BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 901, Disciplinary Docket No. 3
Petitioner	:	Supreme Court
	:	
v.	:	No. 33 DB 2004 – Disciplinary Board
	:	
	:	Attorney Registration No. 04108
RICHARD M. MELTZER	:	
Respondent	:	(Philadelphia)

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 Joint Petition filed with the Supreme Court on January 29, 2004, Richard M. Meltzer, Respondent, and Office of Disciplinary Counsel, Petitioner, requested that the Supreme Court place Respondent on temporary suspension. By Order dated March 8, 2004, the Supreme Court placed Respondent on temporary suspension and referred the matter to the Disciplinary Board. On January 26, 2005, Petitioner filed a Petition for

Discipline against Respondent charging him with professional misconduct arising out of his conviction for wire fraud, in violation of U.S.C.§§1343 and 1346. Respondent filed an Answer to Petition for Discipline on February 18, 2005.

A disciplinary hearing was held on May 4, 2005 before a District I Hearing Committee comprised of Chair Stewart L. Cohen, Esquire, and Members Martin N. Lisman, Esquire, and George D. Bruch, Jr., Esquire. Respondent was represented by James C. Schwartzman, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 18, 2006, finding that Respondent engaged in professional misconduct and recommending that he be suspended for four years.

Respondent filed a Brief on Exceptions to the Hearing Committee Report on February 7, 2006.

This matter was adjudicated by the Disciplinary Board at the meeting on March 29, 2006.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207, Pa.R.D.E., with the power and 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 said Rules of Disciplinary Enforcement.

2. Respondent, Richard M. Meltzer, was born in 1944 and was admitted to practice law in the Commonwealth of Pennsylvania in 1969. Respondent does not currently maintain an office for the practice of law in Pennsylvania. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On December 5, 2003, Respondent entered a plea of guilty to an Information filed in the United States District Court for the Eastern District of Pennsylvania, charging him with wire fraud, in violation of U.S.C. §§1343 and 1346.

4. On October 4, 2004, the Honorable Anita B. Brody entered the following sentence: one day incarceration; a fine of $50,000 to be paid within 60 days and an assessment of $100; five years of supervised release, of which the first fifteen months are to be spent on house arrest with electronic monitoring; and prohibited work release.

5. Respondent served as an Assistant United States Attorney from 1971 to 1977 under Louis C. Bechtle, and Judge Bechtle's successor, Robert E.J. Curran, Esquire.

6. After leaving the government, Respondent pursued private practice with several firms, where he was a partner in each.

7. In 1999, Respondent began representing Metran Funding, Inc.

8. Metran, as servicing agent for Banco Popular of North America, in New York, granted loans secured by taxicab medallions in Philadelphia and assigned the loans

to Banco. Brian Doran, Esquire, was in-house counsel for Banco. Metran was obligated to Banco for loan deficiencies pursuant to its service agreement with Banco.

9. One of Metran's customers was Michael Etemad, who by February 2001, had borrowed and personally guaranteed more than $4.5 million in loans allegedly secured by his medallions.

10. When Metran discovered Etemad's loan irregularities, it had Respondent file Confessions of Judgments in Philadelphia in March of 2001 on behalf of Banco.

11. On June 26, 2001, Paul Rosen, Esquire, on behalf of Etemad and his companies, filed a civil RICO action in Federal Court against Banco, Metran, its owners, and others; sought to render the loans invalid, avoid repayment, and prevent Banco from operating in the Commonwealth; Etemad also ceased making payments on all loans.

12. Metran and Banco agreed to divide payment of legal fees for Respondent's law firm to file a Motion to Dismiss the RICO complaint. Respondent suggested Blank Rome represent Banco for any future proceedings, if the Motion to Dismiss was denied.

13. Respondent and Metran concluded that Etemad had provided false financial statements to Metran and Banco for the loans and had diverted the entire proceeds of a $600,000 loan, causing a lack of security for Banco and Metran. As a result, Respondent and Metran met with federal agents to discuss their findings in July and August of 2001.

14. Banco's primary objectives were to resolve the $4.5 million in nonperforming loans by year end to avoid scrutiny by its auditors, and obtain more collateral on a new loan.

15. By Fall 2001 Metran and Banco had confessed judgment against Etemad for $76,000; had filed a confession action for the $600,000 loan; a third was imminent.

16. Drew Salaman, Esquire, began negotiating a loan restructuring with Doran on Etemad's behalf in August 2001. Respondent directed him to Doran.

17. In August 2001, Doran quickly rejected Salaman's initial offer but invited further settlement discussion. Salaman's second proposal to Doran on September 13, 2001 was for a prompt global resolution, a restructure of loans with better quality collateral, and a "market favorable interest rate, relative to prime." Prime had dropped from 9.25% to 6% at the time. Salaman specified he would handle the negotiations, not Rosen, as he had influence with Etemad. He copied all counsel on the letter.

