or permission of any finance company holding a mortgage on defendant JAY BERGER's residence or of Fidelity, the title insurance company for this transaction.

19. On or about August 21, 2002, after settlement of homeowner M.P.'s home mortgage refinancing, defendant JAY BERGER:

homeowner L.B.'s property, but instead kept the money for himself, without the knowledge or permission of homeowner L.B., any finance company holding a mortgage on homeowner L.B.'s residence, or Fidelity, the title insurance company for this transaction.

(b) directed Washington Mutual to send future correspondence concerning homeowner L.B.'s mortgage to P.O. Box 344, Bala Cynwyd, Pennsylvania, 19004, a post office box controlled by defendant JAY BERGER, and not known to homeowner L.B.

(c) made some payments on homeowner L.B.'s mortgage with Washington Mutual, including some payments with insufficient fund checks.

15. On or about November 27, 2001, after settlement of homeowner D.S.'s home mortgage refinancing, defendant JAY BERGER:

(a) failed to forward approximately \$194,270.94 to Countrywide, the holder of the existing mortgage on homeowner D.S.'s home, but instead kept the money for himself, without the knowledge or permission of homeowner D.S., any finance company holding a mortgage on Homeowner D.S.'s residence, or Stewart, the title insurance company for this transaction.

(b) made several payments on homeowner D.S.'s existing mortgage with Countrywide.

16. On or about December 24, 2001, after settlement of homeowner S.G.'s home mortgage refinancing, defendant JAY BERGER failed to forward approximately \$538,854.60 to Washington Mutual, the holder of the existing mortgage on homeowner S.G.'s home, but instead kept the money for himself, without the knowledge or permission of

(a) failed to forward approximately \$265,647.73 he received from Irwin, the new mortgage holder, to Washington Mutual, the holder of the existing mortgage on homeowner M.P.'s home, but instead kept the money for himself without the knowledge or permission of homeowner M.P., any finance company holding a mortgage on homeowner M.P.'s residence or Fidelity, the title insurance company for this transaction.

(b) directed Washington Mutual to send future correspondence concerning homeowner M.P.'s mortgage to P.O. Box 344, Bala Cynwyd, Pennsylvania, 19004, a post office box controlled by defendant JAY BERGER, and not known to homeowner M.P.

(c) made several payments on homeowner M.P.'s existing mortgage with Washington Mutual.

(d) falsely told homeowner M.P. that a mistake had been made after homeowner M.P. learned in August, 2004, that his original Washington Mutual mortgage had not been paid off, but that monthly payments were being made on that mortgage, after which defendant BERGER then paid off homeowner M.P.'s Washington Mutual mortgage.

20. On or about December 19, 2003, defendant JAY BERGER:

(a) completed a refinancing transaction that homeowner A.O. had cancelled, and obtained a new mortgage on homeowner A.O.'s residence without homeowner A.O.'s knowledge or permission, using paperwork homeowner A.O. had prepared for the cancelled transaction.

(b) failed to forward approximately \$696,455.22 he received from EMC, the new mortgage holder, to Option One, the holder of the existing mortgage on Homeowner A.O.'s home, but instead kept the money for himself, without the knowledge or

permission of homeowner A.O., any finance company holding a mortgage on homeowner A.O.'s residence, or Fidelity, the title insurance company for this transaction.

(c) directed EMC to send future correspondence concerning homeowner A.O.'s mortgage to defendant JAY BERGER's office, 7 Bala Avenue, Bala Cynwyd, Pennsylvania, 19004, without the permission of homeowner A.O.

(d) made several payments on homeowner A.O.'s new mortgage with EMC, until BERGER persuaded homeowner A.O. to complete the refinancing transaction, and begin making payments to EMC. Defendant JAY BERGER then caused homeowner A.O., who did not know that his existing mortgage with Option One had never been satisfied, to start making payments to EMC, and to stop making payments on his Option One mortgage.

