

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1632 Disciplinary Docket No. 3
Petitioner :
v. : No. 130 DB 2010
: Attorney Registration No. 43657
ROBERT M. DANENBERG, :
Respondent : (Allegheny County)

ORDER

PER CURIAM

AND NOW, this 16th day of December, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated August 20, 2014; it is hereby

ORDERED that Robert M. Danenberg is suspended from the Bar of this Commonwealth for a period of five years retroactive to September 27, 2010, 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.

A True Copy Patricia Nicola
As Of 12/16/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1632 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 130 DB 2010
v.	:	
	:	Attorney Registration No. 43657
ROBERT M. DANENBERG	:	
Respondent	:	(Allegheny 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

By Order of September 27, 2010, the Supreme Court of Pennsylvania placed Robert M. Danenberg on temporary suspension from the practice of law following his conviction in the United States District Court for the Western District of Pennsylvania of the crime of conspiracy to commit wire fraud. Office of Disciplinary Counsel filed a Petition for Discipline against Respondent on January 11, 2011, charging him with violation of Pa.R.D.E. 203(b)(1) based on his criminal conviction. Respondent filed an Answer to the Petition for Discipline on February 28, 2011.

By letter dated March 7, 2011, Respondent requested postponement of the disciplinary matter until he was released from incarceration. Pursuant to that request, by Order dated March 14, 2011, the Disciplinary Board stayed the proceedings until such time as Respondent was released from incarceration.

A disciplinary hearing was held on October 1, 2013, before a District IV Hearing Committee comprised of Chair Michele S. Haggerty, Esquire, and Members Lorrie K. Albert, Esquire, and Mary K. Austin, 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 14, 2014, concluding that Respondent violated Rule 203(b)(1), Pa.R.D.E. and recommending that he be suspended for a period of five years.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on May 22, 2014.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, 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 Robert M. Danenberg. He was born in 1954 and admitted to practice law in the Commonwealth in 1985. His attorney registration mailing address is 2754 Beechwood Blvd., Pittsburgh PA 15217. Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Pennsylvania.

3. By Order of the Supreme Court dated September 27, 2010, 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.

4. On February 3, 2009, an Indictment was filed against Respondent in the United States District Court for the Western District of Pennsylvania at Criminal No. 09-33. (PE 2, PE 3)

5. In the Indictment, Respondent was charged with three counts of the offense of "Wire Fraud Conspiracy," in violation of 18 U.S.C. Sections 1349 and 1343. (PE 3)

6. On January 8, 2010, pursuant to a plea agreement, Respondent entered a plea of guilty to Count 1 of the Indictment, and Counts 2 and 3 were dismissed. (PE 4, PE 5, PE 12)

7. On May 25, 2010, the Honorable Donetta W. Ambrose, Judge of the United States District Court for the Western District of Pennsylvania, sentenced Respondent to, inter alia, imprisonment of 24 months. (PE 9, PE 13 p. 203-204)

8. Respondent was incarcerated from July 29, 2010 to February 14, 2012 and subject to home confinement from February 14, 2012 to April 23, 2012. (PE 10, 11)

9. From April 14, 2012 to May 15, 2013, Respondent was subject to supervised release. (PE 10, 11)

10. By Order dated May 15, 2013, Respondent's term of supervised release was reduced to time served and supervision was terminated. (PE 11)

11. Respondent engaged in mortgage fraud with regard to ten different lenders, and agreed that he caused a loss of \$250,000. (PE 6)

12. To pay that restitution, Respondent borrowed money from a family member. (N.T. 37)

13. In addition to participating in the crime himself, Respondent directed five or more employees to take part in his crimes. (PE 13, p. 146)

14. Respondent has not been the subject of any prior disciplinary proceeding. (N.T. 27)

15. Four witnesses testified on behalf of Respondent as to his good reputation prior to the matter at hand. (N.T. 17-21, 67-68; PE 13, p. 156-160, 163-166)

16. Miles Kirschner, Esquire, is Respondent's brother-in-law and former law firm colleague and has known Respondent for more than 40 years. He testified to Respondent's good character and Respondent's acceptance of responsibility for his actions and his remorse. (N.T. 14-22)

17. David Grundler is the president of a software company and knows Respondent from a real estate investors association, in which Respondent was previously active. Respondent has previously served as Mr. Grundler's attorney. Mr. Grundler believes that Respondent was an excellent attorney and he would have no hesitation in hiring Respondent in the future, in the event Respondent's law license would be reinstated. (N.T. 56-65)

