

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1008, Disciplinary Docket
Petitioner	:	No. 3 – Supreme Court
	:	
v.	:	No. 48 DB 2005 – Disciplinary Board
	:	
LEIGHTON COHEN	:	Attorney Registration No. 24547
Respondent	:	(Lehigh County)

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

On April 15, 2005, Leighton Cohen, Respondent, was placed on temporary suspension by Order of the Supreme Court of Pennsylvania. On June 3, 2005, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent charging him with professional misconduct arising out of his criminal conviction of one count of deceptive or

fraudulent business practices, in violation of 18 Pa.C.S.A. §4107(a)(5). Respondent filed an Answer to Petition for Discipline on July 8, 2005.

A disciplinary hearing was held on September 21, 2005, before a District II Hearing Committee comprised of Chair Michael S. Dinney, Esquire, and Members William J. Gallagher, Esquire, and John C. Butera, Esquire. Respondent was represented by James C. Schwartzman, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on February 8, 2005, with the majority recommending that Respondent be suspended for one year retroactive to January 5, 2005. One Member dissented for a one year suspension retroactive to April 15, 2005.

Petitioner filed a Brief on Exceptions on March 6, 2006.

Respondent filed a Brief Opposing Exceptions on March 27, 2006.

This matter was adjudicated by the Disciplinary Board at the meeting on May 10, 2006.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg PA 17101, 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, Leighton Cohen, was admitted to the practice of law in Pennsylvania in 1976 and was placed on temporary suspension by Order of the Supreme Court of Pennsylvania on April 15, 2005. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

4. On October 1, 2004, an Information was filed in the Lehigh County Court of Common Pleas against Respondent, charging him with 14 counts in violation of Title 18 Pa.C.S.A. as follows:

- a. Two counts of Corrupt organizations;
- b. Dealing in proceeds of unlawful activities;
- c. Unauthorized use of computer;
- d. Forgery;
- e. Uttering a forged instrument;
- f. Theft by deception;
- g. Receiving stolen property;
- h. Deceptive or fraudulent business practices;
- i. Misapplication of entrusted property and property of government or financial institutions;

- j. Insurance fraud;
- k. Identity theft;
- l. Criminal use of communication facility;
- m. Criminal conspiracy.

5. On January 5, 2005, Respondent entered a plea of guilty to one count of deceptive or fraudulent business practices, before the Honorable William H. Platt. He admitted to recklessly engaging in a course of business in which he made false or misleading statements in an advertisement addressed to the public or to a substantial segment thereof for the purposes of promoting the purchase or sale of property or service, to wit: an advertisement indicating that special financing had been set aside for Pennsylvania mobile home owners and that these special funds could be used for any purpose.

6. Respondent was sentenced to two years of probation, a fine of \$1,000, restitution totaling \$60,000, and court costs, all to be paid within two years. In addition, Respondent agreed to the immediate suspension of his license to practice law pending further action by the Disciplinary Board.

7. As a result of Respondent's conviction he was terminated from his employment as assistant county solicitor for Lehigh County, which position he had since 1992.

8. Respondent's criminal conviction arose out of his association with the principals and employees of several businesses involved in the mobile home industry:

Charles Milder, David Doheny, Randy McKinney, Steven Miller, Linda Ambrose, and Todd Erie. The businesses were Mobile Experts, Inc., Mobile Home Loans and Sales and Mobile Homes for Less.

9. Over the course of roughly two years, from September 2000 through October 2002, the Principals defrauded lenders of roughly \$1.3 million in more than 20 separate loan transactions procured with falsified or fabricated information.

10. Respondent became involved with the Principals starting in about 1995, when Lee Green, a former client of Respondent, asked Respondent if he would consider handling land home transactions and settlements for Mobile Masters, the business for which she was working at that time.

11. Respondent provided settlement agent services in connection with mobile home transactions processed by the Principals, or business entities owned by them.

12. While working with Mobile Masters, Respondent acted as the closing agent for land home transactions in which the purchaser acquired title to both real property and to the personal property at the time of the closing. The purchaser paid for Respondent's closing services in connection with these transactions.

13. In the Summer or early Fall of 2000, in response to the invitation of the Principals, Respondent moved his private law office from Allentown into the same building at the offices maintained by the mobile home businesses, located in New Tripoli, Pennsylvania.

