STATE BAR COURT OF CALIFORNIA

HEARING DEPARTMENT – LOS ANGELES

In the Matter of **LOEL H. SEITEL,** **Member No. 192999,** **A Member of the State Bar.**	)	Case No. **06-C-10484-RAH** **DECISION AND ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

I. Introduction

In this default conviction referral matter, respondent **Loel H. Seitel** was convicted of one felony count of conspiracy to obstruct justice (18 U.S.C. § 371). He was sentenced to five months in prison in September 2007.

Based on clear and convincing evidence, this court finds that respondent's conviction involved moral turpitude and the facts and circumstances surrounding his conviction also involved moral turpitude and recommends that he be disbarred from the practice of law.

II. Pertinent Procedural History

On September 19, 2007, since respondent had been convicted of violating title 18 United States Code section 371 (conspiracy), a felony, the State Bar Court Review Department placed respondent on interim suspension, effective October 15, 2007, pending final disposition of the criminal proceeding.

On February 15, 2008, the State Bar Court Review Department concluded, based on the record of conviction, that violation of title 18 United States Code section 371 (conspiracy to violate 18 U.S.C. § 1001) was an offense for which there was probable cause to believe that it involved moral turpitude. At the same time, the court denied the State Bar's request for summary disbarment. As respondent's conviction had become final and the case was not eligible for summary disbarment, the Review Department referred this matter to the Hearing Department for a hearing and decision recommending the discipline to be imposed.

On March 4, 2008, the State Bar Court issued and properly served a Notice of Hearing on Conviction on respondent. Respondent did not file an answer.

On motion of the State Bar, respondent's default was entered on May 27, 2008. The order of entry of default was sent to respondent's official address by certified mail, return receipt requested. The mailing was received.

Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e), on May 30, 2008. This court took the matter under submission on June 12, 2008.

III. Findings of Fact and Conclusions of Law

Respondent is conclusively presumed, by the record of his conviction in this proceeding, to have committed all of the elements of the crime of which he was convicted. (Bus. & Prof. Code, § 6101, subd. (a); *In re Crooks* (1990) 51 Cal.3d 1090, 1097; *In re Duggan* (1976) 17 Cal.3d 416, 423; *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.)

A. Jurisdiction

Respondent was admitted to the practice of law in the State of California on December 9, 1997, and has been a member at all times since that date.

B. Conviction

Beginning in or about April 2003, a federal grand jury in Fort Lauderdale, Florida, began investigating the criminal activities of Jeffrey Tobin and Joseph Russo, Jr., and other persons. For several years, Tobin's organization had been operating a substantial marijuana distribution organization that involved purchasing thousands of pounds of Mexican marijuana in either California or Arizona and then transporting the drugs to the New Jersey area for distribution in New Jersey, New York, Pennsylvania and other states.

In 1993, respondent and his co-defendant, Marc F. Desiderio, were attorneys who practiced together in a law office in New Jersey. Desiderio had a stepson named Peter Rossi who worked for an organization headed by Tobin.

In 1994, Rossi introduced respondent and Desiderio to Tobin, who advised them that he was a loanshark who operated in the New Jersey area. Tobin needed to procure "stash houses" for the purpose of storing drugs and illegal proceeds acquired from the sale of drugs, and requested their assistance. From 1994 through approximately 2004, respondent and Desiderio assisted Tobin by renting three houses in the New Jersey area. In 2001 they also purchased certain real estate on behalf of Tobin in South Miami, Florida.

Respondent and Desiderio were provided with cash proceeds as reimbursement for the leased residences and $500,000 in cash proceeds as collateral for their purchase of the piece of real estate. They were told these cash proceeds were from Tobin's loanshark business. In reality, the cash proceeds provided were derived from Tobin's marijuana distribution business.

Respondent paid the rent and utility expenses for the "stash houses" by means of checks drawn on his business operating accounts.

On March 21, 2001, respondent and Desiderio purchased a parcel of land in South Miami for $1 million and took title in their own names, but covertly held the property on Tobin's behalf,

who agreed to take an undisclosed one-half interest in the property. On December 17, 2001, respondent and Desiderio conveyed by warranty deed the South Miami property to Tobin Enterprise, Inc., in exchange for a bogus promissory note to respondent and Desiderio, as well as a mortgage in favor of respondent and Desiderio in the amount of $1.05 million. No money exchanged hands and respondent and Desiderio retained the $500,000 in drug proceeds, which they stored at their law offices in New Jersey, until about June 2003, after they had been fully reimbursed. On May 13, 2003, Tobin Enterprises, Inc., sold the South Miami property to a third party and paid respondent and Desiderio $550,000 each to have the bogus mortgage reconveyed.