18. Joshua Caldwell is a real estate investor and the president of the real estate investors group in which Respondent was active. Mr. Caldwell knew Respondent as

an honest individual and he would not hesitate to use Respondent's legal services in the future if given the opportunity. Mr. Caldwell testified that Respondent was remorseful. (N.T. 65-71)

19. Charles Saul, Esquire is an attorney and former law firm colleague of Respondent. He has known Respondent for at least 20 years. Mr. Saul testified that Respondent was a trustworthy individual. Mr. Saul further testified that Respondent acknowledged his misconduct and felt remorse. He believes that the actions of Respondent that led to his criminal conviction were completely out of character. He had remained in contact with Respondent from the time charges were filed, and saw that Respondent "stood tall throughout this in acknowledging what he has done...and at all times being a stand-up guy and acting with integrity," without disputing he had done something wrong which "won't happen again". (N.T. 71-76)

20. Respondent testified on his own behalf.

21. When asked if he blamed anyone else for what he did or failed to do, Respondent testified: "No, it is strictly on me. I cast a blind eye to what was happening. It was a terrible mistake. It was not good judgment in any way, shape or form, and I know that, I knew it then...I knew better." (N.T. 48)

22. Respondent found it hard to believe that the misconduct happened, "not only that I committed a crime" but also "the ripple effects of the devastation that I caused to myself that I can't even express the words for how sorry I am to have participated in what occurred and what I created by casting a blind eye to the obvious. I should have had the courage to step up and stop it, but I didn't and shame on me for that." (N.T. 50)

23. At times Respondent's statements reflected a lesser degree of responsibility, as when he testified: "it's a terrible and stupid thing that I allowed myself to get into" and professed bewilderment that "I permitted these crimes to occur under my nose and not stop it, including myself." (N.T. 50)

24. Respondent followed these statements by expressing deep regret about the events and his participation in them, acknowledging he "made some very serious mistakes," and was "deeply sorry for my actions". (N.T. 49-50, 54-55)

25. Respondent cooperated with Petitioner by timely reporting his criminal conviction, not contesting the interim suspension, admitting the allegations of the Petition for Discipline, and stipulating to the authenticity of all of Petitioner's exhibits. (Pet. For Disc., Resp. Ans., Pet. Ex. 1-13)

26. Respondent earned his usual fees for his services in the subject real estate closings, but did not receive any other financial gain from the subject transactions. (N.T. 32-33). At his May 25, 2010 sentencing, he testified that he was unaware of how other participants had structured the transactions and unaware of the extent of the money they had exchanged among themselves. (PE 13, p. 101-103)

27. Although other participants who were sentenced prior to Respondent had not been ordered to pay restitution, Respondent consented to and forfeited \$250,000 as restitution. (PE 13, p. 9, 203). Respondent borrowed the money from his wife's family (N.T. 37), and his brother-in-law, Mr. Kirschner, testified that Respondent's repayment of the financial penalty financially ruined Respondent and his wife. (N.T. 18)

III. CONCLUSIONS OF LAW

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

1. Pa.R.D.E. 203(b)(1) - Respondent's conviction is an independent basis for discipline.

IV. DISCUSSION

Respondent's conviction of one count of conspiracy to commit wire fraud is conclusive evidence of the commission of a crime, and incontrovertible evidence of his professional misconduct. Rule 203(b)(1), Pa.R.D.E. Accordingly, the sole issue to be resolved by this Board is the extent of discipline to be imposed. Rules 214(e) and (f)(1), Pa.R.D.E. The Board's recommended discipline must reflect the facts and circumstances unique to the case, including any circumstances that are aggravating or mitigating. *Office of Disciplinary Counsel v. Eilberg*, 441 A.2d 1193 (Pa. 1982).

Respondent's conviction arose from his participation in fraud activities with regard to ten different lenders. His criminal conduct is an egregious affront to the public and the legal profession. Such misconduct, and other similar crimes involving fraud, have led to lengthy suspensions or disbarment. The common theme in these matters is the extreme disfavor with which the Supreme Court views criminal acts involving fraud and dishonesty, from which the public deserves to be protected. *Office of Disciplinary Counsel v. Costigan*, 584 A.2d 296 (Pa. 1990); *Office of Disciplinary Counsel v. Chung*, 695 A.2d 405 (Pa. 1997).

Case precedent suggests that what separates suspension matters from disbarment matters are the aggravating or mitigating factors. We find the following cases to be instructive.

