In re David William Belconis
Attorney-Respondent

Commission No. 2019PR00058

Synopsis of Hearing Board Report and Recommendation
(November 2022)

Respondent was convicted of mail fraud, wire fraud, and making false statements in connection with a fraudulent real estate scheme. Following his conviction, the Administrator charged Respondent with committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. The Hearing Panel found the Administrator proved the charged misconduct.

Based on the substantial evidence in mitigation and Respondent's limited involvement in the fraudulent scheme, the Hearing Panel recommended that Respondent be suspended for three years, with the effective date of the suspension retroactive to the commencement of his interim suspension.

FILED

November 01, 2022

ARDC CLERK

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

DAVID WILLIAM BELCONIS,

Attorney-Respondent,

No. 6193077.

Commission No. 2019PR00058

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

Based on Respondent's conviction for mail fraud, wire fraud, and making false statements in real estate transactions, the Administrator proved that Respondent engaged in dishonest conduct and committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer. Due to Respondent's limited involvement in the scheme that led to his conviction and the substantial mitigating evidence presented, the Hearing Panel recommends that Respondent be suspended for three years, retroactive to the commencement of his interim suspension.

INTRODUCTION

The hearing in this matter was held remotely by video conference on May 9, 2022, before a Panel of the Hearing Board consisting of Carl E. Poli, Chair, Michael V. Casey, and Charles A. Hempfling. Richard C. Gleason, II represented the Administrator. Respondent was present and was represented by Mary T. Robinson.

PLEADINGS AND ALLEGED MISCONDUCT

The Administrator charged Respondent in a one-count Complaint with committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer and

engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rules 8.4(a)(3) and 8.4(a)(4) of the 1990 Rules of Professional Conduct[1]. In his Answer, Respondent admitted many of the factual allegations against him and neither admitted nor denied the allegations of misconduct.

EVIDENCE

The Administrator's Exhibits 1-3 were admitted into evidence. (Tr. 21). The Administrator presented no witnesses. Respondent testified on his own behalf and presented four character witnesses. Respondent's Exhibits 1-5 were admitted into evidence. (Tr. 106).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477 (1991). The Hearing Board assesses witness credibility, resolves conflicting testimony, makes factual findings, and determines whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43 (2006).

Following his conviction for mail fraud, wire fraud, and making false statements in real estate transactions, Respondent was charged with engaging in dishonest conduct and committing a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer.

A. Summary

Respondent's criminal conviction for fraudulent conduct constituted clear and convincing evidence that he committed a criminal act that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer and engaged in dishonest conduct.

B. Admitted Facts and Evidence Considered

Respondent was licensed to practice law in Illinois in 1986. (Tr. 23). At the time of the conduct at issue, he was a sole practitioner who concentrated in real estate law. He also owned a title insurance company named Classic Title. (Tr. 26).

The allegations before us arise from Respondent's conviction for mail fraud, wire fraud, and making false statements in real estate transactions. On July 1, 2015, a federal grand jury in the Northern District of Illinois charged Respondent, Vince Manglardi, Theodore J. Wojtas, Jr., Walter Vali, Nunzio L. Greco, and Karin L. Ganser in a 25-count indictment with participating in a fraudulent scheme in connection with the Woods at Countryside condominium development. Specifically, the indictment charged the project developers, Manglardi and Wojtas, with soliciting and inducing individuals to invest in condominium units by falsely representing that a "$100 million fund" existed that would refund the buyers' down payments and pay all property expenses, including property taxes, assessments, and mortgage payments, for two to three years. In fact, the developers provided the down payment refunds and other financial inducements from the proceeds of fraudulently obtained mortgage loans. The real estate contracts for the condominium purchases did not disclose the refunds and other inducements. In addition, representatives of mortgage lenders who were part of the project sales team submitted loan applications containing "a variety of misrepresentations and omissions." (Adm. Ex. 1 at 2).

The developers referred certain buyers to Respondent and his title company to facilitate closings. Respondent was charged with assisting the developers in their fraudulent scheme by causing closing documents containing false statements to be submitted to lenders. Specifically, the documents misrepresented that buyers paid cash at closing when Respondent allegedly knew the developers were the source of the funds and would reimburse themselves from the proceeds of fraudulently obtained mortgage loans. In addition, the documents misrepresented the source of

the cash as the buyers' checking or savings account when Respondent allegedly knew the developers were the source of the funds. Respondent was further charged with causing one lender to disburse $142,162 in mortgage proceeds by wire transfer to fund one of the fraudulent loans. As a result of the scheme, the original lenders and entities that purchased the loans in the secondary market incurred losses of more than $16,000,000. (Resp. Ex. 1 at 22).

