

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1806 Disciplinary Docket No. 3
Petitioner :
 : No. 218 DB 2010
v. :
 : Attorney Registration No. 75702
THOMAS SCOTT PEDERSEN, :
Respondent : (Dauphin County)

ORDER


PER CURIAM:

AND NOW, this 30th day of May, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 23, 2011, it is hereby

ORDERED that Thomas Scott Pedersen 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 5/30/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 218 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 75702
	:	
THOMAS SCOTT PEDERSEN	:	
Respondent	:	(Dauphin 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 November 1, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Thomas Scott Pedersen. The Petition charged Respondent with violation of Rules of Professional Conduct 1.15(b), 1.15(e), 8.4(b), and 8.4(c) arising from his conduct while employed by Valley Settlement Agency, LLC. Respondent filed an Answer to Petition for Discipline on December 29, 2010.

A disciplinary hearing was held on April 1, 2011, before a District III Hearing Committee comprised of Chair William R. Bunt, Esquire, and Members Daniel T. Brier, Esquire, and Stephen Jennings, Esquire. Respondent appeared pro se. Petitioner submitted into evidence 25 exhibits and called one witness. Respondent testified on his own behalf.

Following the submission of a brief filed by Petitioner, the Hearing Committee filed a Report on August 17, 2011, concluding that Respondent violated Rule of Professional Conduct 1.15(e), and recommending that he be suspended for a period of eleven months.

Petitioner filed a Brief on Exceptions on September 6, 2011, contending that the Hearing Committee erred by not concluding that Respondent violated Rules of Professional Conduct 8.4(b) and 8.4(c), and further contending that a suspension for a period of two years is the appropriate recommendation to address Respondent's misconduct.

This matter was adjudicated by the Disciplinary Board at the meeting on October 18, 2011.

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, 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 said Rules of Disciplinary Enforcement.

2. Respondent is Thomas Scott Pedersen. He was born in 1966 and was admitted to practice law in the Commonwealth in 1995. He maintains his office at 3109 N. Front Street, Harrisburg, PA 17110. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no record of prior discipline in Pennsylvania.

4. At all relevant times, Respondent was the settlement agent and performed legal work for Valley Settlement Agency, LLC. Valley was a real estate title insurance agency that sold title insurance through Chicago Title Insurance Company, and its predecessors.

5. As a title insurance agency, Valley provided real estate closing services to the parties to each transaction. These services included, but were not limited to, collecting all funds from the purchaser; doing a title search to assure that all the debts and liens recorded against the property were known so that they could be satisfied; disbursing all the collected funds of the transaction and paying off all debts, mortgages and liens recorded against the property so that a clear title could be conveyed.

6. Respondent's duties were to act as a closing agent for Valley at the closing of the transactions. Further, he performed additional legal work, as needed, to assure the closing was completed. Respondent was knowledgeable as to the processes involved in a residential real estate closing.

7. On April 23, 2009, Respondent conducted a settlement on behalf of Valley for the sale of 88 Carriage Lane, Gettysburg, PA to Wesley and Jessica Chrismer.

On April 28, 2009, Respondent disbursed funds from that transaction. One of the checks disbursed from the settlement in the amount of \$935.05 was listed on the HUD-1 Settlement sheet as having gone to Mildred A. Weaver for township and county taxes.

8. In fact, the check for \$935.05 was made out to Respondent.

9. On May 22, 2009, Respondent conducted a settlement on behalf of Valley for the sale of 106 Meadow View Lane, New Oxford, PA to John Trawinski. On May 28, 2009, the funds were disbursed from that transaction. The only check listed as disbursed on the HUD-1 Settlement sheet was to have gone to BAC Home Loans Service in the amount of \$227,188.14 for the first mortgage payoff.

10. The payoff amount for the Trawinski transaction was \$227,188.14. In fact, two checks from this closing were made out totaling \$227,188.14. One check in the amount of \$226,434.25 went to BAC Home Loans Service and one check in the amount of \$753.89 was made out to Respondent.