21. On or about February 3, 2004, after settlement of Homeowner B.M.'s home mortgage refinancing, defendant JAY BERGER:

(a) failed to forward at least approximately \$531,987.03 to pay off multiple existing mortgages with WMC, Litton Loan Servicing and Pennsylvania Business Bank on homeowner B.M.'s property, but instead kept the money for himself, without the knowledge or permission of homeowner B.M., any finance company holding a mortgage on homeowner B.M.'s property, or Fidelity and Stewart, the title insurance companies for this transaction.

22. On or about February 6, 2004, after settlement of homeowner M.A.M.'s home mortgage refinancing, defendant JAY BERGER:

(a) failed to forward approximately \$202,293.98 he received from Countrywide, the new mortgage holder, to Fairbanks, the holder of the existing mortgage on homeowner M.A.M.'s home, but instead kept the money for himself without the knowledge or

permission of homeowner M.A.M., any finance company holding a mortgage on homeowner M.A.M.'s residence, or Fidelity, the title insurance company for this transaction.

(b) made several payments on homeowner M.A.M.'s mortgage with Fairbanks.

23. On or about April 29, 2004, after settlement of homeowner P.S.'s home mortgage refinancing, defendant JAY BERGER:

(a) failed to forward approximately \$96,221.07 to GMAC, the holder of the existing mortgage on homeowner P.S.'s home, but instead kept the money for himself, without the knowledge or permission of homeowner P.S., any finance company holding a mortgage on Homeowner P.S.'s residence, or Stewart Title, the title insurance company for this transaction.

(b) directed GMAC to send future correspondence concerning homeowner P.S.'s mortgage to defendant JAY BERGER's office, 7 Bala Avenue, Bala Cynwyd, Pennsylvania, 19004, without the knowledge or permission of homeowner P.S.

(c) made a few payments on homeowner P.S.'s existing mortgage with GMAC., and also caused Margaret Carole Fisher, charged elsewhere, who assisted defendant JAY BERGER in this transaction, to make one payment on this mortgage.

24. On or about August 9, 2004, after settlement of homeowner J.G.'s home mortgage refinancing, defendant JAY BERGER:

(a) failed to forward approximately \$349,402.84 to Chase Manhattan, the holder of the existing mortgage on homeowner J.G.'s home, but instead forwarded Chase Manhattan an insufficient funds check, and kept the money for himself without the knowledge or

permission of homeowner J.G., any finance company holding a mortgage on homeowner J.G.'s residence, or Fidelity, the title insurance company for this transaction.

(b) directed Washington Mutual to send future correspondence concerning homeowner M.P.'s mortgage to P.O. Box 344, Bala Cynwyd, Pennsylvania, 19004, a post office box controlled by defendant JAY BERGER, and not known to homeowner J.G.

(c) made some payments on Homeowner J.G.'s mortgage with Chase Manhattan, including some payments with insufficient fund checks.

25. On or about August 26, 2004, after settlement of the second refinancing of defendant JAY BERGER's own home, defendant JAY BERGER did not forward approximately \$472,931.94 he received from the new mortgage holder, to Litton, the holder of the second mortgage on his property, but instead kept the money for himself, without the knowledge or permission of any finance company holding a mortgage on defendant JAY BERGER's residence or Fidelity, the title insurance company for this transaction.

26. Defendant JAY BERGER gave Margaret Fisher, who assisted him in several fraudulent transactions, at least \$70,000 in "loans" which defendant JAY BERGER did not require her to repay.

27. On or about November 30, 2004, in the Eastern District of Pennsylvania and elsewhere, defendant

JAY BERGER,

for the purpose of executing the scheme described above and affecting a financial institution described above, knowingly caused to be delivered by mail according to the directions thereon, a letter from Washington Mutual, Jacksonville, Florida, addressed to Homeowner L.B., P.O. Box 344, Bala Cynwyd, Pennsylvania 19004-0344.

All in violation of Title 18, United States Code, Section 1341.


FOL PATRICK L. MEEHAN
UNITED STATES ATTORNEY