

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 171, Disciplinary Docket
Petitioner : No. 3 - Supreme Court
:
: No. 3 DB 1996
: Disciplinary Board
v. :
: Attorney Registration No. []
[ANONYMOUS] :
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 Order of the Supreme Court of Pennsylvania dated January 18, 1996 Respondent, [], was temporarily suspended from

the practice of law in Pennsylvania. This suspension was based on Respondent's conviction on August 11, 1995 of making a false statement to a federally insured financial institution in order to secure a mortgage loan, in violation of 18 U.S.C. §§1014 and 2. Respondent was sentenced to five years probation, four months of which was home confinement, a fine of \$2,000, and restitution of \$169,715.

Office of Disciplinary Counsel filed a Petition for Discipline against Respondent on February 13, 1996 based on his criminal conviction. A hearing was held on September 5, 1996 before Hearing Committee [] comprised of Chair [], Esquire, and Members [], Esquire, and [], Esquire. Respondent was represented by [], Esquire and [], Esquire. Petitioner was represented by [], Esquire. The Committee filed a Report on January 6, 1997 and recommended a two year suspension retroactive to January 18, 1996. No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting held on March 5, 1997.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now located

at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), 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, [], was born on March 18, 1956 and was admitted to practice law in Pennsylvania on November 12, 1987. He is married with four children. He resides at [].

3. On August 11, 1995, Respondent pleaded guilty to making a false statement to a federally insured financial institution in order to secure a mortgage loan, in violation of 18 U.S.C. §§ 1014 and 2.

4. He was sentenced to a term of three years probation, four months of which was home confinement, a fine of \$2,000, and restitution of \$169,715.

5. Respondent was placed on temporary suspension by the Supreme Court by Order of January 18, 1996.

6. The events leading to Respondent's conviction are as follows:

- a) In the mid 1980's [A] was active in speculative real estate transactions in the

[] area. He headed several entities that were involved in fraudulent real estate and banking activity.

- b) In or about January 1989, [A] offered to sell to Respondent property located at [] in [].
- c) After negotiating the purchase terms with [A], Respondent signed an agreement of sale to purchase the property for \$600,000.
- d) The agreement of sale contemplated a cash payment of \$120,000, and Respondent made a \$40,000 deposit toward the payment.
- e) On or about January 24, 1989, Respondent caused a mortgage loan application in the amount of \$480,000 (purchase price less supposed cash payment) to be submitted to [B] Bank, and Respondent represented the purchase price of the property to be \$600,000.
- f) Thereafter Respondent negotiated with [A] to reduce the price to \$475,000.
- g) On or about February 5, 1989, Respondent and [A] entered a written agreement to reduce the price to \$475,000 and to share the profits between Respondent and [A's] company when Respondent resold the [] property.
- h) Respondent concealed his agreement with [A] from [B].
- i) Thereafter, Respondent, with the intent of inducing [B] to approve the mortgage loan application, caused documentation to be submitted to [B] wherein he represented the purchase price to be \$600,000, when he knew it was \$475,000.
- j) The loan closed on February 28, 1989, and Respondent left the closing with a check that represented the excess proceeds from the

loan, as well as part of the money he paid as a deposit on the property.

- k) For several months Respondent used the excess proceeds as well as his own money to make four monthly mortgage payments totalling \$12,000 and to pay other expenses associated with the [] property.
- l) Respondent attempted to sell the property at a substantial profit and eventually reduced the selling price, but no offers were made because of a depressed real estate market at the [].
- m) Respondent defaulted on the mortgage.
- n) Respondent attempted to minimize the loss by continuing his efforts to sell the property at the highest possible price and to offer [B] a deed in lieu of foreclosure, which the bank rejected even when Respondent offered a cash settlement.
- o) [B] instituted foreclosure proceedings. Respondent counterclaimed without disclosing the existence of the agreement with [A] to reduce the purchase price because he hoped to maintain his bargaining power and conceal his mortgage fraud.
- p) During the civil litigation, Respondent disclosed the existence of his agreement with [A] to reduce the purchase price. [B] was granted leave of court to file an amended complaint alleging fraud by Respondent.
- q) [B] sold the property in 1993 for \$270,000.
- r) [B] and Respondent continued to litigate the appropriate amount of the deficiency. The litigation settled in 1994 with Respondent paying \$175,000 to the bank.

- s) The FBI contacted Respondent in the summer of 1991, at which time he cooperated with the investigation.

7. Respondent was admitted to practice law in [] in 1987. He was temporarily suspended from practice in that jurisdiction in November, 1995 pending resolution of the litigation.

8. Respondent was temporarily suspended by the Supreme Court of Pennsylvania on January 18, 1996.

9. Respondent has no prior record of discipline in Pennsylvania.

10. Character witnesses testified at Respondent's hearing as to his good reputation in the community for integrity and as a family man. (N.T. 21, 30, 33)

11. Respondent testified that he was driven by the opportunity to make a profit, and he knows what he did was wrong and a mistake. He feels he was lucky to have so many people support him in his time of crisis. (N.T. 40, 41, 68)

III. CONCLUSIONS OF LAW

Respondent's conviction on August 11, 1995 constitutes a conviction under Rule 214(d), Pa.R.D.E.

Respondent's conviction constitutes a per se individual basis for discipline pursuant to Rule 203(b)(1), Pa.R.D.E.