11. On May 22, 2009, a settlement was conducted by Valley for the sale of 219 Harding Avenue, Havertown, PA to Michael and Jana Llewellyn. On May 28, 2009, the funds were disbursed from that transaction. The only check listed as disbursed on the HUD-1 Settlement sheet was to have gone to Wells Fargo Home Mortgage in the amount of \$243,908.74 for the first mortgage payoff.

12. In fact, two checks were made out totaling \$243,908.74. One check in the amount of \$240,960.46 went to Wells Fargo Home Mortgage and one check in the amount of \$2,948.29 was made out to Respondent.

13. Prior to the settlement date, Valley received, and had in its possession, the payoff form from Wells Fargo Home Mortgage. On page two of that document, it was stated by Wells Fargo: "Unless you notify us otherwise, if you fail to remit

sufficient funds to pay your mortgage loan in full, we may, at our option, apply funds from your escrow account to complete the payoff.”

14. The \$2,948.29 check made out to respondent represented the amount of money in escrow and that money rightfully belonged to the Llewellyns.

15. On June 10, 2009, a settlement was conducted by Valley for the sale of 1098 Bair Road, Hanover, PA to Terri Hockensmith and Lori Hoffnagle. On June 16, 2009, the funds were disbursed from that transaction. The only check listed as disbursed on the HUD-1 Settlement sheet was to have gone to Chase Home Finance in the amount of \$250,352.78 for the first mortgage payoff.

16. In fact, two checks were made out totaling \$250,352.78. One check in the amount of \$249,852.78 went to Chase Home Finance and one check in the amount of \$500 was made out to Respondent.

17. On June 12, 2009, a settlement was conducted by Valley for the sale of 233 Video Drive, Homestead, PA to Charles and Colleen Merriman. On June 17, 2009, the funds were disbursed from that transaction.

18. One check listed as disbursed on the HUD-1 Settlement sheet was to have gone to Wells Fargo Home Mortgage in the amount of \$122,798.79 for the first mortgage payoff. A second check was to have gone to Joseph M. Mercuri, Boro tax collector, in the amount of \$804.60. The sum of these two checks was listed on the settlement sheet as being \$123,603.39.

19. In fact, two checks were made out totaling \$123,603.39. One check in the amount of \$121,730.49 went to Wells Fargo Home Mortgage and one check in the amount of \$1,872.90 was made out to Respondent.

20. On June 26, 2009, Respondent conducted a settlement on behalf of Valley for the sale of 18 Pleasant Street, Hanover, PA to Peter and Heather Sztobryn. On August 1, 2009, the funds were disbursed from that transaction. One check listed as disbursed on the HUD-1 Settlement sheet was to have gone to National City Mortgage in the amount of \$120,526.95 for the first mortgage payoff.

21. In fact, two checks were made out totaling \$120,526.95. One check in the amount of \$119,009.96 went to National City Mortgage and one check in the amount of \$1,516.99 was made out to Respondent.

22. On July 29, 2009, Respondent conducted a settlement on behalf of Valley for the sale of 1109 East Walnut Street, Hanover, PA to Kevin and Amanda Bryson. On August 3, 2009, the funds were disbursed from that transaction. One check listed as disbursed from the settlement was to have gone to CitiMortgage in the amount of \$197,501.16 for the first mortgage payoff.

23. In fact, two checks were made out totaling \$197,501.16. One check in the amount of \$193,596.39 went to CitiMortgage and one check in the amount of \$3,904.77 went to an entity identified on the check as Allquest. Allquest does not appear on the settlement sheet as the recipient of any funds.

24. There is no evidence Respondent received any funds from Allquest, or that Respondent had any interest in Allquest.

25. Respondent admits receiving and cashing the checks identified in the evidence presented.

26. Respondent claims that the monies he received were for services he performed.

27. None of the funds Respondent received in the identified transactions were noticed or identified as legitimate costs, fees or expenses to be paid to Respondent for any actions he claimed to have taken to complete the closing of the transaction.

28. Respondent has not repaid any of the funds he received.

29. Valley Settlement Agency, LLC was owned by Christine Yingst. Ms. Yingst was the only licensed title agent at Valley. At the time of the transactions in question, Ms. Yingst was Respondent's live-in girlfriend.

