

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 216, Disciplinary Docket  
Petitioner : No. 3 - Supreme Court  
:  
:  
v. : No. 84 DB 1996  
: Disciplinary Board  
:  
: Attorney Registration No. [ ]  
[ANONYMOUS] :  
Respondent : ([ ])

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 February 22, 1994, Respondent, [ ], pleaded guilty in the United States District Court for the District of New Jersey

to one count of Money Laundering in violation of 18 U.S.C. §1956(a)(2)(A). He was sentenced to five years probation and 250 hours of community service. On June 10, 1994, Respondent pleaded guilty in the United States District Court for the District of Maryland to Wire Fraud and Aiding and Abetting in violation of 18 U.S.C. §§ 1341 and 2. He was sentenced to three years probation, six months home detention with work release, and 250 hours of community service.

Respondent was placed on temporary suspension by Order of the Supreme Court of Pennsylvania dated July 1, 1996. The Order referred the matter to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E. A Petition for Discipline was filed by Office of Disciplinary Counsel against Respondent on July 18, 1996.

A disciplinary hearing was held on October 3, 1996 before Hearing Committee [ ] comprised of Chair [ ], Esquire, and Members [ ], Esquire, and [ ], Esquire. Respondent represented himself. Petitioner was represented by [ ], Esquire. The Committee filed a Report on January 27, 1997 and recommended a five year suspension retroactive to July 1, 1996. No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board

at the meeting of March 5, 1997.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is now located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter Pa.R.D.E.), 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 was born in 1957, admitted to practice law in this Commonwealth in June 1991, and resides at [ ]. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. On May 20, 1996, the Supreme Court of Pennsylvania entered a Rule to Show Cause why Respondent should not be placed on temporary suspension as a result of his criminal convictions in New Jersey and Maryland.

4. By Order of July 1, 1996, the Supreme Court made the Rule absolute and temporarily suspended Respondent and referred this matter to the Disciplinary Board pursuant to Rule

214(f)(1), Pa.R.D.E.

5. On February 22, 1994, Respondent pleaded guilty in the United States District Court for the District of New Jersey to one count of Money Laundering, in violation of 18 U.S.C. §1956(a)(2)(A).

6. He was sentenced to five years probation and 250 hours community service.

7. On June 10, 1994, Respondent pleaded guilty in the United States District Court for the District of Maryland to Wire Fraud and Aiding and Abetting in violation of 18 U.S.C. §§1341 and 2.

8. He was sentenced to three years probation, six months home detention with work release, and 250 hours community service.

9. The events leading to the conviction are as follows:

- a) Respondent was hired in May 1988 by [A], a law school classmate, to work for his insurance companies. These companies provided medical malpractice insurance to podiatrists and medical doctors. These companies were located outside the country and were not licensed to do business in the United States. Respondent's position was essentially in the capacity of in-house counsel and his duties included supervising attorneys involved in defending insureds in litigation. Respondent at this time was not a member of any bar, as he had failed various bar

exams.

- b) In the course of his work, Respondent began to notice that many of the large claims were not being paid by the companies. He asked the [A] about it but was told not to worry.
- c) The [A] companies soon began to come under scrutiny by Insurance Commissioners in different states because of the way they handled their business. Cease and Desist Orders to stop selling insurance were issued against the companies.
- d) The [A] decided that they needed to purchase a company licensed in the country. A New Jersey insurance company named [B] was purchased by a holding company called [C], of which Respondent was named figurehead president by the [A]. This insurance company was licensed but not approved by the Insurance Department.
- e) The [A] names were not on anything involved with these companies because of the prior problems. Respondent was the front man for the companies.
- f) The company began selling insurance although it was not approved to do so. The Insurance Department stepped in and issued a Cease and Desist Order to stop selling, which the company ignored. The United States Attorney began investigating and infiltrated the [A] family with an undercover agent to build the case against the [A] and Respondent, as well as others.

