

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1320 Disciplinary Docket No. 3
Petitioner :
v. : No. 156 DB 2006
: Attorney Registration No. 81675
GLENN RANDALL, :
Respondent : (Bucks County)

ORDER

PER CURIAM:


AND NOW, this 27th day of February, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated October 23, 2007, the Petition for Review and Exceptions and Objections and response thereto, the request for oral argument is denied pursuant to Rule 208(e)(4), Pa.R.D.E., and it is hereby

ORDERED that Glenn Randall be and he is suspended from the Bar of this Commonwealth for a period of one year and one day 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: February 27, 2008

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 156 DB 2006
Petitioner	:	
v.	:	Attorney Registration No. 81675
GLENN RANDALL	:	
Respondent	:	(Bucks 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 September 13, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against Glenn Randall, Respondent. The Petition charged Respondent with professional misconduct arising out of allegations that he signed false statements, misrepresented information to third parties and failed to honor a subpoena. Respondent filed an Answer to Petition for Discipline on October 2, 2006.

A pre-hearing conference was held on November 3, 2006, at which time the parties entered into a Joint Stipulation of Fact and Law and agreed to the admissibility of certain exhibits. A disciplinary hearing was held on December 8, 2006, before a District II Hearing Committee comprised of Chair Andrew J. Reilly, Esquire, and Members Daniel B. Huyett, Esquire, and Stephanie Lucker Wills, Esquire. Respondent was represented by Samuel C. Stretton, Esquire. On that date the parties entered into a second Joint Stipulation of Law and Respondent stipulated that he violated Rules of Professional Conduct 8.4(c) and 8.4(d). As a result of Respondent's admission and stipulation there was only one witness called by Petitioner. Respondent testified on his own behalf and produced three character witnesses.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on April 12, 2007, finding that Respondent engaged in professional misconduct and recommending that he be suspended for one year and one day.

Respondent filed a Brief on Exceptions and request for oral argument on May 2, 2007.

Petitioner filed a Brief Opposing Exceptions on May 21, 2007.

Oral argument was held on June 5, 2007 before a three-member panel of the Disciplinary Board chaired by Laurence H. Brown, Esquire with Robert E.J. Curran, Esquire, and Robert L. Storey.

This matter was adjudicated by the Disciplinary Board at the meeting on July 21, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 the aforesaid Rules.

2. Respondent is Glenn Randall. He was born in 1969 and was admitted to practice law in Pennsylvania in 1998. He maintains his office at 445 2nd Street Pike, Southampton, Bucks County, Pennsylvania 18966. He 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 or around December 20, 2002, Robert Anderson paid James Zinkand, who was at the time a Pennsylvania licensed real estate agent and broker, \$24,750.00 by bank check as down monies for the purchase of a property owned by Zinkand at 10-12 West Mill Road, Flourtown, Pennsylvania.

5. On or around January 8, 2003, Anderson paid Zinkand an additional \$1,000.00 deposit as required by an agreement entered into between Anderson and Zinkand.

6. Anderson understood that his deposit monies were going into an “escrow account” and that under the contract he entered into with Zinkand, all deposits were to be applied to the purchase price of the Mill Road property and to be held in escrow for this transaction by Zinkand.

7. Instead, Zinkand deposited monies in the total amount of \$25,750.00 in his personal account at Roxborough Manayunk Bank, not in an escrow account, and he failed and refused to account for the deposit monies.

8. The sale of the Mill Road property was never completed; instead, Anderson sued Zinkand, seeking, in part, a return of the deposit monies he had paid.

9. In addition to the civil litigation, in or around December 2003 the Montgomery County District Attorney’s Office filed criminal charges against Zinkand for the unlawful possession of Anderson’s funds.

10. Zinkand surrendered himself on January 9, 2004, at which time a preliminary hearing was scheduled for March 15, 2004.

11. At the preliminary hearing Assistant District Attorney Steven Latzer and Zinkand entered into an agreement whereby Zinkand agreed to open a special bank account into which the amount of money in question, \$25,750.00, would be deposited.

12. Respondent owns and operates a title company. Zinkand is a business acquaintance who has referred business to Respondent and Respondent has done title work for Zinkand.

13. Following the civil and criminal actions brought against him, Zinkand asked Respondent to do him a favor, and Respondent agreed. Specifically, Zinkand asked Respondent to sign a letter stating that he had agreed to hold the amount in question in escrow. Respondent agreed to do so.

14. Accordingly, Zinkand authored a letter to which Respondent signed his name with "Esquire" following it, and dated December 15, 2004, addressed "To Whom It May Concern" in which Respondent represented, among other things that:

a. Zinkand "has asked me" to take control of funds in the amount of \$25,750.00 plus accrued interest as part of a transaction with Robert Anderson;

b. "the current verified balance with Citizens Bank in account no. 6244-409766 is a total of \$26,735.43"; and Zinkand "has given me sole and exclusive control" over the funds as "escrow agent" for the funds.

