

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1695 Disciplinary Docket No. 3
Petitioner :
 : No. 255 DB 2010
v. :
 : Attorney Registration No. 26033
WILLIAM E. BUCHKO, :
Respondent : (Beaver County)

ORDER

PER CURIAM:

AND NOW, this 19th day of June, 2013, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 21, 2013, it is hereby

ORDERED that William E. Buchko is disbarred from the Bar of this Commonwealth retroactive to August 2, 2011, 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 6/19/2013

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1695 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 255 DB 2010
v.	:	
	:	Attorney Registration No. 26033
WILLIAM E. BUCHKO	:	
Respondent	:	(Beaver 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 January 13, 2012, Office of Disciplinary Counsel filed a Petition for Discipline against William E. Buchko. The Petition charged Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of his criminal conviction of bank fraud. Respondent failed to answer the Petition for Discipline and therefore, the allegations set forth in the Petition are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E.

A disciplinary hearing was held on June 11, 2012, before a District IV Hearing Committee comprised of Chair William D. Phillips, Esquire, and Members Lisa Ann Zemba, Esquire, and William T. Allison, Esquire. Respondent did not appear.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on November 7, 2012, concluding that Respondent violated the Rules as contained in the Petition for Discipline and recommending that he be suspended for a period of five years, retroactive to August 2, 2011, the date of Respondent's temporary suspension by Order of the Supreme Court of Pennsylvania.

Petitioner filed a Brief on Exceptions on November 27, 2012 and argues that disbarment is warranted.

This matter was adjudicated by the Disciplinary Board at the meeting on January 23, 2013.

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, Pennsylvania, 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 William E. Buchko. He was born in 1950 and was admitted to practice law in the Commonwealth of Pennsylvania in 1977. His attorney

registration mailing address is 1524 2nd Street, New Brighton PA 15066. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of professional discipline in Pennsylvania.

4. By Order of the Supreme Court of Pennsylvania dated August 2, 2011, Respondent was placed on temporary suspension pursuant to his conviction for bank fraud in the United States District Court for the Western District of Pennsylvania.

Criminal Conviction Matter

5. On June 16, 2010, an Indictment was filed against Respondent in the United States District Court for the Western District of Pennsylvania, charging Respondent with one count of the offense of bank fraud, in violation of 18 U.S.C. §1344(1).

6. On November 8, 2010, Respondent entered a plea of guilty to the Indictment.

7. On May 31, 2011, the Honorable David S. Cercone sentenced Respondent to imprisonment of one day and supervised release for a term of three years.

8. As set forth in the Indictment to which Respondent entered a plea of guilty, he aided a borrower in attempting to obtain a loan on certain real estate by use of false information to be given to the lender. The false information was to lead the lender to believe that the real estate had already been purchased by the borrower, for \$3.2 million dollars, and that the loan was to refinance a prior loan. The borrower did not yet own the property, and the bank would have had no security for its loan.

9. The false documents consisted of a settlement sheet and a deed which falsely evidenced an earlier purchase of the property.

Long Matter

10. On or about September 12, 2005, a closing was held on the purchase of real estate located at 627 Virginia Avenue, Rochester, Pennsylvania 15074 by Nicholas and Kristin Long from Ann M. Long for \$70,000.

11. At the closing, \$5,520 out of the proceeds of the sale was escrowed by the closing agent, American General Services Corporation, pending the satisfaction of a mortgage held by "Finance American Cons. Disc".

12. Respondent appeared at the closing as the attorney for the seller, Ann M. Long, who was otherwise entitled to the \$5,520.

13. On September 13, 2005, Old Republic National Title Insurance Company issued a title insurance policy in the amount of \$70,000 to Nicholas and Kristin Long for the real estate they purchased at 627 Virginia Avenue, Rochester, Pennsylvania.