14. After Respondent's move, he began to act as a closing disbursement agent for some mobile home-only transactions, pursuant to which he would make disbursement on behalf of the mobile home companies in accordance with the instructions he received from the mobile home company on the settlement sheet.

15. Respondent used his attorney escrow account in these transactions to receive monies that were not his and then to disburse monies that were not his, in accordance with the settlement sheets.

16. At the time that Respondent provided settlement agent services for transactions initiated by the Principals, he had no knowledge that any of the funds that passed through his attorney escrow account had been fraudulently obtained by the Principals.

17. Respondent was negligent in connection with the disbursement of \$58,000 from Coastal Financial in connection with the fraudulent lending practices of the Principals.

18. Respondent first became suspicious of activities of the Principals and their entities in Spring 2002, following a conversation with his son, who was working for the companies.

19. Finally, in June 2002, Respondent received a call from Suzanne Wells of Dennison Financial regarding a fraudulent transaction.

20. In early September 2002, Respondent moved his law office out of the New Tripoli location.

21. Respondent cooperated in the investigation of the Principals and their activities.

22. Respondent's criminal case engendered notoriety in the form of newspaper articles in the Allentown Morning Call and News Service from 2001 to 2005.

23. Several character witnesses testified on behalf of Respondent.

24. Jerry Knafo, Esquire, is a Lehigh County attorney who has been practicing law for 23 years and is a former Disciplinary Board Hearing Committee Member. Mr. Knafo indicated that Respondent has an excellent reputation for being a truthful, honest and law-abiding person, and that Respondent's conviction was well known, but had not changed his opinion or the opinions of others in the community.

25. James Anthony, Esquire, and Richard Orloski, Esquire, are Lehigh County attorneys who have known Respondent for a number of years. They attested to Respondent's superb reputation for being an honest, law abiding person, whose good reputation continues in spite of the conviction.

26. Thomas Murtaugh, Alfred Fritzinger, and Nancy Bernstein are members of the community who similarly testified to Respondent's excellent reputation for honesty and truthfulness in the community.

27. Respondent demonstrated sincere remorse and acceptance of responsibility for his actions.

28. Respondent saw the advertisements and was “indifferent one way or the other” and testified that he “didn’t think about whether it’s true or not true.” (N.T. 120, 146)

29. Respondent only saw the advertisements because they were “all over the place” (N.T. 120)

30. Respondent stated that he “wasn’t watching, you know, the fort. I was supposed to be the captain of the ship, and I wasn’t at the helm.” (N.T. 118)

31. As of the date of the disciplinary hearing, Respondent had not filed a statement of compliance as required by Pa.R.D.E. 217(e), relating to notification of clients of his temporary suspension.

32. Respondent agreed to file a statement of compliance immediately following the hearing, and did file his letter of compliance on September 29, 2005, eight days after the hearing.

III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(1) – Respondent’s conviction constitutes an independent basis for discipline.

2. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on his fitness as a lawyer.

IV. DISCUSSION

Respondent is before the Disciplinary Board for consideration of his criminal actions which resulted in his conviction of one count of deceptive or fraudulent business practices, a misdemeanor of the second degree. As with all disciplinary matters predicated on an attorney's conviction of a serious crime, the sole issue to be resolved is the extent of discipline to be imposed on Respondent. Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1193 (Pa. 1982). Respondent admits that his crime is a serious crime and constitutes a per se ground for discipline. Respondent further admits that he was negligent in connection with the disbursement of \$58,000 from Coastal Financial in connection with fraudulent loans. Respondent's offense arose out of his tacit approval and seeming indifference to the truth of the assertions made in the direct marketing materials utilized by Mobile Experts and Mobile Home Loans and Sales. Respondent admitted that he was daily exposed to this promotional literature, but did not pay attention nor take action to prevent the dissemination of the advertisements. Additionally, he did not cease providing his services in connection with the transactions of the entities. Respondent expressed sincere remorse for his actions and sorrow for the shame he brought on himself, his family and the legal profession.

After consideration of the positions of the parties, the Hearing Committee recommended a one year suspension, with a majority further recommending that the suspension be retroactive to January 5, 2005, the date Respondent pleaded guilty to his crime and ceased practicing law. The Committee recognized the seriousness of the crime, but was impressed by the character witnesses, each of whom held that Respondent was of excellent character, notwithstanding the conviction. The Committee gave weight to Respondent's sincere contrition.

