

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2074 Disciplinary Docket No. 3
Petitioner :
 : No. 31 DB 2013
v. :
 : Attorney Registration No. 64819
LAURENCE ADLAI NEISH, :
Respondent : (Allegheny County)

ORDER

PER CURIAM:

AND NOW, this this 17th day of September, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 29, 2014, it is hereby

ORDERED that Laurence Adlai Neish is suspended from the practice of law for a period of six months, the suspension is stayed in its entirety and respondent is placed on probation for a period of six months, subject to the following conditions:

1. Respondent shall not commit any violations of the Pennsylvania Rules of Disciplinary Enforcement; and
2. Upon completion of the period of probation, respondent shall submit a sworn certification to the Board that he has complied with the above condition.

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

A True Copy Patricia Nicola
As Of 9/17/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 31 DB 2013
Petitioner	:	
	:	
v.	:	Attorney Registration No. 64819
	:	
LAURENCE ADLAI NEISH	:	
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 Petition for Discipline filed on March 6, 2013, Office of Disciplinary Counsel charged Laurence Adlai Neish with violations of Rules of Professional Conduct 1.15(a), 8.4(b), and 8.4(c). Respondent filed an Answer to Petition on May 15, 2013.

A disciplinary hearing was held on September 9, 2013, before a District IV Hearing Committee comprised of Chair Henry M. Casale, Esquire, and Members Regina C. Wilson, Esquire, and Kirsten J. Sigurdson, Esquire. Respondent was represented by Robert O. Lampl, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 17, 2014, concluding that Respondent violated RPC 8.4(c) and recommending that he receive a Public Reprimand with probation.

Petitioner filed a Brief on Exceptions on February 5, 2014.

Respondent filed a Brief Opposing Exceptions on February 25, 2014.

This matter was adjudicated by the Disciplinary Board at the meeting on March 11, 2014.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, 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 Laurence Adlai Neish. He was born in 1965 and was admitted to practice law in the Commonwealth of Pennsylvania in 1992. His mailing address is 142 James Place, Pittsburgh PA 15228. 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. From 1999 until 2003, Respondent maintained a minority interest in Streamline Settlement Services while at the same time being employed by Stewart Title as the district manager and underwriting counsel. (N.T. 20-21, 63)

5. In 2003, Respondent terminated his employment with Stewart Title and began managing real estate matters for Streamline Settlement Services. (N.T. 64)

6. At this time, an individual named James Fisher was both the principal and a mortgage broker for Streamline. (N.T. 20-21)

7. In 2005, Respondent became aware that Mr. Fisher was taking money from Streamline in the form of advances out of closings for brokerage fees prior to closings. Respondent subsequently removed Mr. Fisher from his ownership interest in Streamline. (N.T. 21, 65)

8. Respondent believed he had cured the financial issues caused by Mr. Fisher through the procurement of a personal loan. (N.T. 21, 65)

9. In 2005, Respondent acquired and was the principal of Diversified Real Estate Title Services, Inc. ("DRESSI") and directed the operating business of Streamline into DRESSI. DRESSI was a bigger company with a larger footprint around the country. Respondent was not handling closings, but rather running this business. (N.T. 66)

10. In 2006, approximately six to nine months after acquisition of DRESSI, Respondent discovered there were some "problems" with DRESSI in the form of shortfalls. Two individuals, similar to Respondent's business partner in 2005, were inappropriately writing checks and causing his newly formed entity to incur shortfalls. (N.T. 67-68)

11. Respondent obtained another loan, pledged his assets, and ran out credit cards in an effort to cure the shortfalls. (N.T. 22)

12. In September 2007, Respondent acquired Renaissance Settlement, with the hope that it would cure the shortfalls. (N.T. 67)

13. As of September 2007, Respondent was the principal of Renaissance Settlement and also the president and sole director of DRESSI. (PE 1)

14. Not long thereafter, Respondent became aware that the deficiencies which had stemmed from inappropriate draws by Mr. Fisher and other individuals were beyond his ability to cure. (N.T. 67-68)

15. On April 13, 2007, Raymond J. Calabrese and his wife Sally A. Calabrese, along with Vivian J. Beran, agreed that, in their sale of real estate to Richard and Karen Fotz, \$100,000 was to be escrowed pending an assessment by Allegheny County as to the value of the property involved, and issuance of revised tax bills for the years 2002 through 2007. (Pet. for Dis. Para. 3; Ans. Para. 3)

16. On April 13, 2007, at closing on the sale of the real estate, \$100,000 was held by Renaissance Settlement, the closing agent. At this time, Glenn Bartifay was the sole owner and operator of the Renaissance Settlement. (Pet. For Dis. Para. 5, 6; Ans. Para. 5, 6)

17. Until at least September 28, 2007, the \$100,000 was properly held in escrow to await the determination of any additional tax liability for the years 2002 through 2007. (Pet. For Dis. Para. 8; Ans. Para. 8)