18. On September 20, 2001, Respondent wrote to Doran that he believed the Motion to Dismiss the RICO case would be granted, that Banco's decision about an acceptable rate of interest was a pure business decision, and he wanted Etemad to pay Metran's legal fees at closing.

19. Respondent told Salaman and Etemad during negotiations of his optimism on the Motion to Dismiss to induce them to move quickly.

20. On October 1, 2001, Respondent wrote Doran that Salaman agreed to many of Banco's demands, but wanted a fixed rate of 5%. Respondent made no

recommendation. Respondent told Doran to reject a property as collateral Etemad had claimed to be worth $600,000, as it had valuation and other problems.

21. Banco then counter proposed a floating rate of prime plus one.

22. On October 22, 2001, Respondent wrote to Doran that Salaman increased the rate to a fixed rate of 6.75%. Respondent believed the rate seemed reasonable since prime was 5.5%, but noted that it was up to the bank's business department.

23. In late October 2001, Banco provided Respondent with three alternative interest rate proposals with Doran's mandate that Etemad must select one of these proposals. Respondent verbally communicated this to Salaman, followed by a letter on October 26, 2001, wherein Respondent stated that he and Salaman confirmed the loan terms, emphasized that Doran mandated Etemad must select one of Banco's three proposed rates and demanded a written commitment from Salaman confirming his "client's intention to resolve the claim with Banco..." so closing could occur by year end.

24. Respondent met with Etemad on November 1, 2001 to discuss the legal fees to be paid by Etemad to his firm as previously promised by Salaman, the time to comply with the terms, and to ensure confirmation was promptly sent to Banco. Salaman was unable to attend but was aware of the meeting and consented to it. A third person, not involved with the loan and who Respondent knew, accompanied Etemad.

25. At the meeting Etemad gave Respondent a sealed envelope. Etemad expressed that he appreciated Respondent's hard work, recognized that Respondent did

not criticize him to Banco despite their past personal differences, that he would like Respondent to represent him in some future matters, that the envelope was a token of appreciation and he wanted to show that he was not "tight with money like other Israeli clients." Etemad was pleased that he could deal with Banco. (N.T. 136)

26. The material terms of the deal were already settled when Etemad met Respondent on November 1, 2001.

27. Respondent accepted the envelope which contained $2900.

28. Respondent did not retain the money but gave it to a long time client, Jacob Gabbay. Respondent indicated that Etemad had recently defrauded Gabbay of substantial money paid in insurance premiums. Respondent reported this to the FBI.

29. Respondent claims he did not consider the payment to be a "bribe"; it did not influence Respondent to act contrary to Banco's or Metran's interests or to favor Etemad. At no time did Respondent attempt to obtain a more favorable rate for Etemad. The terms were already determined. He was not asked or expected to do anything in exchange for the payment and his later actions were adverse to Etemad's interests.

30. Respondent did not tell Banco about the $2900 payment. Respondent admitted that this was wrong, stupid and unethical. (N.T. 137-139)

31. The next day Salaman confirmed the "principal terms" and told Banco to select the final rate.

32. Banco selected a floating rate not lower than 6% or above 7.5% based upon prime plus one. Settlement terms provided Banco with first liens on 75 cab

medallions worth $4.1 million and on appraised real estate worth $500,000; a cash down payment of $400,000; payment of delinquent interest of $180,000; mutual dismissal of litigation, but only for Banco in RICO action; a ten-year amortization with a five-year balloon payment of the $4.1 million loan balance; and payment of legal fees of $50,000 to Respondent's firm. Repayment included the $600,000 loan for which Etemad had denied liability under oath with a claim it had been procured by a forged signature and for which a confession action was pending in state court. The documents were to be prepared by Doran and the deal hinged on closing by year end.

33. Closing took place on December 17, 2001. At the time, prime was at 4.75%.

34. Following the November 1, 2001 meeting, Respondent's conduct was consistent with protecting Banco's and Metran's interests and adverse to Etemad. Respondent prepared an Omnibus Modification Agreement giving Banco more protection, suggested modifications to existing PUC regulations to the Senate Subcommittee in Harrisburg, provided information to the FBI in February 2002 about Etemad, and filed an Emergency PUC Petition against Etemad.

35. Respondent's Motion to Dismiss the RICO complaint was granted by Judge Giles on December 28, 2001.

36. Four and a half months after the receipt of the $2900 and three months after closing, in approximately February or March 2002, Respondent met Etemad at the

direction of Simon Abitbol, a principal of Metran, to discuss a matter which was relevant to the taxi industry.

37. During that meeting Etemad wore a recording device. He gave an envelope containing $2500 to Respondent. Etemad said nothing at that time, but later in the meeting Respondent refuted Etemad's statement crediting him for saving Etemad money by obtaining a rate lower than on his original loan.