15. As of the date of the letter, Respondent did not hold funds for Zinkand in escrow or as an escrow agent.

16. This letter was faxed to Mr. Latzer on December 15, 2004.

17. Mr. Latzer immediately telephoned Respondent to discuss the matter.

18. Mr. Latzer asked Respondent who he was and what his relationship was to Zinkand and was told by Respondent that they were "friends."

19. Mr. Latzer told Respondent that there was a pending criminal matter concerning the funds in question and that Latzer personally needed to receive assurance that the funds in question were placed in escrow.

20. Mr. Latzer wanted Respondent's commitment that Respondent would hold the monies in question, and not in a Citizen's Bank account that belonged to Mr. Zinkand.

21. Respondent expressed concern that he not be "dragged into" the criminal matter or civil litigation, and Mr. Latzer explained that the purpose of the call was to verify the information in Respondent's letter and to further explain that the faxed letter was insufficient for Latzer's purposes.

22. On December 16, 2004, Zinkand faxed Respondent a letter representing that he had given Respondent "full and exclusive control" of funds on deposit at Citizens Bank in Account #6244-409766 and an attached certificate of deposit #6149-430081 which "total \$26,735.43."

23. Zinkand attached two bank statements to the December 16 letter. The statements were barely legible; the first was an October 2004 statement for a five-year certificate of deposit #6149-430081 with a "current balance" of approximately \$22,789.00; the second was an October 2004 statement for "Tiered Rate Savings" #6244-409766 with a "current balance " of \$3,942.97.

24. Neither bank statement references Respondent; instead, only the name of James M. Zinkand appears.

25. Respondent did not review the paperwork Zinkand sent to him or request to see a November or December 2004 bank statement.

26. Respondent made no inquiry to determine if the five-year certificate of deposit carried any sort of penalty for early withdrawal which would have reduced the amount of money available.

27. As a result of Respondent's conversation with Mr. Latzer, Zinkand authored a second letter. Respondent again signed his name as Glenn Randall, Esquire, dated the letter December 17, 2004, and addressed it to Mr. Latzer. In the letter Respondent represented, among other things, that:

a. he had been contacted by James Zinkand who requested that he keep in Respondent's escrow account funds totaling \$25,750.00; and

b. such funds were being held with regard to a "criminal matter" and "shall be held indefinitely" by Respondent's company, Lexington & Concord Search and Abstract Title Company, until such time as the case "is finalized."

28. As of the date of the December 17, 2004 letter, Respondent did not hold funds for Zinkand in escrow or as an escrow agent.

29. As a result of the December 17, 2004 letter, and in reliance on the representations therein, Mr. Latzer dropped the criminal charges against Zinkand in the

mistaken belief that the funds in issue were secured by a third party and could be distributed properly at the conclusion of the civil matter.

30. Mr. Latzer knew Respondent was a lawyer and believed it was clear to all parties that the monies in question should be held in an escrow account that would be maintained by an attorney.

31. Shortly after receipt of Respondent's letter Mr. Latzer learned, apparently through the efforts of Mr. Anderson, that the statements in Respondent's letter to him were false.

32. Mr. Latzer authorized the refiling of criminal charges against Zinkand. He also obtained a subpoena compelling Respondent's appearance at the preliminary hearing.

33. By letter dated January 31, 2005, Respondent wrote to Joseph Kalkbrenner, Anderson's attorney in the civil matter against Zinkand, and claimed that his involvement in the case was strictly as an "escrow agent."

34. Respondent knew or should have known that his claim to be an escrow agent was false, as he had knowledge that the funds in question were being held in an account over which he had no control.

35. On February 3, 2005, Respondent's deposition was taken by telephone in the civil case involving Anderson and Zinkand.

36. At the deposition Respondent admitted, for the first time, that he had never received any funds at all from Zinkand.

37. The Honorable Deborah Lukens issued a subpoena dated February 23, 2005, commanding Respondent's attendance at a March 2, 2005 preliminary hearing in the criminal matter.

38. Respondent failed to attend the preliminary hearing despite having received the subpoena.

39. Mr. Latzer called Respondent approximately 20 minutes after the hearing began to ask why Respondent had not appeared.

40. Respondent, who was at his business office, answered the telephone and took the position that he did not understand why his presence was necessary and that he did not have the monies in question.

41. Respondent gave inconsistent testimony concerning why he did not appear at the hearing and his attempts to notify the District Attorney.

42. Respondent claims that on the morning of the preliminary hearing, which was held on March 2, 2005, he attempted to go to the hearing, there was "traffic in the area because of Christmas" and he changed his mind and decided to call the Court and explain he wasn't coming.

43. Respondent next claims that on March 2 he was about to leave for the hearing when a representative from Chicago Title walked into his office unexpectedly.

