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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. 14-C-04558
)	
JOHN CODY,)	RECOMMENDATION OF SUMMARY
AKA BOBBY THOMPSON)	DISBARMENT
)	
A Member of the State Bar, No. 93300.)	
_____)	

On July 3, 2017, the State Bar's Office of Chief Trial Counsel (State Bar) filed a request for summary disbarment, which we dismissed without prejudice on July 28, 2017 because the record of conviction was incomplete. Thereafter, the State Bar filed further evidence of the conviction. On January 17, 2018, the State Bar filed an amended motion requesting that John Cody AKA Bobby Thompson be summarily disbarred based on his convictions for 12 violations of the Ohio Revised Code. The State Bar asserts that Cody's felony offenses involved moral turpitude per se and filed evidence to establish that the convictions are final. Cody filed a response on February 26, 2018. We grant the State Bar's motion, finding that 11 of Cody's 12 violations are felony convictions involving moral turpitude per se, and recommend that Cody be summarily disbarred.

I. PROCEDURAL HISTORY

On November 14, 2013, Cody was convicted by jury verdict of multiple counts of violating the Ohio Revised Code: (1) one count of section 2923.32(A)(1) (Engaging in pattern of corrupt activity); (2) one count of section 2923.03/2913.02(A)(3) (Complicity to Theft);

(3) seven counts of section 1315.55(A)(1) and/or (A)(3) (Complicity to Money Laundering); (4) two counts of section 2913.42(A)(2) (Tampering with Records); and (5) 12 counts of section 2913.49(B) (Identity Fraud) (11 of these 12 counts were dismissed on appeal). The court entered judgment on December 16, 2013, and sentenced Cody to a total of 28 years in prison. On July 3, 2017, the State Bar filed a request for summary disbarment. On August 29, 2017, Cody filed a response asserting, among other things, that his conviction was not final. We granted the State Bar's request for additional time to provide evidence of finality. The State Bar filed supplemental transmittals on January 17, 2018, and February 7, 2018, that provided proof of finality of Cody's convictions. Specifically, the State Bar submitted certified copies of the judgment from the Court of Appeals of Ohio, a certified copy of an order from the Supreme Court of Ohio declining to accept jurisdiction of the appeal, and a certified copy of the docket of the United States Supreme Court showing that Cody's petition for writ of certiorari was denied.

On January 17, 2018, the State Bar also filed an amended motion for summary disbarment. On February 26, 2018, Cody filed a response, again asserting that his convictions are not yet final. Effective April 2, 2018, we ordered that Cody be placed on interim suspension as a result of his convictions, and he has remained suspended and not entitled to practice law in California since that time.

After the 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).) The record of conviction in this case establishes both criteria for summary disbarment.

A. Cody Suffered Felony Convictions

Cody's convictions are each felonies. Business and Professions Code section 6102, subdivision (d), provides that a conviction under the laws of another state or territory of the United States shall be deemed a felony if: (1) the judgment or conviction was entered as a felony irrespective of any subsequent order suspending sentence or granting probation and irrespective of whether the crime may be considered a misdemeanor as a result of post-conviction proceedings; and (2) the 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. The indictment charged each criminal violation as a felony, and the record of conviction shows that Cody was convicted of felony violations of the Ohio Revised Code.

Additionally, the analogous crimes in California are felonies. (See Pen. Code, § 17, subd. (a) [crime punishable by imprisonment in state prison is a felony.]) For Cody's conviction of complicity to theft, the analogous California crime is Penal Code section 182 (conspiracy), which treats any conspiracy to commit a felony as a felony. For Cody's conviction of complicity to money laundering, the analysis is the same under Penal Code section 182. For Cody's conviction of tampering with records, the analogous California crime is Penal Code section 115, subdivision (a), which is a felony. For Cody's conviction of identity fraud, the analogous California crime is Penal Code section 530.5, subdivision (a) (identity theft). Penal Code section 530.5, subdivision (a) states that a violation "shall be punished by a fine, by imprisonment in a county jail not to exceed one year, . . . or by imprisonment pursuant to subdivision (h) of section 1170." Penal Code section 17, subdivision (a) defines a felony in multiple ways, including a crime that is punishable, notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of subdivision (h) of section 1170. Thus, Penal Code section

530.5 is also a felony. Since Cody was convicted of felonies in Ohio and each of the analogous California crimes are felonies, the Ohio crimes should also be classified as felonies.