30. Respondent denied responsibility for any of the financial misdealings of the settlements in question.

31. The stub of every check issued in the above transactions and every ledger balance sheet listed for each transaction listed above identified Respondent as the "Responsible Party." Additionally, Respondent signed some of the HUD-1 Settlement sheets as the "Settlement Agent."

32. Respondent was the party responsible for drafting and distributing checks, even though he had no signatory power over Valley's escrow account.

33. Respondent admits receiving funds from settlement which were not disclosed on the HUD-1 Settlement sheets.

III. CONCLUSIONS OF LAW

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

1. RPC 1.15(e) – A lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third

person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property.

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

3. 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 Disciplinary Board for consideration of the charges filed against Respondent that he committed professional misconduct while employed by Valley Settlement Agency, LLC.

Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and convincing. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981) The evidence presented clearly supports the conclusion that Respondent violated Rules of Professional Conduct 1.15(e), 8.4(b) and 8.4(c).

Rule 1.15(e) requires that a lawyer shall “promptly deliver to the client or third person any property,...that the client or third person is entitled to receive....” The monies received by Respondent in the Chrismer, Trawinski, Llewellyn, Hockensmith/Hoffnagle, Merriman, Bryson and Sztobryn settlements were monies Respondent had no lawful claims to receive and rightfully belonged to those parties. Respondent admits receiving and keeping those monies. The fact that the funds came to him in an indirect manner, through

the Valley Escrow account, did not absolve him of his responsibility to deliver the funds to the proper parties.

Rule 8.4(b) defines conduct as professional misconduct when a lawyer “commit[s] a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer....” Taking money that did not belong to Respondent was a criminal act. The fact that Respondent has not been criminally charged by any law enforcement agency does not preclude the conclusion that he violated 8.4(b).

Rule 8.4(c) describes misconduct as when a lawyer “engage[s] in conduct involving dishonesty, fraud, deceit or misrepresentation.” As previously noted, Respondent accepted monies to which he was not entitled. This conduct was dishonest.

Respondent admits that he received money that was not accounted for in the transactions and that he was not legally entitled to take, but he cashed the checks regardless of this. Respondent therefore accepted money belonging to individuals or institutions, and not him. Respondent continues to insist that he did nothing wrong, that he did not cause the monies to be issued to him, and that the responsibility for any wrongdoing must lie with another person. Respondent’s position is unacceptable, as his knowledge of settlement processes for residential real estate closings would have alerted him to the fact that the monies simply were not his. He cashed the checks and was apparently unwilling to determine to whom the funds rightfully belonged. He has not repaid any of the monies.

Precedent establishes that unauthorized dealings with client or third party monies requires some form of public discipline due to the breach of trust involved. In re Anonymous No. 124 DB 1997, 47 Pa. D. & C. 4th 338 (1998). The discipline imposed is based on the nature and gravity of the misconduct and the aggravating and mitigating

factors present. In re Anonymous No. 85 DB 97, 44 Pa. D. & C. 4th 299 (1999). In the matter of Office of Disciplinary Counsel v. Joseph James Durney, 55 DB 2004, 961 Disciplinary Docket No. 3 (Pa. Oct. 15, 2004), the lawyer received a suspension of one year and one day after he mishandled estates monies. In the case of In re Anonymous No. 8 DB 97, No. 402 Disciplinary Docket No. 3 (Pa. April 20, 1998), the attorney was suspended for one year and one day after he diverted an unspecified amount of fees to himself from his law firm over a 13 month period of time. In the matter of Office of Disciplinary Counsel v. Karen Muir, No. 79 DB 2002, No. 891 Disciplinary Docket No. 3 (Pa. March 1, 2004), the attorney was suspended for a period of three months after she converted a single \$500 fee that was payable to her law firm, and failed to timely pay over fees to her law firm in three other matters.

Respondent's repeated misconduct in the settlement matters and his failure to acknowledge or to take responsibility for his actions warrants a suspension of one year and one day.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Thomas Scott Pedersen, 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: 

R. Burke McLemore, Jr., Board Member

Date: December 23, 2011