After learning of the investigation being conducted by the Internal Revenue Service (IRS) and the Federal Bureau of Investigation (FBI), respondent, Desiderio, Tobin and others agreed to provide false and misleading information to the government concerning the nature of the relationship that respondent and Desiderio had with Tobin. Also, Desiderio and Tobin agreed that Desiderio would provide false information and false and misleading documents at the meeting with federal law enforcement officials, for the specific purpose of misleading the grand jury about the manner in which the South Miami property was purchased and sold. On August 18, 2003, at a meeting with agents from the IRS and the FBI, among others, Desiderio provided materially false information about his involvement in business transactions with Tobin. This information was material to the government's investigation.

A month later, Rossi was served with a subpoena to appear before the Fort Lauderdale grand jury regarding the investigation of the Tobin organization. On November 18, 2003, respondent appeared at the grand jury hearing as Rossi's attorney. The government moved to have respondent disqualified as Rossi's attorney, alleging that respondent had a financial relationship with Tobin, who was a target of the investigation. At the hearing, respondent falsely stated to the court that there was no conflict of interest because the South Miami property

transaction with Tobin was a legitimate, arm's length transaction and acknowledged that Desiderio had previously provided this documentation and information to the government.

On January 5, 2006, an Indictment was filed, charging several counts of criminal conduct against respondent and Desiderio, in *U.S.A. v. Marc F.Desiderio and Loel H. Seitel*, U.S. District Court, Southern District of Florida, case No. 06-60005-CR-COHN (S). A Superseding Indictment was filed on August 8, 2006, charging respondent with the following: (1) count 1: conspiracy to commit money laundering; (2) count 2: money laundering concealment; (3) count 3: conspiracy to obstruct justice; and (4) count 6: obstruction of justice.

On July 19, 2007, respondent pled guilty to count 3 for conspiring to make false statements to the government. The government sought to dismiss the other remaining counts against respondent.

Respondent admitted that the sole object of the conspiracy was to knowingly and willfully make false, fraudulent and fictitious statements to the IRS and the FBI, in violation of title 18 United States Code section 1001.[1]

On September 28, 2007, the U.S. District Court for the Southern District of Florida sentenced respondent to five months' imprisonment, followed by two years' supervised release, and imposed a $30,000 fine and a $100 assessment.

[1] 18 United States Code section 1001 provides, in part: "[W]hoever, knowingly and willfully … (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry … shall be fined under this title, imprisoned not more than 5 years."

C. Conclusions of Law

In the Review Department's February 2008 order, the court concluded that respondent's conviction was an offense for which there was probable cause to believe that it involved moral turpitude.

Although the term "moral turpitude" defies precise definition, it has been described as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (See *In re Craig* (1938) 12 Cal.2d 93, 97.) It has also been described as any crime or misconduct without excuse (*In re Hallinan* (1954) 43 Cal.2d 243, 251) or any dishonest or immoral act. Crimes which necessarily involve an intent to defraud, or dishonesty for personal gain, such as perjury (*In re Kristovich* (1976) 18 Cal.3d 468, 472), grand theft (*In re Basinger* (1988) 45 Cal.3d 1348, 1358) and embezzlement (*In re Ford* (1988) 44 Cal.3d 810, 813) involve moral turpitude.

As previously indicated, respondent is conclusively presumed to have committed all of the elements of the crime of which he was convicted. (*In re Duggan*, *supra*, 17 Cal.3d at p. 423.) Respondent, Desiderio, Tobin, and others "agreed to provide false and misleading information to the government concerning the nature of the relationship that respondent and Desiderio had with Tobin." Hence, the elements of respondent's crime include the specific intent to make a materially false or fraudulent statement to the government.

Crimes involving the intent to make false statements have typically been held to involve moral turpitude per se. (*In the Matter of Sawyer* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 765 [misdemeanor conviction of being an accessory after the fact in making false statements in banking transactions in violation of 18 U.S.C. § 1014]; *In the Matter of Jolly* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 740 [felony conviction of making false statements and

submitting false loan application documents in violation of 18 U.S.C. § 1010].) Therefore, respondent's conviction for conspiracy to obstruct justice by making false statements to government officials established moral turpitude and the facts and circumstances surrounding the conviction also involved moral turpitude.

IV. Level of Discipline

The parties bear the burden of proving mitigating and aggravating circumstances by clear and convincing evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, stds. 1.2(b) and (e).)[2]

A. Mitigation

No mitigating evidence was offered or received. Respondent's lack of a prior record of discipline is not mitigation because he had engaged in a continuous course of misconduct before and after being admitted to the practice of law in California. (Std. 1.2(e)(i).)

