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STATE BAR COURT
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STATE BAR COURT OF CALIFORNIA

REVIEW DEPARTMENT

IN BANK

In the Matter of)	Case No. 06-C-14649
)	
THOMAS DALE GRABINSKI,)	RECOMMENDATION OF SUMMARY
)	DISBARMENT
A Member of the State Bar, No. 147442.)	
_____)	

On June 13, 2013, the State Bar's Office of the Chief Trial Counsel (State Bar) filed a motion requesting that Thomas Dale Grabinski be summarily disbarred based on his conviction. The State Bar asserts Grabinski's felony offense involved moral turpitude per se and concurrently filed evidence that the conviction is final. Grabinski did not file a response. We grant the motion and recommend that Grabinski be summarily disbarred.

I. PROCEDURAL HISTORY

In July 2006, a jury found Grabinski guilty of a felony violation of Arizona Revised Statutes section 13-2310 (fraudulent schemes and artifices)¹ for conduct that occurred between January 1994 to August 1999 while he acting as vice president and general counsel of a charitable corporation. We ordered Grabinsky interimly suspended as a result of his conviction,

¹ Under this statute, "Any person who, pursuant to a scheme or artifice to defraud, knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions is guilty of a class 2 felony." The jury also convicted Grabinski of a felony violation of Arizona Revised Statutes section 13-2312 (knowingly conducting illegal enterprise). In recommending that Grabinski be summarily disbarred, we rely only on his fraudulent schemes violation.

effective February 8, 2008, and he has remained suspended and not entitled to practice law in California since that time.

Grabinski filed an appeal in his criminal case and the attorney general cross-appealed. In an unpublished opinion filed June 2, 2009, the Arizona Court of Appeals affirmed Grabinski's conviction but remanded the matter on the issue of restitution. After remand, Grabinski appealed the trial court's restitution order. The Arizona Court of Appeals affirmed the restitution order in an unpublished opinion filed December 1, 2011. The Arizona Supreme Court denied review on April 25, 2012. There is no evidence Grabinski filed a petition for certiorari in the United States Supreme Court. (U.S. Supreme Ct. Rules, rule 13, 28 U.S.C [petition to review a civil or criminal judgment entered by state court of last resort must be filed within 90 days after entry of judgment].) Therefore, Grabinski's conviction is final. (Cal. Rules of Court, rule 9.10 [judgment of conviction deemed final when availability of appeal has been exhausted and time for filing petition for certiorari in U.S. Supreme Court on direct review has elapsed].)

II. GRABINSKI'S CONVICTION QUALIFIES FOR SUMMARY DISBARMENT

A. Grabinski's Offense Occurred During Two Versions of the Summary

Disbarment Law

Grabinski began committing the crime of participating in a fraudulent scheme in January 1994. Grabinski conceded, and the Arizona Court of Appeal determined, that his conviction for fraudulent schemes is a continuing offense. "[A] 'continuing offense' endures over a period of time, and its commission is ongoing until cessation of the proscribed conduct. [Citations.]" (*State v. Helmer* (2002) 203 Ariz. 309, 310-311 [53 P.3d 1153, 1154-1155].) Thus, Grabinski continuously committed the offense of fraudulent schemes from the time that the proscribed conduct began to the time that the proscribed conduct ceased. (*Ibid.*; see also *Williams v. Superior Court* (1978) 81 Cal.App.3d 330, 343 [crime of concealment of stolen property is a

continuing offense and statute of limitations does not begin to run until purposeful concealment ceases].) The Arizona Court of Appeal determined the evidence established that Grabinski's proscribed conduct continued through August 1999. Thus, Grabinski continuously committed the offense of fraudulent schemes from January 1994 to August 1999.

Two versions of the summary disbarment law were in effect during the five and one-half years that Grabinski committed the continuous offense of fraudulent schemes. Between 1986 and the end of 1996, the prior version of Business and Professions Code section 6102, subdivision (c), stated "the Supreme Court shall summarily disbar the attorney if the conviction is a felony under the laws of California or of the United States which meets both of the following criteria: (1) An element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement. (2) The offense was committed in the course of the practice of law or in any manner such that a client of the attorney was a victim." Under the current summary disbarment law, which became effective January 1, 1997, when an attorney's judgment of conviction becomes final, "the Supreme Court shall summarily disbar the attorney if the offense is a felony . . . and an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement, or involved moral turpitude." (Bus. & Prof. Code, § 6102, subd. (c).) We review Grabinski's conviction under both laws.