18. From approximately September 28, 2007 through December of 2007, Respondent caused to be deposited to escrow accounts the funds from real estate closings that he was to hold for the benefit of buyers, sellers and creditors. (PE 1)

19. From approximately September 28, 2007 through December of 2007, Respondent caused funds in his accounts which were to be paid for the benefit of buyers,

sellers, brokers and/or lenders of real property or creditors thereof to be used for purposes other than for which they were intended. (PE 1)

20. Respondent concealed his knowledge of the deficiencies for approximately two months as he attempted to find a method to cure the deficiencies. He continued to allow DRESSI and Renaissance Settlement to write title insurance after he became aware of the monetary deficiencies. (N.T. 68-69)

21. Respondent self-reported the deficiencies to Stewart Title, provided access to his files and computers and entered into a consent judgment for an amount in excess of Stewart Title's loss. (RE 2)

22. Respondent failed to safeguard entrusted funds of at least \$1 million.
(PE 1)

23. No criminal charges were brought against Respondent. (N.T. 15 - 16)

24. Respondent offered the testimony of two character witnesses at the hearing.

25. Richard Swartz testified that he received counsel from Respondent on certain real estate transactions and that Respondent is a family man who maintains a reputation in the community for honesty and good character. (N.T. 38-39, 42-43)

26. Donna Neish is Respondent's spouse. She and Respondent have two sons, one of whom has Asperger's Syndrome. (N.T. 49)

27. Mrs. Neish suffers from atypical trigeminal neuralgia, a nerve condition that stems from the brain that causes electrical shock pain to shoot into her face. Respondent is her primary caregiver. (N.T. 50-51)

28. Respondent has been active in his sons' baseball leagues and serves as an advocate for students with special needs in the Mount Lebanon School District. (N.T. 54-55)

29. Respondent entered into evidence RE 1, a collection of ten character letters reflecting positively on Respondent's personal and professional character.

30. Respondent testified on his own behalf.

31. Respondent admitted that he concealed the shortfalls in the escrow accounts and expressed remorse. He appears chastened by this experience and willing to accept discipline for his actions.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rule of Professional Conduct:

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

IV. DISCUSSION

This matter is before the Board for consideration of the charges brought against Respondent that he engaged in professional misconduct by committing a criminal act, acting dishonestly, and failing to properly safeguard entrusted funds in connection with a client-lawyer relationship. Petitioner bears the burden of proving, by a preponderance of the evidence that is clear and satisfactory, that Respondent's actions constitute

professional misconduct. Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000).

We first consider the charges brought against Respondent. Petitioner contends that Respondent violated Rules of Professional Conduct 1.15(a) (for conduct occurring before September 20, 2008), 8.4(b) and 8.4(c). Respondent has denied that he violated these Rules. As explained below, we conclude that Petitioner failed to meet its burden of proof as to Rule 1.15(a) and Rule 8.4(b), and we further conclude that Respondent violated Rule 8.4(c).

Former Rule 1.15(a) stated in pertinent part that “a lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a client-lawyer relationship separate from the lawyer’s own property.” The evidence contained of record does not clearly demonstrate that a client-lawyer relationship existed between Respondent and any other person or entity wherein the Rules would have been violated during the applicable time frame.

As the record shows, Respondent was the principal of Renaissance Settlement and president and sole director of DRESSI from September 28, 2007 through December 2007. There was no evidence presented that clearly and satisfactorily demonstrated that Respondent at any time participated in the real estate closings, or in any other way presented himself as a lawyer to anyone in connection with his ownership interests and job responsibilities for those entities. Respondent’s duty under Rule 1.15(a) was to safeguard funds contingent upon the existence of a client-lawyer relationship. He did not violate this duty, and did not violate Rule 1.15(a).

Rule 8.4(b) states that “It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as

lawyer in other respects.” Petitioner asserts that Respondent’s “concealment” of the shortfalls from the title insurance company was criminal conduct. However, Petitioner failed to provide evidence to show that Respondent committed a crime or engaged in criminal activity, and failed to meet its burden to prove that Respondent violated Rule 8.4(b).

A lawyer who engages in conduct involving dishonesty, fraud, deceit or misrepresentation commits professional misconduct, pursuant to Rule 8.4(c). In 2005, Respondent first became aware that a business partner was taking money from Streamline Settlement Services, a business that Respondent had an ownership interest in. Respondent borrowed money to cure the “problem.” Shortly thereafter, Respondent acquired another business, DRESSI, and became aware of individuals inappropriately writing checks causing DRESSI to incur shortfalls. Once again, Respondent attempted to cure the problem by borrowing funds, pledging assets and using credit cards. Respondent acquired yet another entity, Renaissance, in the hope that by doing so he would cure “the problem.” He later realized that the inappropriate draws were beyond his ability to cure. Although Respondent knew of the deficiencies and his inability to cure them, he continued to write title insurance for approximately two months. His concealment of the deficiencies to the insurer is dishonest conduct and is violative of Rule 8.4(c).

