

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT - LOS ANGELES

In the Matter of) Case No.: 10-C-10100-RAP
)
CRAIG JONATHAN SHABER,) DECISION AND FURTHER ORDERS
)
Member No. 159151,)
)
A Member of the State Bar.)

Introduction¹

This contested conviction referral proceeding is based upon the conviction of respondent Craig Jonathan Shaber of a felony violation of title 26, United States Code section 7201 for tax evasion.

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

Significant Procedural History

On October 21, 2010, respondent pleaded guilty to violating title 26 United States Code section 7201, a felony offense for tax evasion; and, his conviction was entered on that same date.

On January 6, 2011, since respondent had been convicted of tax evasion, a felony for which there was probable cause to believe that moral turpitude was involved, the Review Department of the State Bar Court (review department) ordered that respondent be suspended

¹ Unless otherwise indicated, all references to rules refer to the State Bar Rules of Professional Conduct. Furthermore, all statutory references are to the Business and Professions Code, unless otherwise indicated.

from the practice of law, effective January 24, 2011, pending final disposition of this proceeding. On September 9, 2011, respondent's conviction having become final, the review department issued a further order, referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding respondent's criminal violation involved moral turpitude or other misconduct warranting discipline. The review department also ordered that respondent was to remain on interim suspension and not entitled to practice law pending final disposition of this proceeding.

On September 14, 2011, the State Bar Court issued and properly served respondent with a Notice of Hearing on Conviction. Respondent filed his Answer (response) on September 28, 2011.

The parties filed a joint Stipulation as to Facts and Admission of Documents (Stipulation) on October 16, 2012.

Trial was held on October 16, 2012. Respondent was represented by attorney Knut S. Johnson. The State Bar was represented by Deputy Trial Counsel Jessica A. Lienau.

The matter was submitted for decision on October 16, 2012.

Findings of Fact and Conclusions of Law

After carefully considering, inter alia, each witness's demeanor while testifying in the hearing in this matter, the manner in which each witness testified; the character of each witness's testimony; each witness's interest in the outcome of this proceeding, if any; and each witness's capacity to perceive, recollect, and communicate the matters on which he or she testified, the court finds the testimony of all the witnesses to be credible, with the exception of part of respondent's testimony as set forth and discussed, *post*.

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; and *In the Matter of Respondent O* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 581, 588.) However, “[w]hether those acts amount to professional misconduct . . . is a conclusion that can only be reached by an examination of the facts and circumstances surrounding the conviction.” (*In the Matter of Respondent O, supra*, 2 Cal. State Bar Ct. Rptr. 581, 589, fn. 6.)

Jurisdiction

Respondent was admitted to the practice of law in California on June 11, 1992, and has been a member of the State Bar of California at all times since that date.

Facts

Procedural History of the Underlying Criminal Conviction

Pursuant to an indictment filed on August 14, 2009, in the U.S. District Court for the Southern District of California in *United States of America v. Craig J. Shaber*, case No. 09-CR-3057, respondent was charged with one count of violating title 18, United States Code, Section 371 (conspiracy to defraud) and three counts of violating title 26, United States Code, Section 7201 (tax evasion).

In October 2010, respondent executed a plea agreement, whereby he pleaded guilty to Count Two of the indictment (felony tax evasion). The plea agreement was filed on October 21, 2010 (Plea Agreement) , and on that same date respondent was convicted of violating 26 U.S.C. § 7201.

The Federal District Court for the Southern District of California sentenced respondent to 10 months in prison and three years of supervised release. The court also ordered respondent to make restitution to the Internal Revenue Service (IRS) in the amount of approximately \$555,000.

Respondent was taken into custody on August 31, 2011, and was released to a halfway house on May 1, 2012. On June 1, 2012, he was released to home detention, and remained on home detention until June 15, 2012.

Facts and Circumstances Surrounding Respondent's Criminal Conviction

Between 1999 and 2002, respondent, a resident of San Diego County, was a self-employed attorney operating a law practice under several different names, including The Law Office of Craig J. Shaber and Capital Law Group.

Beginning in or before 1999 and continuing until at least May 2002, respondent and accountant Steven Wright (Wright) were business partners, who earned significant income by fraudulently acquiring control of public shell companies and selling the companies and stock that they retained in the companies for a substantial profit.² Respondent and Wright would sell their controlling interest in the public shell companies and deposit a portion of the funds that they obtained into either a client trust bank account of the Law Offices of Craig J. Shaber or a bank account in the name of Bonaventure Capital, LTD (Bonaventure), an entity which both respondent and Wright controlled. They also received income generated from the sale of retained shares of the shell companies through brokerage accounts held in the name of Bonaventure. Respondent and Wright then caused funds to be transferred from the brokerage accounts to Bonaventure's bank account, which they also controlled.