38. Respondent offered the money to Jacob Gabbay, who told him to keep it, which Respondent did. Respondent did not inform Metran or Banco of the receipt of money from Etemad

39. Respondent never intended or planned to represent Etemad.

40. Respondent never intended nor caused any financial loss to Banco, whose position improved as a result of his acting as conduit between Salaman and Doran.

41. In February 2003, Respondent and Simon Abitbol met with Doran and advised him that Etemad might be in violation of the December 17, 2001 loan agreement by selling medallions without Banco's consent.

42. Banco reduced Etemad's interest rate on the new loan in the Summer of 2003. Respondent was not in the picture at that point.

43. Respondent introduced character witnesses at the disciplinary hearing.

44. Judge Arlin Adams (ret) unequivocally stated that Respondent's reputation for being a truthful, honest, and law-abiding person is of very high standing.

45. Judge Louis Bechtle (ret) has known Respondent since 1971 and knows many other people who are familiar with Respondent. Judge Bechtle is aware that Respondent enjoys an excellent reputation for being truthful, honest, and law-abiding. The underlying facts of the case have not changed his opinion of Respondent.

46. Lynanne Wescott, Esquire, has known Respondent since the 1990's. She described Respondent's general reputation as one of truthfulness and honesty "almost to a fault".

47. Carl Primavera, Esquire, former Chancellor of the Philadelphia Bar Association, has known Respondent since 1984. He described Respondent as enjoying an excellent reputation for being a truthful, law abiding and honest person. The circumstances of the case have not changed his opinion or the opinions of others concerning Respondent. Mr. Primavera believes the misconduct was an isolated event in an unblemished career.

48. Several other character witnesses testified similarly that Respondent's reputation was excellent and has not diminished as a result of the case because it was a complete aberration by all who knew Respondent.

49. Letters from members of the bar were offered in support of Respondent's excellent character.

50. Prior to this incident Respondent performed years of charitable work and contributed pro bono services to many members of his synagogue.

51. Respondent demonstrated remorse and acceptance of responsibility for his failure to disclose the receipt of money from Etemad.

52. Respondent did not expect to receive money from Etemad at any of the meetings.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. Pa.R.D.E. 203(b)(1) – Conviction of a serious crime pursuant to Pa.R.D.E. 214(i) constitutes an independent ground for discipline.

IV. DISCUSSION

Respondent stands convicted of the crime of wire fraud. This crime is a serious crime, punishable by more than one year of imprisonment, and there exists a per se basis for discipline. As with any criminal conviction matter, the sole issue for the Board to determine is the extent of discipline.

The nature of Respondent's misconduct was his failure to report the receipt of money from Mr. Etemad, the opposing party, during and after the representation ended. The record evidences that in the end there was no actual or resulting harm sustained by

Respondent's client, Metran, or by Banco, and he continued to represent Metran as Banco's agent. While Petitioner argues that Respondent behaved in ways opposite to his clients' interests after his receipt of monies from Etemad, there is no evidence to suggest that Respondent was disloyal to Metran or Banco. Respondent did not fail to disclose information helpful to Banco; Respondent did not persuade Banco to select a lower interest rate than on the original loans after receipt of a payment from Etemad; Respondent did not place his own financial interests above those of his clients; Respondent did not ignore the interests of his clients; and Respondent was not motivated to obtain future business from Etemad due to the payments. Respondent has acknowledged his error in failing to disclose to his clients the fact that he accepted money on two occasions from Etemad. He has labeled his conduct as "stupid, foolish, ignorant, wrong and unethical".

While the Hearing Committee definitively found that Respondent did not act disloyally to his clients, the recommendation forthcoming was a four year suspension. Following careful review of the facts of this matter, and keeping in mind the strong character evidence from respected members of the bar and judiciary, the Board is persuaded that a one year suspension is appropriate. Respondent did not take monies for the purpose of furthering his career and he did not take action against his own clients as a result of receiving the monies. Respondent did not expect to receive monies and at no time intended to harm his clients. We consider the unfortunate events leading to Respondent's conviction to be an aberrant lapse of judgment. Respondent was truly remorseful, and exhibited honesty and candor throughout the proceedings. To require

Respondent to undergo the scrutiny of a reinstatement proceeding is unnecessary. A one year suspension, retroactive to the date of his temporary suspension, will serve to address Respondent's misconduct and provide redress to the profession and the public.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Richard M. Meltzer, be suspended from the practice of law for a period of one year retroactive to March 8, 2004.

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:_____
Donald E. Wright, Jr., Board Member

Date: June 14, 2006

Board Members Saidis and Brown dissented for suspension of one year and one day.

Board Member Curran recused.

O R D E R

PER CURIAM:

AND NOW, this 28th day of September, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 14, 2006, it is hereby

ORDERED that Richard M. Meltzer be and he is suspended from the Bar of this Commonwealth for a period of one year retroactive to March 8, 2004, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

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