14. On or about April 7, 2009, Respondent sent, via facsimile, a letter to John Fencil of American General Services Corporation, in which he:

a. Stated that he was attempting to satisfy the open mortgage in the chain of title for the property located at 627 Virginia Avenue;

b. Stated that he had spoken with Ann M. Long and she asked that he pursue a quiet title action to resolve this matter; and

c. Requested that Mr. Fencil release to Respondent \$1,000 from the amount which he was holding in escrow in order to apply the funds as fees and costs of the quiet title action.

15. By letter to Mr. Fencil dated April 13, 2009, Respondent:

a. Stated that he had recently requested a release of the portion of the funds escrowed by Mr. Fencil's office pending satisfaction of the open mortgage in the chain of title to the property;

b. Confirmed that the sum of \$5,520 would be transferred to Respondent to hold in escrow and apply as needed in pursuit of the quiet title action;

c. Requested Mr. Fencil release the funds; and

d. Provided the signature of Ann M. Long noting her agreement to this course of action.

16. On April 15, 2009, Respondent received a check in the amount of \$5,520, made payable to "William E. Buchko, Esquire, in escrow for Ann M. Long."

17. On or about April 15, 2009, Respondent deposited the check into his business account at Huntington National Bank. This account was not a separate and segregated account for the deposit of entrusted funds.

18. By depositing the \$5,520 into this account, Respondent commingled entrusted funds with his own.

19. Respondent did not then, or ever, file a quiet title action, despite having been entrusted with the funds to do so.

20. On April 15, 2009, the balance in Respondent's Huntington National Bank business account was \$5,523.61.

21. From April 16, 2009 through April 23, 2009, due to withdrawals unrelated to his entrustment on behalf of Ann M. Long, the balance in Respondent's Huntington National Bank business account fell to \$3,873.61, which was \$1,646.39 below the amount with which he was entrusted.

22. On April 22, 2009, by check drawn on his Huntington Bank business account, Respondent transferred \$3,000 from that account to his Citizens Bank IOLTA account, captioned "William E. Buchko, IOLTA Account."

23. Due to withdrawals unrelated to Respondent's entrustment, by August 6, 2009, the balance in the Huntington National Bank business account was reduced to zero, thereby closing the account with a zero balance.

24. By hand-delivered letter to Respondent dated January 13, 2010, Mr. Fencil stated that:

a. He had checked the record on January 12, 2010 to verify if the quiet title action had been filed by Respondent as agreed upon and found nothing has been filed as of that date;

b. He found this disturbing since the money held was released to Respondent on April 15, 2009 to pursue the quiet title action; and

c. He demanded that Respondent return the entire \$5,520 to American General Services so that the services of another attorney could be retained to complete the action.

25. By letter dated February 24, 2010, sent to Respondent from Michael DeMarco, Esquire, Respondent was informed that Mr. DeMarco's law firm represented American General Services, and needed Respondent to provide him with copies of all relevant papers related to the closing on the sale of Ms. Long's property.

26. By letter to Respondent dated March 31, 2010, among other things, Mr. DeMarco demanded an immediate refund of the \$5,520 entrusted to Respondent to pursue the quiet title action.

27. By June 30, 2011, because of withdrawals made by Respondent which were unrelated to his entrustment, the balance in his Citizens Bank IOLTA account was reduced to \$7.63 and there was no further activity in this account.

28. Respondent misappropriated the entire \$5,520 with which he was entrusted for the quiet title action, and has never repaid these funds.

29. Old Republic National Title Insurance Company retained Mr. DeMarco to pursue the quiet title action, which he did successfully.

30. Respondent did not appear at the disciplinary hearing on June 11, 2012.

31. At approximately 8:45 a.m. on June 11, 2012, Respondent left a message on the voice mail of Samuel F. Napoli, Disciplinary Counsel, stating that Respondent would not be at the hearing due to the fact that his granddaughter was having surgery and he needed to be with his family. (N.T. 7)

32. Mr. Napoli spoke to Respondent later that morning prior to the scheduled start of the hearing and Respondent informed Mr. Napoli that he was aware of the hearing and made the choice not to appear. (N.T. 7-8) Respondent did not request a continuance.