In 2002, respondent and Wright received approximately \$260,000 in cash for the sale of the controlling interest in a public shell company.

² The sentencing court found that Wright was involved in fraudulent practices before respondent had become his partner.

In addition to the Law Office of Craig J. Shaber and Bonaventure, respondent controlled numerous nominee entities, which were used to assist in the evasion of taxes on the income earned from the sale of the shell companies and the retained stock. Respondent's nominee entities included, but, were not limited to: Aspen International Marketing, Inc.; Belleview International, Inc.; Cloudcrest Ventures Ltd.; Brighton International; and The Logical Corporation.

Respondent stipulated and the court finds that he willfully attempted to evade and defeat his federal individual income tax due and owing the United States (U.S.) for the tax years 2000 to 2002, by committing and causing to be committed affirmative acts, including the following:

- Paying for personal expenditures directly from Bonaventure's bank account;
- Causing proceeds from the sale of shell companies to be transferred from The Law Office of Craig J. Shaber and Bonaventure to bank accounts in the name of nominee entities that he controlled;
- Writing checks to himself and paying for personal expenditures directly from bank accounts in the names of nominee entities that he controlled;
- Causing assets to be held in the names of nominee entities that he controlled; and
- Signing and filing, or causing to be filed, materially false federal corporate income tax returns with the IRS for Bonaventure and certain nominee entities to help disguise his receipt of taxable income.

Respondent signed and filed, or caused to be filed, his 2000, 2001 and 2002 federal joint individual income tax returns, while knowing that they were materially false in that he failed to report significant taxable income that he had received from the sale of shell companies and retained stock. Respondent stipulated that he signed and filed the 2000, 2001, and 2002 returns

in an attempt to evade and defeat income tax due and owing for those years; and, the court so finds.

Respondent has acknowledged that for the 2000, 2001, and 2002 tax years, he attempted to evade and defeat a large part of the federal individual income taxes that were due and owing by him and his spouse. The taxes which he attempted to evade and which were due and owing by him to the U.S. involved a sum greater than \$325,000, but not more than \$950,000.

In his Plea Agreement (Exhibit 3), respondent specifically admitted to acting “willfully” when he violated Title 26, United State Code section 7201. Additionally, respondent swore under the penalty of perjury that the facts in the “factual basis” paragraphs of the Plea Agreement were true. Respondent unequivocally admitted in the factual basis paragraphs that “he signed and filed, or caused to be filed, his 2000, 2001 and 2002 federal joint individual income tax returns knowing that they were materially false in that [he] failed to report significant taxable income that he received from the sale of shell companies and retained stock.” Respondent also admitted that he “signed and filed these returns in an attempt to evade and defeat income tax due and owing” for the years 2000, 2001, and 2002.

Conclusions of Law

As set forth, *ante*, the Review Department of the State Bar Court issued an order, referring this matter to the hearing department for a hearing and decision recommending the discipline to be imposed if the hearing department finds that the facts and circumstances surrounding respondent’s criminal violations involved moral turpitude or other misconduct warranting discipline.

The term moral turpitude is defined broadly. (*Baker v. State Bar* (1989) 49 Cal.3d 804, 815, fn. 3.) An act of moral turpitude is any “act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the

accepted and customary rule of right and duty between man and man. [Citation.]” (*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. “Although an evil intent is not necessary for moral turpitude [citations], some level of guilty knowledge or [moral culpability] is required. [Citation.]” (*In the Matter of Myrdall* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 363, 384.)

As the Supreme Court stated in *In re Lesansky* (2001) 25 Cal.4th 11, 16:

[W]e can provide this guidance: Criminal conduct not committed in the practice of law or against a client reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or if it involves such a serious breach of a duty owed to another or to society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the attorney’s conduct would be likely to undermine public confidence in and respect for the legal profession.

Simply put, “an act of moral turpitude is an act contrary to honesty and good morals.”

(*In the Matter of Rech* (Review Dept. 1995) 3 Cal. State Bar Ct. Rptr. 310, 315.)

At trial in this matter, respondent testified that all of his tax returns, both personal and business, had been prepared by his business partner, Wright. Respondent also stated in his testimony that he was generally unaware of any problem. The court finds that this testimony by respondent lacks credibility. The testimony, which is self-serving, directly conflicts with the facts that have been presented in this matter and the “factual basis” paragraphs of the Plea Agreement which respondent signed under penalty of perjury.

Moreover, whether or not respondent personally prepared his federal income returns is irrelevant. Respondent cannot credibly pass blame for his misconduct to others after his admissions in the Plea Agreement. The Plea Agreement makes clear that respondent was aware that he had been committing federal tax evasion and had knowledge of the factual basis for his criminal activity.