B. Aggravation

The record establishes several aggravating circumstances by clear and convincing evidence. (Std. 1.2(b).)

Respondent's continuous course of criminal acts between 1994 and 2004, such as providing stash houses to store drugs and drug proceeds and making fraudulent statements to the IRS and FBI, clearly establishes a pattern of misconduct. (Std. 1.2(b)(ii).)

Because respondent's misconduct has already been found to involve moral turpitude, it cannot be considered as an additional aggravating factor. (Std. 1.2(b)(iii).)

Respondent's misconduct harmed significantly the public and the administration of justice. (Std. 1.2(b)(iv).)

[2]All further references to standards are to this source.

Respondent's failure to cooperate with the State Bar before the entry of his default is also a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; std. 1.3.)

In determining the appropriate level of discipline, the court looks first to the standards for guidance. (*Drociak v. State Bar* (1991) 52 Cal.3d 1095, 1090; *In the Matter of Koehler* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, 628.)

The Supreme Court gives the standards "great weight" and will reject a recommendation consistent with the standards only where the court entertains "grave doubts" as to its propriety. (*In re Silverton* (2005) 36 Cal.4th 81, 91-92; *In re Naney* (1990) 51 Cal.3d 186, 190.) Although the standards are not mandatory, they may be deviated from when there is a compelling, well-defined reason to do so. (*Bates v. State Bar* (1990) 51 Cal.3d 1056, 1061, fn. 2; *Aronin v. State Bar* (1990) 52 Cal.3d 276, 291.)

Standard 3.2 provides that final conviction of an attorney of a crime which involves moral turpitude, either inherently or in the facts and circumstances surrounding the crime's commission must result in disbarment. Only if the most compelling mitigating circumstances clearly predominate, will disbarment not be imposed.

Here, there was no evidence in mitigation.

The State Bar urges disbarment, citing *In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310 in support of its recommendation.

In *Rech*, an attorney was disbarred for his conviction of conspiracy to impair the collection of federal income taxes (18 U.S.C. § 371), which resulted from his role in permitting his client to shield drug proceeds through investments in two real estate ventures involving the attorney. The Review Department found that his extremely serious misconduct involving repeated acts of moral turpitude over a period of several years warranted disbarment.

The Supreme Court noted in *In re Hallinan* (1957) 48 Cal.2d 52, 56, that "an attorney, whose standard of conduct should be one of complete honesty [citation], who is convicted of either offense [defrauding an individual or the government] is not worthy of the trust and confidence of his clients, the courts, or the public ... since his conviction of such a crime would necessarily involve moral turpitude."

"The record discloses a callous and brazen indifference to the obligations of an attorney, with the object of personal gain. Under these circumstances [the attorney] should be removed from the practice of law for a substantial period of time in order that he may realize the error of his ways and rehabilitate himself before again resuming a place in the ranks of the legal profession." (*In re Hallinan, supra,* 48 Cal.2d 52, 56.)

Here, respondent pursued a course of criminal conduct in illegal drug business for a decade, with the object of personal gain, and then conspired to lie and did lie to the federal authorities. "[D]isbarments, and not suspensions, have been the rule rather than the exception in cases of serious crimes involving moral turpitude." (*In re Crooks, supra,* 51 Cal.3d 1090, 1101 [attorney convicted of conspiracy to defraud the United States (18 U.S.C. § 371) based on tax shelter scheme].) Thus, respondent is not a candidate for suspension and/or probation.

Lesser discipline than disbarment is inadequate because there are no extenuating circumstances that clearly predominate in this case. The serious, similar and prolonged nature of the misconduct suggests that he is capable of future wrongdoing and raise concerns about his

ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. "The protection of the public, courts, and legal profession; the maintenance of high professional standards by attorneys; and the preservation of public confidence in the legal profession necessitate disbarment for respondent's extensive participation in criminal activities involving repeated acts of moral turpitude." (*In the Matter of Rech, supra,* 3 Cal. State Bar Ct. Rptr. 310, 317.) Accordingly, respondent's disbarment is amply warranted.

VI. Recommendations

The court recommends that respondent **Loel H. Seitel** be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys in this state.

The court recommends that respondent be ordered to comply with California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court order in this matter.

Finally, the court recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

VII. Order of Inactive Enrollment

In accordance with Business and Professions Code section 6007, subdivision (c)(4), it is ordered that respondent be involuntarily enrolled as an inactive member of the State Bar of California effective three days after service of this decision and order by mail (Rules Proc. of State Bar, rule 220(c)).

Dated: August _____, 2008

RICHARD A. HONN
Judge of the State Bar Court