

IN THE SUPREME COURT OF OHIO

ORIGINAL

Toledo Bar Association

Case No. 2010-0341

Relator

vs.

Douglas Ritson

Respondent

**ON RESPONDENT'S OBJECTION TO THE RECOMMENDATION OF THE BOARD
OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME
COURT OF OHIO**

BRIEF OF RELATOR

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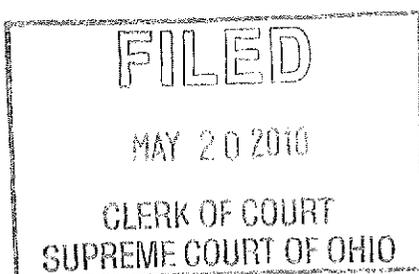
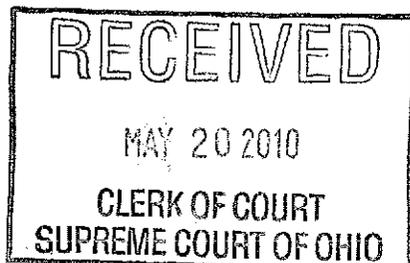


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STATEMENT OF FACTS

Respondent Douglas J. Ritson has stipulated and been found by the Board of Commissioners on Grievances and Discipline to have violated DR 1-102(A)(4), conduct involving dishonesty, fraud, deceit, or misrepresentation and DR 102(A)(6), conduct adversely reflecting on his fitness to practice law. The Hearing Panel and the Board accepted all of the stipulations. Relator also charged Respondent, based on the facts stipulated, with a violation of DR 1-102(A)(3), illegal conduct involving moral turpitude. That alleged violation was deemed not to have been proved.

The substantial facts are not in dispute. Between 1997 and 2001, Respondent engaged in a criminal conspiracy with others to knowingly and fraudulently induce real estate agents and appraisers to pay money to maintain memberships in two companies, the American Real Estate Association (“AREA”) and the Noble Group (“NOBLE”), on the false representation that they would be covered by an errors and omissions policy issued by Midwest Insurance Company (“Midwest”), when, in fact, there was no errors and omissions insurance policy issued by Midwest. Midwest was an offshore entity created by the conspirators and never licensed to issue insurance in the United States.

In furtherance of the fraud, Respondent sent new members certificates of membership and certificates of insurance that falsely stated that they were covered by the Midwest policy. He also sent to members a monthly newsletter that falsely identified Midwest as providing the errors and omissions insurance coverage for members.

When members had claims that they believed were covered, Respondent sometimes sent installment payments for members’ attorney fees and settlements, but the funds to cover such disbursements came directly from the dues and fees paid by AREA and NOBLE members and

not from Midwest or from any other insurance company. Respondent falsely informed the members that the funds came from Midwest.

In addition, Respondent represented himself to be a Claims Administrator and mailed letters and sent facsimile transmissions to AREA and NOBLE members relating to their claims for coverage under the non-existent Midwest policy and represented, directly and indirectly, that the policy did exist and provided coverage for the members.

As a result of the fraud of Respondent and others members of his conspiracy, during the period from June 1997 through December 2001, AREA and NOBLE members paid membership dues and fees in the amount of \$3,700,000 that they would not have paid had they known that no errors and omissions insurance policy existed. Respondent has stipulated that his motive was personal gain by dishonest activity and that his was a pattern of misconduct. (Stipulation, ¶¶14, 15).

On December 1, 2006, Respondent entered a plea of guilty to a criminal information filed by United States Attorney which alleged one count of conspiracy to commit mail and wire fraud, a felony violation of Title 18, United States Code, § 371. On October 21, 2008, Respondent was sentenced by the United States District Court, Northern District of Ohio, to one year and one day in prison plus three years of supervised release, and was ordered to make restitution in the amount of \$3,700,000.

Respondent voluntarily assumed inactive status on January 20, 2007, shortly after he pled to the charge. His license was suspended on an interim basis for his felony conviction on December 4, 2008.

Respondent was previously disciplined. Toledo Bar Association v. Ritson 94 Ohio State 3d 411, 2002 Ohio 1047.