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 pleaded guilty to and was convicted of one count of felony tax evasion in violation of title 26 United States Code section 7201. By his plea, respondent agreed that he committed each of the elements of the crime as explained in the Plea Agreement and that there is a factual basis for his guilty plea as set forth on pages two through four of the Plea Agreement under the heading “Elements Understood and Admitted – Factual Basis.”³ He further swore under penalty of perjury that the facts as set forth in the “factual basis” paragraph of the Plea Agreement were “true.” (Exh. 3.)

Specifically, respondent acknowledged as true the following facts, among others: (1) he signed and filed, or caused to be filed, his 2000, 2001 and 2002 federal joint individual income tax returns knowing that they were materially false in that he failed to report significant taxable income that he received from the sale of shell companies and retained stock; (2) he signed and filed these returns in an attempt to evade and defeat income tax due and owing by him and his spouse for the years 2000, 2001, and 2002; (3) he willfully attempted to evade and defeat a large part of the federal income tax due and owing by him and his spouse to the United States, such tax due and owing being greater than \$325,000, but not more than \$950,000; and (4) his evasion of taxes was willful and knowing and not the result of accident or mistake.

Based on the foregoing facts, the court concludes that the facts and circumstances surrounding respondent’s criminal conviction involved moral turpitude.

³ Under the heading “Elements Explained,” respondent agreed that he understood that the offense to which he was pleading guilty consisted of the following elements:

- Title 26, United States Code § 7201:
1. Attempt to evade or defeat income taxes;
 2. Additional tax due and owing; and
 3. The defendant acted willfully.

Aggravation⁴

Multiple Acts/Pattern of Misconduct (Std. 1.2(b)(ii).)

Respondent is charged here with misconduct resulting in his criminal conviction. He has acknowledged signing and filing tax returns, knowing that they were materially false in that he failed to report significant taxable income that he received from the sale of shell companies and retained stock. Such acts, among others acknowledged by respondent at the hearing in this matter and in his criminal Plea Agreement, evidence multiple acts of misconduct.

Misconduct Surrounded/Followed by Bad Faith, Dishonesty, Concealment, Overreaching or Other Violations of State Bar Act/ Rules of Professional Conduct; If Trust Funds/Property Involved, Refusal/Inability to Account to Client/Other Person for Improper Conduct Toward Funds/Property (Std. 1.2(b)(iii).)

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

However, evidence of uncharged misconduct may be considered in aggravation where it is elicited for a relevant purpose and is based on the respondent's own evidence. (*Edwards v. State Bar* (1990) 52 Cal.3d 28, 35-36.) Respondent's admission that he and Wright would sell their interest in public shell companies and deposit a portion of the funds that they obtained into a client trust account if the Law Offices of Craig J. Shaber is evidence that respondent commingled non-client funds in his client trust account.

By depositing funds that he received from the sale of public shell companies in his client trust account, respondent commingled non-client funds in a client trust account, which constitutes an aggravating factor. Moreover, by using his client trust account in his plan to evade paying taxes owed to the United States, respondent entwined his law practice with his criminal activities – an additional aggravating factor.

⁴ All references to standards (Std.) are to the Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

Indifference Toward Rectification/Atonement (Std. 1.2(b)(v).)

As noted, *ante*, respondent's attempt to pass blame in his testimony in this matter for his own criminal misconduct onto his partner, Wright, by asserting that he was generally unaware of any problem, since Wright prepared all his federal tax returns, both business and personal. That testimony by respondent not only contradicts the statements he made in his sworn Plea Agreement, but demonstrates a failure to take responsibility for his own wrongdoing. As in the *Matter of Bach*, respondent's use of specious arguments "in an attempt to evade culpability in this matter reveals a lack of appreciation both for his misconduct and for his obligations as an attorney." (*In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, 647.) "The law does not require false penitence. [Citation.] But it does require that the respondent accept responsibility for his acts and come to grips with his culpability. [Citation.]" (*In the Matter of Katz* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 502, 511.) Here, respondent's testimony suggests that respondent has not yet come to grips with his own culpability as to his wrongdoing in terms of the tax evasion scheme in which he was a willing participant.

Mitigation

No Prior Record (Std. 1.2(e)(i).)

Respondent practiced law without discipline for only seven years, prior to the commencement of the misconduct at issue in this matter. In addition, respondent's misconduct is serious. Thus, the period of discipline-free practice entitles respondent to only minimal weight in mitigation. (Std. 1.2(e)(i); *Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 [seven and one-half years without discipline insufficient for mitigation credit]; *Smith v. State Bar* (1985) 38 Cal.3d 525, 540 [six years of blemish-free practice "not a strong mitigating factor"]; *In the Matter of Greenwood* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 831, 837 [six years of blemish-free practice entitled to no mitigative weight].)