10. Respondent was aware at all times of the illegal activities being conducted.

11. Respondent passed the Pennsylvania Bar Exam in

1991 and planned to leave his employment with the [A] to open a practice in [ ], Pennsylvania.

12. Respondent got a mailing address in [ ] and a secretary service and a bank account. He informed the [A] that he was leaving. They offered him a chance to move to Florida and a salary of \$100,000 to stay with them. Respondent decided he could not turn down the money.

13. Respondent moved to Florida in June 1991 and within months was a target of the grand jury in New Jersey. He was indicted in January 1992.

14. After his conviction and sentencing, Respondent moved to Buffalo and completed his community service work. He began working at a title search company in May 1993. Respondent now runs the company and opened his own business on the side for foreclosure searches.

15. Respondent has no prior history of discipline in Pennsylvania.

### III. CONCLUSIONS OF LAW

Respondent's convictions on February 22, 1994 and June 10, 1994, constitute convictions under Rule 214(d), Pa.R.D.E.

Respondent's convictions constitute a per se individual basis for discipline pursuant to Rule 203(b)(1),

Pa.R.D.E.

IV. DISCUSSION

Rule 203(b)(1) of the Pennsylvania Rules of Disciplinary Enforcement provides that conviction of a serious crime shall be grounds for discipline. The sole issue before the Board in the case at bar is the extent of discipline to be imposed. Office of Disciplinary Counsel v. Costigan, 526 Pa. 16, 584 A.2d 296 (1990). In cases where the disciplinary proceeding arises out of a criminal conviction, the inquiry must focus on whether Respondent's character, as shown by his conduct, makes him unfit to practice law from the standpoint of protecting the public and the court. Office of Disciplinary Counsel v. Casety, 511 Pa. 177, 512 A.2d 607 (1986).

Respondent's misconduct spans a period from May 1988 to approximately September 1991. Shortly after Respondent graduated law school, he was offered a job by [A], a law school friend, working for the [A] family's insurance companies. Respondent had been unable to pass the bar exam in New York and Michigan and decided to accept the job offer. He began work in May 1988 and was in charge of supervising attorneys who defended the insured parties. Soon after he started, he noticed that small claims of \$5,000 or \$10,000 would be paid, but no big claims were ever paid.

He discussed this concern with the [A] and was told to mind his own business. Respondent did not question any further the companies' policies but continued to work for them. The criminal charges and Respondent's testimony reveal that the essence of the businesses of the [A] family was to sell medical malpractice insurance, without appropriate authority from regulatory commissions, collect and launder the premiums through different companies and hundreds of foreign bank accounts, avoid payment of substantial claims, and move on to set up business in new jurisdictions when regulators attempted to stop these activities. The insurance companies were the subject of cease and desist orders in different states, as the companies were not licensed to sell insurance in the United States. The [A] devised a plan in 1990 to purchase an insurance company in New Jersey and used Respondent as the front man for the operation. Respondent's name was on many documents and bank accounts. He was a signatory for different accounts. Soon that company was under investigation by the Insurance Department, who attempted to freeze the assets. Respondent was involved in a scheme to create fraudulent documents to induce the release of those assets. The United States Attorney soon began an investigation and sent an undercover agent into the [A] family.



At one point in 1991, Respondent decided that he had to get out of the business. He had passed the Pennsylvania Bar Exam in 1991 and wanted to set up a practice in [ ], Pennsylvania. When he announced his intentions to the [A], they gave him a salary increase and told him they would move him to Florida where they planned to start fresh. Respondent agreed to go along because he testified that the money was too good to pass up. Respondent moved to Florida in June 1991 and subsequently, thereafter, the [A] were indicted. Respondent cooperated with the government investigation. Respondent was brought in as a material witness and turned over certain incriminating tapes, the existence of which was told to him by [A]. Respondent was eventually indicted due to his position as the front person for the companies.