In *Office of Disciplinary Counsel v. Buchko*, No. 255 DB 2010, the attorney engaged in mortgage fraud and was also charged with an additional, unrelated count of misappropriation of entrusted funds. Mr. Buchko chose not to attend the disciplinary proceedings. For his criminal conduct, misappropriation of funds and aggravating factors, he was disbarred.

The attorney in *Office of Disciplinary Counsel v. Reginald Greene*, 169 DB 2007 (Pa. 2009) engaged in conduct similar to that of Respondent. Mr. 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 loan proceeds provided by those lenders." Additionally, he minimally acknowledged responsibility for his actions. As a result of his criminal acts, Mr. Greene was disbarred.

Office of Disciplinary Counsel v. John L. Chaffo, Jr., No. 8 DB 2011 (Pa. 2013) involved an attorney who was convicted of two counts of conspiracy to commit wire fraud and nine counts 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; as a result, he was disbarred.

Other cases involving fraud have occasioned the imposition of a suspension. See *Office of Disciplinary Counsel v. Glori A. Kasner*, No. 51 DB 2011 (Pa. 2012) (five year suspension following conviction of two counts of aiding and abetting mail fraud;

demonstrated remorse, cooperated with the disciplinary process, and had no history of discipline); *Office of Disciplinary Counsel v. Chung*, 695 A.2d 405 (Pa. 1997) (suspension of five years for five counts of making false statements to financial institutions; demonstrated significant community involvement and evidence of good character); *Office of Disciplinary Counsel v. Michael David Sinko*, No. 99 DB 2009 (Pa. 2012) (suspension of four years for conviction of two counts of money laundering in connection with a conspiracy to solicit and accept bribes/kickbacks from unqualified loan applicants at a bank to which Mr. Sinko was outside counsel; demonstrated remorse, cooperated with disciplinary counsel and had no prior discipline).

Prior to the events at issue, Respondent had no history of professional discipline in a legal career that spanned nearly 25 years. Four witnesses appeared at his disciplinary hearing and testified to his good character, his contributions to his community, and their observations that Respondent was remorseful and had acknowledged his responsibility.

Respondent cooperated with the disciplinary process and expressed remorse. Though the Hearing Committee remarked upon Respondent's testimony that he had been drawn into the matter and was at a loss to understand his own behavior (PE 13 at 145, 147), the Committee ultimately concluded that Respondent's remorse was indeed genuine, demonstrating as he did a comprehensive understanding of his responsibility for his criminal conduct.

These mitigating factors persuade the Board that disbarment is not warranted in this matter, as the above-cited disbarment cases involved little or no demonstration of remorse or other mitigating factors that were present here.

For all of the foregoing reasons, the Board recommends that Respondent be suspended for a period of five years, retroactive to the date of the temporary suspension.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert M. Danenberg, be Suspended from the practice of law for a period of five years retroactive to September 27, 2010.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

Jane G. Penny, Board Member

Date: 8/20/2014

Board Members Lewis and Fitzsimons did not participate in the adjudication.



THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

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August 20, 2014

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1632 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 130 DB 2010
v.	:	
	:	Attorney Registration No. 43657
ROBERT M. DANENBERG	:	
Respondent	:	(Allegheny County)

**Expenses Incurred in the Investigation and Prosecution
of the above-captioned proceedings***

09/27/2010	2 Copies of Supreme Court Order	\$ 1.00
01/11/2011	2 Copies of Petition for Discipline	5.00
02/28/2011	2 Copies of Answer to Petition for Discipline	3.00
11/06/2013	2 Copies of Disciplinary Counsel's Brief to Hearing Committee	20.00
12/16/2013	2 Copies of Respondent's Brief to Hearing Committee	22.00
02/14/2014	2 Copies of Hearing Committee Report	17.00
09/23/2013	Transcript of Prehearing Conference held September 4, 2013	106.00
10/22/2013	Transcript of Hearing held October 1, 2013	386.00
09/04/2013	Charge for Change of Plea held January 8, 2010	843.15
08/20/2014	Administrative Fee	<u>250.00</u>

TOTAL AMOUNT DUE \$1,653.15

Make Check Payable to PA Disciplinary Board

PAYMENT IS REQUIRED UPON RECEIPT OF ORDER

* Submitted pursuant to Rule 208(g) of the Pa.R.D.E. and §93.111 of the Disciplinary Board Rules.