Following a jury trial, Respondent was convicted of one count of mail fraud (18 U.S.C §1341), one count of wire fraud (18 U.S.C. §1343), and three counts of making false statements (18 U.S.C. §§1014 and 2). (Adm. Ex. 1). A mistrial was declared on the remaining seven counts against Respondent. He was sentenced to one day of imprisonment, which was considered served, and two years of supervised release with conditions including six months of home confinement. In addition, he was ordered to pay $190,485 in restitution, a $10,000 fine, and assessments of $500. (Ans. at ¶ 3). Respondent's conviction was affirmed on appeal. (Adm. Ex. 3).

Respondent testified that he met Manglardi in 2005 and subsequently represented him in real estate closings unrelated to the Woods of Countryside project. In 2007, Respondent discussed with Manglardi the possibility of referring Woods of Countryside buyers to him. Respondent offered to represent the buyers at a discounted rate of $200 per closing. (Tr. 29-31).

Between 2007 and 2009, Respondent represented buyers in 94 Woods of Countryside closings. (Tr. 32). Nine of those closings were the subject of the federal charges against Respondent. Respondent's title company, Classic Title, was the title company for 19 closings. Classic Title earned $2,000 per closing. (Tr. 27).

Respondent did not have an ownership or investment interest in the Woods of Countryside project. He did not perform legal work for the project or participate in planning meetings. The only financial benefit he received was payment for representing buyers at closings. (Tr. 34). He

testified that his purpose was only to represent buyers and denied that he did so with the purpose of helping to close fraudulent deals. (Tr. 36). Respondent testified it was not his responsibility as a buyer's attorney to verify the buyers' assets and liabilities or the information submitted to their lenders. (Tr. 39-40). He did not have access to buyers' credit reports or other financial information the lenders had. He denied having information about the source of down payment funds. (Tr. 42-43).

With respect to Respondent's representation of one of his co-defendants, Karin Ganser, he denied knowingly submitting a false closing packet for Ganser. He recognizes, however, the jury's finding that he did so. (Tr. 43-44). Respondent was also convicted for his conduct in representing buyer Tae Lee. He accepts the jury's finding that he knowingly transmitted a closing packet with false statements about Lee's down payment. (Tr. 48).

C. Analysis and Conclusions

Rule 8.4(a)(3)

Rule 8.4(a)(3) provides that a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. For the purposes of this proceeding, we are governed by Supreme Court Rule 761(f), which provides that proof of Respondent's conviction is conclusive of his guilt of the crimes for which he was convicted. The Administrator has presented proof of Respondent's conviction for mail fraud, wire fraud, and making false statements when he was representing clients in real estate transactions. The conviction necessarily implicates Respondent's honesty, trustworthiness, and fitness as a lawyer. Accordingly, we find the Administrator proved by clear and convincing evidence that Respondent violated Rule 8.4(a)(3).

Rule 8.4(a)(4)

Rule 8.4(a)(4) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Fraud and dishonesty, whether under Rule 8.4(a)(4) or current Rule 8.4(c), are broadly construed to include any intentional conduct calculated to deceive, including the suppression of truth and the suggestion of falsity. See In re Stark, 09 SH 19, M.R. 23732 (May 18, 2010) (Hearing Bd. at 13); In re Edmonds, 2014 IL 117696, ¶ 53. Whether dishonesty is present is an issue of fact, to be determined based on all of the circumstances. See In re Rodriguez, 2012PR00169, M.R. 26591 (May 16, 2014) (Hearing Bd. at 13).

Applying the same analysis set forth in the prior section, the conclusive proof of Respondent's guilt of the federal crimes of mail fraud, wire fraud, and making false statements in real estate transactions establishes by clear and convincing evidence that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(a)(4).

EVIDENCE IN AGGRAVATION AND MITIGATION

Aggravation

The Administrator contends that Respondent has not shown contrition for his wrongdoing and asserts that his acceptance of the jury verdict against him is not the equivalent of accepting responsibility for his misconduct.

Mitigation

In sentencing Respondent, Judge Shah noted that Respondent did not reap unusual profits from his criminal conduct, nor did his conduct involve the same kind of moral failure as that of the project developers, Manglardi and Wojtas. Judge Shah further noted that Respondent has conducted himself responsibly and appropriately since his indictment. (Adm. Ex. 2).

After Respondent was placed on interim suspension in 2019, he declared bankruptcy and sold his home. The proceeds from that sale, totaling $40,814.38, were applied toward his restitution obligation. (Tr. 53; Resp. Ex. 4). Since 2018, Respondent has paid $400 per month toward his restitution and has not missed any payments. As of the date of this hearing, he still owed $148,000. (Tr. 56-57).