44. In a letter to Office of Disciplinary Counsel dated April 18, 2006, Respondent wrote:

Only the evening before the hearing I received notice that senior representatives from my underwriter, Chicago Title Insurance Company, were coming to perform a random audit the next day, which unfortunately coincided with the hearing. I tried to notify the District Attorney as soon as I became aware of the conflict. I called that evening as well as the next morning.

45. Mr. Latzer did not receive a message from Respondent the evening before or the morning of the preliminary hearing indicating Respondent would not appear.

46. Mr. Latzer opined and we find that the delay that occurred because of mistakenly dropping the charges against Zinkand had a significant impact on the eventual criminal prosecution, as Zinkand fled the Commonwealth, costing the taxpayers additional expense in tracking him down and seeking his extradition.

47. Respondent expressed remorse for his misconduct and stated that he now understands that he needs to be more careful when making representations in the future.

48. Respondent produced three character witnesses on his own behalf; his mother, Diane Smith; and two former employees of his title company, Elena Kosse and Daniel Rubinshteyn.

49. All three testified that Respondent has a good reputation in the community for being peaceful, law-abiding, truthful and honest.

III. CONCLUSIONS OF LAW

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

1. RPC 7.1(a) – A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.
2. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
3. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

IV. DISCUSSION

The instant Petition for Discipline levels serious charges against Respondent arising from his actions wherein he signed letters in which he falsely and knowingly represented that he was holding escrow monies for the benefit of Robert Anderson. Respondent signed a letter which was faxed to the Montgomery County District Attorney's Office; he signed a letter which was sent to Assistant District Attorney Steven Latzer; and he sent a letter to Mr. Anderson's attorney in the civil case. Each letter contained false statements that Respondent was either acting as an escrow agent or holding escrow account funds. Respondent knew that these statements were false, as he never had

control over the funds in question. As a result of the false assurance contained in the letter dated December 17, 2004 to Assistant District Attorney Steven Latzer, criminal charges were withdrawn against Zinkand. Once Mr. Latzer was alerted that the funds were not held in escrow by Respondent, the charges were refiled and a subpoena was obtained compelling Respondent's attendance at the preliminary hearing. Respondent ignored the subpoena and failed to appear at the preliminary hearing. Respondent's attempts to explain his reason for failing to appear were inconsistent at best, and not credible.

Respondent's perplexing inability to articulate why he signed the letters when he knew he did not hold the escrow funds underscores his total lack of awareness of and appreciation for the circumstances. Respondent basically ignored his obligations pertaining to the escrow monies. He allowed Zinkand to direct his actions without examining the ramifications so as to foster his relationship with Zinkand. The misrepresentations that Respondent made resulted from his failure to truly understand his actions, his obligations and his responsibilities.

The record indicates that at the time of the misconduct and for some years prior, Respondent was not practicing law but running a title company. Although in his mid-thirties at the time of the misconduct, Respondent had only been a licensed lawyer for approximately five years. This constitutes inexperience, as the learning curve in the profession of lawyering is lengthy. The Board does not focus on Respondent's inexperience in the law to suggest an excuse or justification for his myopic view of the

consequences of the representations made in the letters, but to illuminate Respondent's background.

This case is difficult because reasonable people viewing the facts could differ over the appropriate sanction. We believe a suspension of one year and one day, as the Hearing Committee recommended, is appropriate in this case. Respondent's dishonest statements and failure to appear for the preliminary hearing, along with his inconsistent explanations for failing to appear, are serious enough acts that an argument for a lengthy suspension could be made. Office of Disciplinary Counsel v. DiAngelus, 907 A.2d 452 (Pa. 2006) (five year suspension for lying to an assistant district attorney about the existence of a plea agreement with the arresting police officer). Respondent concludes that the facts show he did not intend to lie, but that he acted out of ignorance. He argues vehemently that even a suspension of one year and one day is too extreme under the circumstances. The Board disagrees with Respondent's distorted interpretation of the facts. While Respondent has no prior discipline he does not regularly represent clients. Respondent presented character testimony as to his good reputation in the community, but the witnesses consisted of his mother and two employees. Protection of the public is the paramount concern of the Board. A longer suspension is not in order because this does not appear to present a situation of an attorney whose acts pose a vital danger to the public.

A careful analysis of the record and consideration of the arguments of the parties leads us to conclude that a suspension of one year and one day is warranted in this

matter. This period of suspension and the process of reinstatement to the Bar, should Respondent seek reinstatement, will provide Respondent with an opportunity to reflect on his actions and misrepresentations and their consequences.

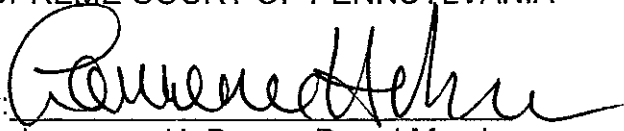
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Glenn Randall, be Suspended from the practice of law for a period of one year and one day.

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: 
Laurence H. Brown, Board Member

Date: October 23, 2007

Board Member Saidis dissented and would recommend a three year suspension.

Board Members Newman and Raspanti did not participate in the adjudication.