IV. DISCUSSION

Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement provides that conviction of a serious crime shall be grounds for discipline. The sole issue before the Board in the case at bar is the extent of discipline to be imposed. Office of Disciplinary Counsel v. Costigan, 526 Pa. 16, 584 A.2d 296 (1990). In criminal conviction cases, the Board's inquiry must focus on whether Respondent's character, as evidenced by his conduct, makes him unfit to practice law from the standpoint of protecting the public and the court system. Office of Disciplinary Counsel v. Casety, 511 Pa. 177, 512 A.2d 607 (1986). In order to properly assess Respondent's character, the Board must examine the circumstances of the criminal conduct.

Respondent engaged in a scheme with [A] in 1989 whereby he signed an agreement of sale to purchase property in [] for \$600,000. [A] headed several entities involved in fraudulent real estate and banking activities. Respondent submitted a mortgage application to [B] Savings and Loan representing the purchase price to be \$600,000. In a secret deal between Respondent and [A], the purchase price was reduced to \$475,000. The intent of the scheme was that Respondent would sell the property shortly after purchasing it and share the profits with [A]. The loan

closed in February 1989, at which time Respondent caused documentation to be submitted to [B] in which Respondent misrepresented the purchase price to be \$600,000. This fraud, in effect, allowed Respondent to receive 100% financing on the property while deceiving [B] into the understanding that Respondent had made a personal equity investment of \$120,000 in the property.

The scheme began to go awry when, after taking title, Respondent was unable to find a quick buyer or realize an anticipated profit. Respondent made four monthly mortgage payments before defaulting on the loan. In an attempt to extricate himself from his predicament, Respondent offered [B] a deed in lieu of foreclosure and later the deed plus a cash payment, but [B] rejected these offers. Foreclosure proceedings were instituted by [B]. Respondent compounded his fraud by counterclaiming against [B] without revealing the existence of his agreement with [A] to reduce the price. The litigation lasted for two years, during which time Respondent made multiple representations that the purchase price was \$600,000. Only towards the conclusion of the litigation did Respondent reveal the truth about the agreement with [A]. [B] filed an amended complaint alleging fraud on the part of Respondent. [B] sold the property in 1993 for \$270,000,

and subsequently the litigation settled with Respondent paying \$175,000 to [B].

Respondent testified that he was approached by [A], through his company [C], to get involved in a land deal and was promised a lot of money if he did so. (N.T. 42) Respondent was supposed to buy the property for \$600,000. The property would then be subdivided and sold. Respondent testified that he got cold feet shortly after signing the agreement of sale and wanted to pull out, but [A] suggested to him that they reduce the purchase price and get 100% financing. (N.T. 43) At that point Respondent knew such a side agreement was wrong, but he decided to go forward. Respondent explained that the anticipated financial gains induced him to go forward with the scheme.

Respondent's misconduct raises serious questions concerning his character and fitness to practice. Not only did he allow himself to be persuaded to commit fraud on a financial institution, he continued his involvement in the charade by continuing to falsely assert that the purchase price was \$600,000 during the majority of the foreclosure litigation with [B]. He was still attempting to conceal his fraud and maintain his bargaining position with the bank without regard for the legal and ethical inappropriateness of his behavior. Such egregious

misconduct deserves a suspension from the practice of law.

Several mitigating factors must be considered prior to the final determination of discipline. Respondent's conduct occurred more than five years ago. Respondent attempted to minimize [B's] loss. Respondent settled the civil litigation by paying \$175,000 to [B]. Respondent cooperated with the government investigation and readily acknowledged his guilt. Respondent cooperated with Petitioner, moving jointly for a temporary suspension and entering into stipulations when possible. Respondent presented compelling evidence of good character and has a good reputation in the legal community. Respondent has no prior record of discipline, although this fact must be tempered by the reality that Respondent was admitted to the bar in 1987 and became involved in the scheme in 1989. Finally, Respondent expressed sincere remorse for his actions.

Precedent suggests that a period of suspension for two years is an adequate and appropriate sanction based on the totality of the circumstances in this matter. In the case of In re Anonymous No. 65 DB 93, 25 Pa. D. & C. 4th 375 (1995), an attorney was convicted of structuring bank deposits to evade reporting requirements to the IRS. The Board found that the attorney's conduct was a momentary lapse and not a course of

conduct. This attorney cooperated with the government. The attorney was suspended for one year. In the case of In re Anonymous No. 121 DB 88, an attorney pleaded guilty to obstruction of justice arising from his assistance in filing for fraudulent medical claims. The attorney was suspended for two years and three months. The sanction recommended in the instant case is within the ambit of appropriate discipline for similar convictions.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be suspended for a period of two (2) years, retroactive to January 18, 1996.

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: _____
Gregory P. Miller, Member

Date: May 13, 1997

Board Member Scaricamazza recused himself.

Board Member Kerns dissents and would remand the matter back to the Hearing Committee for an independent evaluation and recommendation.

Board Members Carson and Caroselli did not participate in the March 5, 1997 adjudication.

PER CURIAM:

AND NOW, this 2nd day of July, 1997, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 13, 1997, it is hereby

ORDERED that [Respondent] be and he is SUSPENDED from the Bar of this Commonwealth for a period of two (2) years, retroactive to January 18, 1996, 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.