Respondent currently works for former client, Gregg Mason, handling logistics for Mason's chemical manufacturing company. (Tr. 53-56). Mason has known Respondent for 20 years and considers him to be a person of the highest integrity. Mason testified that Respondent's duties include purchasing materials and handling trucking schedules. Respondent has authority to make wire transfers, and Mason trusts him to handle company funds. (Tr. 98-104).

Attorney Damon Cheronis represented Respondent in his criminal matter. In his opinion, Respondent's reputation for honesty and integrity is "second to none." Cheronis submitted to the federal court 75 pages of letters in support of Respondent from his friends, family, colleagues, and members of the community. Cheronis believes that Respondent accepted the jury's verdict and understands he should have done things differently. (Tr. 60-69).

Attorney Paul Davies has known Respondent since the early 1990s. Prior to Respondent's suspension, Davies helped cover closings for Respondent's busy practice. Davies described Respondent's character and reputation for honesty and integrity as "the best." The charges against Respondent did not change his opinion. However, he chose not to read the details of the indictment. (Tr. 75-80).

Dr. Sam Akmakjian has been Respondent's friend for almost 30 years. He is a dentist as well as a real estate broker and developer. Respondent represented him several times in real estate transactions. He always found Respondent to be honest, ethical, and law-abiding, to the point that

Respondent refused to jaywalk across a street. The indictment did not change Dr. Akmakjian's opinion of Respondent. (Tr. 87-94).

Respondent testified that he and his wife work with several different charities, including Lamb's Farm and Feed My Starving Children. (Tr. 25).

Prior Discipline

Respondent does not have prior discipline.

RECOMMENDATION

A. Summary

Based on Respondent's limited involvement in the scheme that led to his conviction and the substantial mitigating evidence presented, we recommend that Respondent be suspended for three years, with the suspension's effective date retroactive to the commencement of his interim suspension.

B. Analysis

The purpose of the disciplinary process is not to punish attorneys, but to protect the public, maintain the integrity of the legal profession, and safeguard the administration of justice from reproach. In re Edmonds, 2014IL117696, ¶ 90. In arriving at our recommendation, we consider these purposes as well as the nature of the misconduct and any factors in mitigation and aggravation. In re Gorecki, 208 Ill. 2d 350, 360-6 (2003). We seek consistency in recommending similar sanctions for similar types of misconduct but must decide each case on its own unique facts. Edmonds, 2014IL117696, ¶ 90.

The Administrator asks us to recommend a suspension of three years and until further order of the Court (UFO). Respondent contends that a UFO provision is not warranted. While he acknowledges that a suspension is warranted, he asserts that the three years of suspension he has

already served is sufficient. He contends that if additional suspension is recommended, ninety days would be appropriate. For the following reasons, we conclude that the circumstances do not warrant a suspension UFO or an additional term of suspension beyond the time Respondent has already served.

Respondent's conviction for his involvement in a fraudulent real estate scheme is undoubtedly serious. According to the conviction, his conduct resulted in actual financial losses to lenders and violated Respondent's duties of honesty and candor. However, it is significant to our consideration that he neither orchestrated the scheme nor became enriched by it. Judge Shah noted that Respondent's crimes were less egregious than those of his codefendants, which was reflected in Respondent's relatively minimal sentence of one day in prison and six months of home confinement. The Administrator does not contend that Respondent's conviction warrants disbarment, nor do we find that such a harsh sanction would be appropriate given Respondent's limited involvement in the criminal scheme.

The Administrator contends, as aggravation, that Respondent's testimony denying he committed certain conduct for which he was convicted demonstrates a lack of contrition. We do not find this testimony to be aggravating. In In re Wigoda, 77 Ill. 2d 154, 159-161 (1979), the Court recognized that a convicted person who sincerely believes he is innocent should not be required to confess guilt in order to be allowed to practice law. We found Respondent to be a credible witness and found his belief that he did not knowingly engage in fraudulent conduct to be sincere. Moreover, he accepts the validity of the jury verdict despite his disagreement with it. We find that Respondent appreciates the gravity of his conduct and has respect for the system of justice. Consequently, we do not hold his denial of certain conduct against him.

Respondent presented a substantial amount of mitigation. He cooperated in this proceeding and understands that he should have conducted himself differently with respect to the closings at issue. Multiple witnesses, including two attorneys, testified to his honesty and integrity. He has demonstrated responsibility and trustworthiness since the time of his misconduct by achieving steady employment and making his monthly restitution payments. Also in his favor, the misconduct was an aberration in an otherwise respectable career. Respondent has no other misconduct, including during the 11 years between the closings at issue and the commencement of his interim suspension. The fact that Respondent practiced for several years without incident after his indictment satisfies us that he can successfully return to practice without harming the public or the profession.