Relator Toledo Bar Association filed the complaint in the instant case, and a hearing was held before a panel on January 22, 2010. At the conclusion of the hearing Relator recommended a sanction of an indefinite suspension and Respondent requested a sanction of not greater than a two-year suspension with credit for time served.

The Panel recommended that Respondent be indefinitely suspended with no credit for the interim suspension. The Board of Commissioners adopted the Findings of Fact and Conclusions of Law of the Panel but recommended that the Respondent be permanently disbarred.

Respondent has objected to the sanction recommended, and now asks for an indefinite suspension.

The only significant issue before this Court is whether Douglas Ritson should be indefinitely suspended or permanently disbarred.

ARGUMENT

THERE IS NO REQUIREMENT THAT THE BOARD HAVE ACCESS TO A TRANSCRIPT OF THE PANEL HEARING TO MAKE ITS FINDINGS AND CONCLUSIONS

Respondent raises an issue in his brief objecting to the fact that the hearing panel and the Board considered the case before a transcript of the hearing was filed.

All of the exhibits in the case were either stipulated before the panel hearing or submitted at the panel hearing. The panel members had all of the evidence before them. They heard Respondent and all his mitigation witnesses testify.

Gov. Bar Rule V, Section 6(G) requires that panel hearings be recorded and transcribed, but nowhere in the Rule is there a provision requiring that the transcript be available before the Board considers a case. Relator is not aware of any case law that mandates the either the Panel or the Board review the transcript prior to making its recommendations, and Respondent cites no legal authority for such a proposition.

Further, this was a highly stipulated case. Virtually all of the operative facts and the violations found were admitted. Indeed, all of the testimony presented at the hearing was either from the Respondent himself or from his mitigation character witnesses. The fact that the Board's recommendation does not include a recitation of the mitigation evidence is not any indication that it was not heard or considered.

THE BOARD'S RECOMMENDATION THAT THE RESPONDENT BE PERMANENTLY DISBARRED IS SUPPORTED BY THE FACTS OF THE CASE

This Court has often stated that it makes disciplinary sanction decisions on a case-by-case basis, Disciplinary Counsel v. Russo, 124 Ohio St. 3d 437, 2010 Ohio 605, considering sanctions imposed in similar cases and aggravating and mitigating factors. Disciplinary Counsel v. Bennett, 124 Ohio St. 3d 314, 2010 Ohio 313.

In most of the reported cases in which an Ohio lawyer was disciplined after being convicted of federal mail or wire fraud or a similar crime, the Court imposed either an indefinite suspension or a long term suspension.

In a trio of cases involving mail fraud convictions arising out of the same conspiracy, for example, the Court indefinitely suspended two conspirators, Disciplinary Counsel v. Hartsock, 94 Ohio St. 3d 18, 2001 Ohio 6977, and Disciplinary Counsel v. Gambrel, 94 Ohio St. 3d 10, 2001 Ohio 6979, and suspended the third for two years with six months stayed. Disciplinary Counsel v. Dubyak, 92 Ohio St. 3d 18, 2001 Ohio 145.

In Disciplinary Counsel v. Margolis, 114 Ohio St. 3d 165, 2007 Ohio 3607, the respondent was convicted of conspiracy to restrain trade, in a scheme which damaged its victims in an amount between 37.5 and 100 million dollars. Margolis was suspended for two years. In another mail fraud case, Akron Bar Ass'n v. Peters, 94 Ohio St. 3d 215, 2002 Ohio 639, the respondent was suspended for two years with credit for time spent on an interim suspension.

In the very recent decision of Disciplinary Counsel v. Gittinger, Slip Opinion 2010-Ohio-1830, decided May 4, 2010, this Court revisited the question of the appropriate sanction in a felony fraud case. In Gittinger, the respondent was convicted of federal bank fraud in connection with falsifying HUD-1 statements. The parties had stipulated an 18 month suspension, with credit for time spent on the on his interim felony suspension. The Panel and Board recommended an indefinite suspension, with credit for the interim, but with a condition that Gittinger complete his five years of supervised release before applying for reinstatement. The Court agreed.