33. The Hearing Committee proceeded with the hearing and permitted Respondent 15 days from the date of the hearing to put in any evidence, after which time the record would be closed. (N.T. 8-9)

34. Respondent did not contact Petitioner within the time frame permitted by the Committee, and the record was closed.

III. CONCLUSIONS OF LAW

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

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

3. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

4. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

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

IV. DISCUSSION

This matter is before the Board for consideration of Respondent's criminal conviction in federal court of bank fraud, a serious felony. In addition to the conviction, the evidence of record demonstrates that Respondent misappropriated \$5,520 in entrusted funds in a second, unrelated matter. Those funds were to be used to pursue a quiet title action, for which Respondent took no action. Respondent did not respond to the charges set forth in the Petition for Discipline, nor did he appear at the disciplinary hearing.

In disciplinary matters arising from a criminal conviction, the conviction is conclusive evidence of the commission of the crime, and the sole issue to be resolved is the extent of discipline to be imposed. Pa.R.D.E. 214(e) and (f)(1) The recommended discipline is a reflection of 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 engaged in serious criminal activity. Respondent aided a borrower in attempting to obtain a loan by creating false information to be given to the lender. This false information was to lead the lender to believe that the real estate had already been purchased by the borrower, and the loan was to refinance a prior loan. While the scheme was unsuccessful and the bank did not suffer an actual loss, this does not lessen the egregiousness of the misconduct.

Such misconduct, and other similar crimes, have led to a lengthy suspension or disbarment. The common thread 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) (Disbarment for theft by deception, theft by failure to make required disposition of funds, theft, criminal conspiracy, and aiding in consummation of a crime); Office of Disciplinary Counsel v. Reginald D. Greene, No. 169 DB 2007 (Pa. July 30, 2009) (Disbarment for conviction of criminal conspiracy to commit mail fraud and bank fraud); Office of Disciplinary Counsel v. Chung, 695 A.2d 405 (Pa. 1997) (Five year suspension retroactive to the date of temporary suspension for making false statements to a federally insured financial institution; mitigation in the form of excellent reputation, remorse, and extensive community involvement).

Standing alone, Respondent's conviction is the basis for a lengthy suspension. This intentional misconduct demonstrates a callous disregard for the legal system that renders him unfit to practice law. His additional misconduct of misappropriation and neglect of a client matter heightens the seriousness of this matter, as misappropriation in and of itself can be grounds for a lengthy suspension or disbarment. Office of Disciplinary Counsel v. Monsour, 701 A.2d 556 (Pa. 1997).

Aggravating this matter is Respondent's failure to appear at the disciplinary hearing. He contacted Petitioner the day of the hearing to advise that he was not attending due to family circumstances. He acknowledged that he had made a choice to do this and did not request a continuance. Despite the opportunity given him by the Committee to submit evidence, he did not do so. The record is devoid of mitigation, but for Respondent's lack of a prior record. This is not a compelling factor, in light of the serious nature of the misconduct.

The Hearing Committee has recommended a suspension of five years, retroactive to the date of Respondent's temporary suspension. Petitioner's position is that no less than disbarment will suffice to address the egregious nature of the misconduct, which is compounded by the aggravating factor of Petitioner's non-appearance at the hearing. The Board agrees that a bank fraud conviction and misappropriation of client funds in tandem with Respondent's failure to participate warrants disbarment, and that such a sanction is in line with sanctions imposed in previous, similar cases.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, William E. Buchko, be Disbarred from the practice of law retroactive to August 2, 2011.

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: 
Jane G. Penny, Board Member

Date: March 21, 2013

Board Members Momjian and Hastie did not participate in the adjudication.