B. Grabinski's Conviction Qualifies for Summary Disbarment Under the Current and Prior Version of the Summary Disbarment Law

Both versions of the summary disbarment statute require that the attorney be convicted of a felony and that an element of the offense is the specific intent to deceive, defraud, steal, or make or suborn a false statement. Additionally, the prior summary disbarment law requires that Grabinski commit the offense in the practice of law. Grabinski's conviction meets the requirements of both versions of the summary disbarment law.

1. Grabinski's offense is a felony

Grabinski was charged with, and a jury found him guilty of, an Arizona felony. For purposes of the summary disbarment statute, a conviction under the laws of another state shall be deemed a felony if “[t]he elements of the offense for which the member was convicted would constitute a felony under the laws of the State of California at the time the offense was committed.” (Bus. & Prof. Code, § 6102, subd. (d)(2).) The elements of Grabinski's Arizona offense would constitute felony grand theft under California Penal Code sections 484, subdivision (a), and 487, subdivision (a).

California Penal Code section 484, subdivision (a), provides that: “Every person who . . . shall fraudulently appropriate property . . . or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property . . . is guilty of theft.” When Grabinski committed his offense between 1994 and 1999, grand theft would be committed under California Penal Code section 487, subdivision (a), when the value of the property taken exceeded \$400. Under California Penal Code section 489, subdivision (b), grand theft is punishable by imprisonment in county jail pursuant to section 1170, subdivision (h). Such a crime is defined as a felony. (Pen. Code, § 17, subd. (a) [felony is a crime punishable by imprisonment in county jail under § 1170, subd. (h)].) Grabinski was convicted of fraudulently obtaining approximately \$345 million in investment funds and sentenced to a six-year prison term. Thus, his Arizona conviction clearly constitutes a felony under California law.

2. Grabinski's offense involves the specific intent to defraud

The Arizona crime proscribing fraudulent schemes and artifices requires a specific intent to defraud. (*State v. Haas* (1984) 138 Ariz. 413, 418-419 [675 P.2d 673, 678-679].) “A crime in which intent to defraud is an essential element is a crime involving moral turpitude.” (*In re*

Hallinan (1954) 43 Cal.2d 243, 247; see also *In re Kelley* (1990) 52 Cal.3d 487, 494 [crimes involving the intent to defraud involve moral turpitude per se].)


3. Grabinski committed his offense in the practice of law

The record of conviction shows that during the entire time Grabinski committed this crime between January 1994 to August 1999, he acted in his capacity as general counsel of a charity.

Grabinski's conviction qualifies for summary disbarment under the current and prior versions of the summary disbarment law: he was convicted on a felony, his crime involved moral turpitude per se, and it was committed in the practice of law. When an attorney's conviction meets the requirements of Business and Professions Code section 6102, subdivision (c), "the attorney is not entitled to a State Bar Court hearing to determine whether lesser discipline is called for." (*In re Paguirigan* (2001) 25 Cal.4th 1, 7.) Disbarment is mandatory. (*Id.* at p. 9.)

III. RECOMMENDATION

We recommend that Thomas Dale Grabinski, State Bar number 147442, be disbarred from the practice of law in this state. We also recommend that Grabinski 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 days, respectively, after the effective date of the Supreme Court order in this case. Finally, we recommend that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that such costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.



Presiding Judge

CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on August 12, 2013, I deposited a true copy of the following document(s):

RECOMMENDATION OF SUMMARY DISBARMENT FILED AUGUST 12, 2013

in a sealed envelope for collection and mailing on that date as follows:

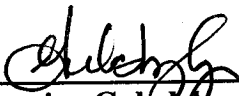
[X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

THOMAS D. GRABINSKI
1030 ELM ST
GRINNELL, IA 50112

[X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

DONALD R. STEEDMAN, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on August 12, 2013.



Jasmine Guladzyan
Case Administrator
State Bar Court