In determining appropriate discipline, consideration is to be given to any aggravating or mitigating factors. Office of Disciplinary Counsel v. Francis P. Eagen, No. 102 DB 2003, 73 Pa. D. & C. 4th 217 (2004). Discipline is imposed on a case-by-case basis in light of the totality of facts presented. Office of Disciplinary Counsel v. Cappuccio, 48 A.3d 1231 (Pa. 2012).

Respondent offered mitigating factors for the Board to consider in making its recommendation. We find the following facts persuasive: Respondent has no history of

discipline since his admission in 1992; Respondent has been practicing law for the past five years since the misconduct in question without any claims of misconduct, disciplinary complaints or escrow-related issues; Respondent has admitted he concealed the shortfalls in the account and has expressed sincere remorse; Respondent is the caregiver for his wife who suffers from a chronic illness and for his son who has Asperger's syndrome; Respondent has been an active member of his community for many years.

The Hearing Committee has recommended that Respondent be publicly reprimanded, following its conclusion that Respondent violated RPC 8.4(c). While Respondent urges the Board to accept the Committee's recommendation, Petitioner asks the Board to consider disbaring Respondent for his dishonest conduct.

We note from the outset that there are no cases on point. Having carefully reviewed the cases cited by Petitioner in support of disbarment, we find that none of these cases is particularly persuasive. In Office of Disciplinary Counsel v. Tumini, 453 A.2d 310 (Pa. 1982), the attorney falsely testified to a federal grand jury regarding a fraud perpetrated by other parties; laundered checks; delivered a cash payment known to constitute a bribe of a public official; failed to cooperate with a criminal investigation while an immunized witness; and, failed to recant false testimony until faced with the possibility of an indictment for perjury. Clearly the conduct of Mr. Tumini was more egregious than that of Respondent, as it constituted an array of criminal activities, and warranted disbarment. Herein, there is no evidence that Respondent committed a crime or engaged in criminal activity.

Two other cases cited by Petitioner in support of disbarment involve attorneys who were convicted of felonies. Office of Disciplinary Counsel v. Shorall, 592 A.2d 1285 (Pa. 1991) (conviction of the federal crime of misprision of a felony after concealing crimes

by clients and making misrepresentations to FBI agents); In re Anonymous No. 85 DB 88 (Edward K. Strauss), 18 Pa. D. & C. 4th 26 (1992) (conviction of the federal crime of misprision of a felony resulting from awareness of fraud by government officials). Both attorneys in the cited cases were suspended for three years. Again, we find no similarities between these cases and the instant matter that would persuade us to rely on the outcomes of such matters.

Respondent has cited cases in support of his position that discipline significantly less than disbarment is warranted. These cases involve attorneys who mishandled fiduciary funds, with discussion of the various factors that formed the ultimate sanction. For instance, the Court imposed a public censure on an attorney who did not hold \$6,000 intact in his escrow account for three clients; reimbursed the funds; did not prejudice his clients; cooperated with Disciplinary Counsel; and, had no prior discipline. Office of Disciplinary Counsel v. Robert G. Young, No. 6 DB 2002 (Pa. 2002). An attorney was suspended for three months for commingling and converting \$3,700 that he had collected for title insurance premiums; repaid the money to the insurance company; cooperated with Disciplinary Counsel; had no record of discipline; and, was highly regarded in the legal community. Office of Disciplinary Counsel v. Albert B. Mackarey, No. 158 DB 2000, 60 Pa. D. & C. 4th 129 (2002). A three month suspension with one year of probation and conditions was imposed on an attorney who mishandled a substantial amount of his client's escrowed funds. Office of Disciplinary Counsel v. William J. Yates, No. 38 DB 2005 (Pa. 2006) The Board noted that the attorney's conduct was not motivated by greed, that there was no prior discipline, and the attorney cooperated with Disciplinary Counsel.

Our review of the record persuades the Board that a short suspension is warranted, due to the dishonest nature of the misconduct engaged in by Respondent. We recognize that Respondent admitted his misconduct and cooperated with Petitioner, and the record as a whole does not support a finding that Respondent poses a danger to the public due to potential recidivist conduct. For these reasons, we recommend a six month period of suspension, to be stayed in its entirety with probation for six months.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Laurence Adlai Neish, be Suspended from the practice of law for a period of six months; that the suspension be stayed in its entirety and that he be placed on Probation for a period of six months with the following condition:

1. Respondent shall not commit any violations of the Rules; and
2. Upon completion of the Probation, he shall submit a sworn certification to the Board, that he has complied with the above condition.

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: _____


R. Burke McLemore, Jr., Board Chair

Date: May 29, 2014