Despite the evidence in mitigation, the Administrator asserts that Respondent should be suspended until further order of the Court. We disagree. "In cases in which disbarment is not warranted, a fixed term of suspension should be imposed, unless there are specific, articulable reasons for imposing an indeterminate term, or UFO." In re Baril, 00 SH 14, M.R. 18162 (Sept. 19, 2002) (Review Bd. at 10). Such reasons include failing to participate in the disciplinary proceedings, the presence of mental health or substance abuse issues that require ongoing treatment in order for a lawyer to be fit to practice, multiple prior disciplinary actions, the need to make restitution, or, on rare occasion, when disbarment is warranted but significant mitigating factors are present. Baril, 00 SH 14, Review Bd. at 11-12.

The Administrator has not pointed to, and we do not find, an articulable factor that would support a UFO recommendation in this case. Respondent has cooperated in this proceeding and has no prior discipline. There is no evidence of a mental health or substance abuse issue that would impact his ability to practice. While he still owes restitution, he has submitted the proceeds from

the sale of his home toward his restitution obligation and, since 2018, has consistently made monthly payments of $400 on the remaining balance pursuant to a payment plan. Given Respondent's demonstrated commitment to paying restitution and our expectation that he will continue to comply with his payment plan, the remaining restitution balance is not a sufficient reason to recommend a suspension UFO.

Further, we do not consider the severity of the misconduct, by itself, to be a sufficient basis for a UFO recommendation. The Administrator's cited cases, In re Scudder, 2018PR00029, M.R. 29739 (March 19, 2019) (3 years UFO for wire fraud in connection with a fraudulent investment scheme) and In re Broyles, 2010PR00035, M.R. 25239 (May 18, 2012) (3 years UFO for conspiracy to commit immigration visa fraud), do not persuade us otherwise. The suspension UFO in Scudder was imposed on consent, without discussion as to why the UFO was warranted. Consequently, we do not find Scudder helpful in this matter. The attorney in Broyles had mental health conditions that affected her ability to function professionally, and she was barred from returning to her prior area of practice, immigration law, because of her criminal conviction. Broyles, 2010PR00035 (Hearing Bd. at 39-40). No such factors are present here. The remaining cases the Administrator cites, In re Helton 2012PR00010, M.R. 26884 (Sept. 12, 2014); In re Porter, 2016PR00130, M.R. 30289 (Sept. 21, 2020); In re Peters, 2011PR00064, M.R.27617 (Nov. 17, 2015); and In re Hook, 98 CH 50, M.R. 21025 (Sept. 21, 2006), resulted in disbarment. They are not helpful given that the Administrator does not seek disbarment nor do we find it warranted.

It is unclear to us what purpose a suspension UFO would serve in this case. Respondent has demonstrated to our satisfaction that he is a trustworthy individual who is making amends for his criminal conduct. Consequently, we view a UFO provision as punitive and unnecessary and decline to recommend it.

We agree with the Administrator that a suspension is warranted, but conclude that the three years of suspension Respondent has already served satisfies the purposes of the disciplinary process. When an attorney has been suspended on an interim basis because of a criminal conviction, the Court has in some instances ordered that the effective date of the final disciplinary sanction be retroactive to the commencement of the interim suspension. This is particularly true when a respondent has presented significant mitigating evidence. In re Palivos, 05 CH 109, M.R. 26127 (Sept. 25, 2013). In Palivos, the attorney was convicted of conspiracy to obstruct justice after he participated in a scheme to create false documents in response to a federal subpoena. Several attorneys and judges testified to Palivos's honesty and integrity. In recommending that Palivos's suspension be retroactive to the date of his interim suspension, the Hearing Board considered the impressive character evidence presented, the limited nature of Palivos's criminal conduct, and the fact that he had been suspended for more than seven years on an interim basis. See also In re Scott, 98 Ill. 2d 9, 19-20 (1983).

We find this case analogous to Palivos based on the limited nature of Respondent's involvement in the criminal scheme and the compelling evidence of his honesty and integrity. Based on the strength of this evidence and our observations of Respondent, we conclude that he would not pose a danger to the public or the profession if he were permitted to return to practice. Respondent has been suspended on an interim basis for three years. This is a substantial length of time and, in our view, fulfills the purposes of the disciplinary process without the need for additional suspension. Accordingly, we recommend that Respondent be suspended for three years, effective September 17, 2019, the date he was placed on interim suspension.

Respectfully submitted,

Carl E. Poli
Michael V. Casey
Charles A. Hempfling

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on November 1, 2022.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

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[1] The conduct that was the subject of the indictment occurred between 2007 and 2009. Therefore, the 1990 Rules of Professional Conduct apply.