Petitioner argues for a two year period of suspension based on its position that Respondent's crime requires that he petition for reinstatement and appear before the Board to prove his fitness before he is allowed to practice law in the future. Petitioner emphasizes the aggravating factors it finds in this case, i.e. the number of people impacted by his conduct, the substantial amount of money involved in the scheme, the use of the attorney escrow account for disbursement of funds, and the impact on the public by the significant notoriety arising from Respondent's misconduct. Petitioner also raises two tangential issues it believes impacts the outcome of this case. The first is Respondent's two year criminal probation, which ends on January 5, 2007. A one year suspension would mean that Respondent would be reinstated while on probation. The second issue is Respondent's failure to comply with the notification provisions of Pa.R.D.E. 217 until after the disciplinary hearing. Petitioner suggests that this omission demonstrates Respondent's lack of fitness.

There are no reported disciplinary cases in Pennsylvania involving a conviction for deceptive or fraudulent business practices. It is appropriate to consider precedent involving similar misconduct. Petitioner cited various cases of insurance fraud, mail fraud and banking fraud. The Board is not persuaded that the instant matter is on equal footing with such cases, as Respondent did not participate actively and frequently in the scheme, nor did he benefit personally. See, Office of Disciplinary Counsel v. Russell F. D'Aiello, Jr., 83 DB 2000, 587 Disciplinary Docket No. 3 (Pa. Dec. 28, 2001) (two year suspension for making false statements to financial institution, where attorney submitted a falsified personal loan application so that he would qualify to borrow the amount he sought to borrow); In re Anonymous No. 3 DB 1996, 171 Disciplinary Docket No. 3 (Pa. July 2, 1997) (two year suspension for making false statements to financial institution where attorney filed mortgage loan applications overstating the purchase price for property he was acquiring, aggravated by the fact that he continued to maintain that the inflated price was the true purchase price). Respondent's conduct is less culpable than the conduct of the attorneys in the above cited cases.

The Board is persuaded that a one year period of suspension is appropriate under the totality of the circumstances. Respondent's criminal conviction arose out of his failure to pay attention to direct advertising material, which contained false and misleading statements. There was no evidence that Respondent actually prepared the material or that he reviewed the material as legal counsel to the Principals involved in the scheme. Respondent knew the false advertising existed and was disseminated to the public, and he

continued to provide closing and settlement services for transactions. Respondent was aware of the false advertising material and could have prevailed upon the principals to cease making the misstatements, or he could have terminated his association with the Principals. Respondent allowed himself to be used in the Principals' scheme.

The Board finds no merit to the arguments on probation and notification raised by Petitioner. Additionally, the Board is impressed by the high quality of the character evidence presented that Respondent's excellent reputation for truthfulness and honesty in the community has remained intact, despite the criminal conviction. In the view of many, the conduct was an aberration. Respondent has acknowledged his crime and expressed sincere remorse. Respondent was a fit and competent attorney for many years prior to this incident. There is no evidence of record to suggest that his criminal conduct has rendered him so unfit that a reinstatement hearing is required in the future.

The Board recommends that Respondent be suspended for one year retroactive to April 15, 2005, the date of his temporary suspension from the practice of law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Leighton Cohen, be suspended from the practice of law for a period of one year retroactive to April 15, 2005.

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: _____
Robert C. Saidis, Board Member

Date: June 21, 2006

ORDER

PER CURIAM:

AND NOW, this 10th day of October, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 21, 2006, it is hereby

ORDERED that Leighton Cohen be and he is suspended from the Bar of this Commonwealth for a period of one year retroactive to April 15, 2005.

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

ORDER

PER CURIAM:

AND NOW, this 27th day of November, 2006, on certification by the Disciplinary Board that the respondent, Leighton Cohen, who was suspended by Order of this Court dated October 10, 2006, for a period of one year retroactive to April 15, 2005, has filed a verified statement showing compliance with all the terms and conditions of the Order of Suspension and Rule 217, Pa.R.D.E., and there being no other outstanding order of suspension or disbarment, LEIGHTON COHEN is hereby reinstated to active status, effective immediately.