Candor/Cooperation to Victims/State Bar (Std. 1.2(e)(v).)

Respondent entered into a stipulation as to facts and admission of documents. However, as the misconduct to which respondent stipulated is easily provable and the documents are public/court records, respondent is only entitled to slight to moderate mitigating credit for having entered the Stipulation in this matter.

Good Character (Std. 1.2(e)(vi).)

Respondent presented the testimony of five witnesses who testified to his good character. However, four of the witnesses were not aware of the full extent of respondent's misconduct. Therefore, respondent is entitled to some mitigation, but not full mitigation of his good character evidence. (*In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 538 [mitigating value of character testimony is undermined where the witness is unaware of the full extent of a respondent's misconduct].)

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.) As 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 1.6(b) provides, in pertinent part, that the specific sanction for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

Here, standard 3.2, which is the applicable standard, provides a range of sanctions from actual suspension to disbarment. 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, in which case the discipline must not be less than two years' actual suspension, prospective to any interim suspension, regardless of mitigating circumstances.

Respondent contends that his felony conviction for federal tax evasion is not a criminal conviction involving moral turpitude, or if it is, there is compelling mitigating evidence that clearly predominates. The court, however, finds respondent's contentions lack merit.

The State Bar argues that respondent's felony conviction for federal tax evasion is a criminal conviction involving moral turpitude. Since the most compelling mitigating evidence does not clearly predominate, the State Bar recommends that respondent be disbarred from the practice of law. The court agrees.

In addition to the standards, the court looks to case law for guidance and finds the following cases to be instructive.

In *In re Hallinan* (1957) 48 Cal.2d 52, 56, the Supreme Court noted 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.)

Respondent, herein, pursued a course of conduct, whereby he evaded paying the taxes on money generated from the sale of retained shares of shell companies that he acquired, using his client trust account at the Law Office of Craig J. Shaber to assist in the scheme to evade paying taxes. The object of respondent’s misconduct was personal gain.

Respondent is not a candidate for suspension and/or probation. As discussed, *ante*, his testimony demonstrates that he had not accepted responsibility for his tax evasion conviction and seeks to shift the blame for his actions onto his business partner. Such trivialization of his failure to comply with his obligations and his refusal to recognize his own wrongdoing are indeed troubling. Thus, the court is not convinced that respondent would not repeat his misconduct if he were permitted to continue in practice.

Moreover, lesser discipline than disbarment is inadequate because there are no extenuating circumstances that clearly predominate in this case. The serious nature of the misconduct suggests that respondent is capable of future wrongdoing and raises concerns about his ability or willingness to comply with his ethical responsibilities to the public and to the State Bar. It is not at all clear that respondent has learned from the past. Having considered the evidence, the standards and other relevant case law, the court believes that disbarment is the only

adequate means of protecting the public from further wrongdoing by respondent. Accordingly, respondent's disbarment is amply warranted.

Recommendations

It is recommended that respondent Craig Jonathan Shaber, State Bar Number 159151, be disbarred from the practice of law in California and respondent's name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

It is further recommended that respondent be ordered to comply with the requirements of rule 9.20 of the California Rules of Court, 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 proceeding.

Costs

It is recommended 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.

Order

On October 24, 2012, respondent filed a "Sealed Unopposed Motion under Rule 5.12 to Seal a Portion of the Answer" (Motion). In his Motion, respondent requests that the court redact and seal paragraph 9 of his September 28, 2011 "Answer" to the notice of hearing on conviction filed in the instant matter. Paragraph 9 of the Answer contains private medical information regarding respondent, which was not relied upon in the trial of the instant matter. The State Bar does not oppose the Motion.

Good cause having been shown and no response or opposition having been filed by the State Bar, respondent's Motion is **GRANTED**.

Accordingly the court directs the case administrator to redact paragraph 9 of the Answer, which appears on page 6 of respondent's Answer. The court further **Orders** that the original, unredacted Answer to the notice of hearing in this matter, which was filed on September 28, 2011, be sealed. The case assistant, who files the instant Decision, is further directed to take any and all necessary steps to ensure that respondent's original Answer is removed from the website and the redacted version is inserted on the website in its place.

Order of Involuntary Inactive Enrollment

Respondent is ordered transferred to involuntary inactive status pursuant to Business and Professions Code section 6007, subdivision (c)(4). Respondent's inactive enrollment will be effective three calendar days after this order is served by mail and will terminate upon the effective date of the Supreme Court's order imposing discipline herein, or as provided for by rule 5.111(D)(2) of the State Bar Rules of Procedure, or as otherwise ordered by the Supreme Court pursuant to its plenary jurisdiction.

Dated: January 7, 2013

RICHARD A. PLATEL
Judge of the State Bar Court