Although Relator recommended an indefinite suspension at the hearing level, the Board's recommendation that Respondent be permanently disbarred is supported by the facts. Relator conceded as much at the hearing level, based on this Court's decision in Disciplinary Counsel v. Ulinski, 106 Ohio St. 3d 53, 2005 Ohio 3673. On facts similar to the instant case, Ulinski was permanently disbarred.

In his Memorandum in Support of Objections, Respondent has synopsised all of the factors in favor of mitigation, and all were presented to the Panel at the hearing. And although the Board adopted the Findings of Fact and Conclusions of Law of the Panel, it recommended permanent disbarment, rather than an indefinite suspension. The Board cited to Respondent's over four and half years of criminal conduct and the fact that "thousands of victims lost close to \$4,000,000." (Board Recommendation, page 7).

Respondent "challenges the characterization of his \$3,700,000 restitution as the sum approximately 3,000 victims lost as a result of the scheme" (Respondent's brief, page 13), but the undeniable fact is that Respondent and his co-conspirators cheated AREA and NOBLE members out of \$3,700,000 in membership dues and fees that the members would not have paid had they known no errors and omissions policy existed. (Stipulation, ¶ 8.)

Respondent's assertion that "no clients were harmed by Respondent's misconduct" (Memorandum in Support of Objections, pages 10 and 16) is disingenuous. Many people, if not clients, were harmed. While Relator concedes that Respondent did not perpetrate this fraud through the abuse of attorney-client relationships, he did knowingly and actively participate in a real fraudulent scheme with real victims who suffered real harm. They simply did not happen to be clients of Respondent's law practice.

Another critical factor which should be considered in the instant case is Ritson's prior discipline. While there are a number of felony fraud cases cited in both parties' briefs that did not result in disbarment, none of those cases involved a respondent with a record of prior discipline. Ritson's prior discipline was a public reprimand, but it is clearly an aggravating factor under BCGD Proc Reg 10(B)(1)(a), and, in close cases, should militate toward a more severe sanction.

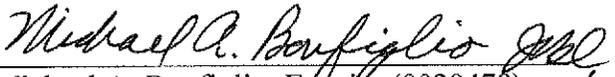
CONCLUSION

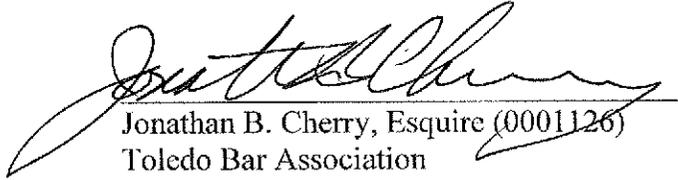
Respondent participated in the fraudulent scheme in violation of federal criminal law for over four and a half years and, although he resigned in May of 2001, he never reported the fraud until he learned he was the subject of an FBI investigation in either 2004 or 2005.

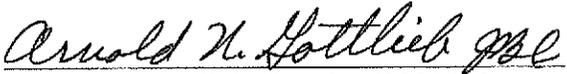
Respondent has cited a handful of cases which he claims support a sanction of indefinite suspension, but not one of the cited cases involved an attorney that had been previously disciplined. The matter before this Court is the Respondent's second disciplinary sanction within the past ten years.

Upon consideration of the facts in their entirety, Relator has no objection to the Board's recommendation of permanent disbarment.

Respectfully submitted,

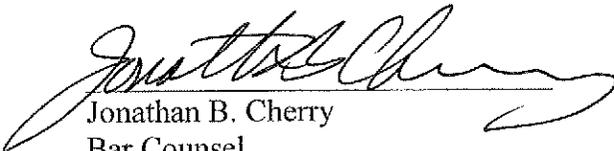

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Certificate

The undersigned certifies that copies of the foregoing Brief of Relator were sent by regular U.S. mail to all counsel of record whose names appear thereon, at the addresses stated hereon, on the 19th day of May, 2010.


Jonathan B. Cherry
Bar Counsel