Respondent's testimony indicates that while he may not have been fully apprised of every aspect of the [A] business schemes, he knew that the organization was improperly licensed and was defrauding policy holders of anticipated coverage. He was aware that illegal and fraudulent practices were ongoing in the organization. This knowledge of illegal activity should have prompted Respondent to resign from the organization. He contemplated leaving after he passed the Pennsylvania Bar Exam, but

rejected that idea after being offered a large sum of money to stay. It is apparent that his good lifestyle was more important to him than making an honest living. Respondent's subsequent cooperation with the government after the investigation accelerated has negligible impact as he was aware of illegalities in the organization for some time and never did anything about it.

Respondent's conduct throughout his employment with the [A] demonstrates critical lapses in judgment. When he first became aware of incongruities in the manner of conducting business he questioned his employers and was told to mind his own business.

Respondent simply acquiesced and continued working. His apparent loyalty to the organization seems motivated by the material and financial gains he received during his employment, as demonstrated by his inability to leave and start his own practice. Respondent had several chances to depart but never did. Respondent is the type of attorney for whom the Rules of Professional Conduct specifically seek to shelter the public, as he is unfit to act as a repository of trust in representing the concerns of the public.

An attorney who willingly chooses financial gains and involvement in illegal schemes over integrity is a distinct danger to the public and cannot be allowed to practice in this Commonwealth.

This case is analogous to Office of Disciplinary

Counsel v. Tumini, 499 Pa. 284, 435 A.2d 310 (1982), wherein Mr. Tumini was employed by his mentor and friend and was ultimately involved in matters orchestrated by the friend, including money laundering, delivery of bribes, and false swearing in criminal proceedings. Mr. Tumini was disbarred by the Supreme Court for these activities. The Court rejected Mr. Tumini's allegations that the misconduct resulted from his youth and inexperience and noted that he only cooperated with the authorities after being implicated. While it is arguable that Respondent's misconduct in the instant case is not as egregious as Mr. Tumini's, the misconduct is very serious and raises legitimate concerns as to Respondent's ability to engage in the ethical practice of law.

Other cases involving similar egregious misconduct have also resulted in disbarment. In the case of In re Anonymous No. 115 DB 92, 26 Pa. D. & C. 4th 248 (1995), an attorney convicted of fraud relative to unauthorized use of credit cards was disbarred.

In Office of Disciplinary Counsel v. Costigan, 526 Pa. 16, 584 A.2d 296 (1990), Mr. Costigan was convicted of theft by deception, criminal conspiracy and aiding in the consummation of a crime and was disbarred, even after the Board considered that he had no prior record. In the case of Office of Disciplinary Counsel v. Stern, 515 Pa. 68, 526 A.2d 1180 (1987), Mr. Stern assisted a

client in conduct known to be illegal and fraudulent by facilitation of illegal payments to union officials. Mr. Stern was disbarred for his misconduct. This case is somewhat similar to the instant case as Respondent assisted his employers in activities he knew were fraudulent.

The Board is persuaded by the evidence of record that disbarment is the appropriate sanction in this case. The record of this case evidences no circumstances in Respondent's favor to alleviate this sanction. Although he has never been disciplined before, this factor does not impact the Board's recommendation, as Respondent has only been licensed in Pennsylvania since 1991 and was convicted in 1994. He never actually practiced in this Commonwealth. Respondent offered no character testimony to give the Board insight into the type of person he is. To his credit, Respondent did not deny his participation or make excuses, but rather appeared contrite. This realization of the enormity of his misconduct is important to his future rehabilitation, but at present it is not enough to convince the Board that a sanction less than disbarment is warranted.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [ ], be disbarred,

retroactive to July 1, 1996.

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: \_\_\_\_\_  
Stephen T. Saltz, Chair

Date: May 21, 1997

Board Members Dean Carson and Caroselli did not participate in the March 5, 1997 adjudication.

PER CURIAM:

AND NOW, this 15<sup>th</sup> day of July, 1997, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 21, 1997, it is hereby

ORDERED that [Respondent] be and he is DISBARRED from the Bar of this Commonwealth, retroactive to July 1, 1996, 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.