B. Eleven of Cody's Convictions Involved Per Se Moral Turpitude

We find that 11 of Cody's 12 felony convictions involve moral turpitude per se, as analyzed below.¹

1. Ohio Revised Code Section 2923.03/2913.02(A)(3) (Complicity to Theft)

Cody was convicted of complicity to theft. Ohio Revised Code section 2913.02(A)(3) provides that: "No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways: . . . (3) [b]y deception." Specifically, the indictment charged Cody as follows: "[I]n a continuing course of conduct involving offenses committed in Cuyahoga County, Ohio, Defendant did knowingly exert or obtain control over, or knowingly aid or abet another to exert or obtain control over the property or services of another with the purpose to deprive those persons of said property or services, totaling one million five hundred thousand dollars or more, by deception."

Respondent was specifically convicted of "knowingly" engaging in this complicity. Under California law, such offenses involve moral turpitude if the underlying crime involved moral turpitude. (*In re Mostman* (1989) 47 Cal.3d 725, 737 [criminal solicitation involves moral turpitude if the underlying crime involves moral turpitude]; *In re McAllister* (1939) 14 Cal.2d

¹ We find that Cody's conviction of Ohio Revised Code section 2923.32(A)(1) (Engaging in a Pattern of Corrupt Activity) does not involve moral turpitude per se. The indictment charged that Cody "at least recklessly" engaged in a pattern of corrupt activity which included the other crimes she was convicted of, and thus should be classified as may or may not involving moral turpitude. (*In the Matter of Oheb* (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 920, 928 [where the crime of insurance fraud required either reckless disregard or knowledge of intent of another to commit insurance fraud, and the attorney pled to "reckless disregard," Review Department could not find that the crime inherently involved moral turpitude].)

602, 603 [if the commission of an offense involves moral turpitude, then a conspiracy to commit the offense would also involve moral turpitude]; see e.g., *In re Lindgren* (1979) 25 Cal.3d 65, 66 [conviction of being an accessory after the fact to an obstruction of a criminal investigation necessarily involves moral turpitude]; *In re Hanley* (1975) 13 Cal.3d 448 [bribing a witness not to testify involves moral turpitude on its face]; *In re Craig* (1938) 12 Cal.2d 93 [conspiracy to obstruct justice involves moral turpitude on its face].)

Therefore the classification determination turns on whether the underlying crime involved moral turpitude per se. In this case, since the underlying crime involved theft by deception, the equivalent underlying statute in California would be Penal Code section 487 (grand theft), which necessarily involves moral turpitude, and which has been consistently so classified by the Supreme Court. (*In re Basinger* (1988) 45 Cal.3d 1348, 1358 [grand theft necessarily involves moral turpitude]; see also *In re Paguirigan* (2001) 25 Cal.4th 1, 5 [crimes of robbery, embezzlement, and other forms of theft necessarily involve moral turpitude].) Cody's conviction for complicity to theft should be classified as involving moral turpitude per se.

2. Ohio Revised Code Section 1315.55(A)(1) (Complicity to Money Laundering)

Cody was convicted of complicity to money laundering. Ohio Revised Code section 1315.55(A)(1) provides that: "No person shall conduct or attempt to conduct a transaction knowing that the property involved in the transaction is the proceeds of some form of unlawful activity with the purpose of committing or furthering the commission of corrupt activity." Ohio Revised Code section 1315.55(A)(3) provides that: "No person shall conduct or attempt to conduct a transaction with the purpose to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of corrupt activity."

Crimes based on the "knowledge of the falsity of certain facts or documents or the illegality of certain conduct" involve moral turpitude. (*In re Rivas* (1989) 49 Cal.3d 794, 800,

citing *In re Bloom* (1987) 44 Cal.3d 128, 143; *In re Berman* (1989) 48 Cal.3d 517, 526 [money laundering involves moral turpitude].) Cody's conviction for complicity to money laundering should be classified as involving moral turpitude per se.

3. **Ohio Revised Code Section 2913.42(A)(2) (Tampering with Records)**

Cody was convicted of tampering with records. Ohio Revised Code section 2913.42(A)(2) provides that: "No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following: (1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record; (2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section." Specifically, the indictment charged that Cody "did knowing that he had no privilege to do so, and with the purpose to defraud or knowing that he was facilitating a fraud, falsify and/or utter a writing or record, or knowingly aid or abet another in falsifying and/or uttering a writing or record, knowing it to have been tampered with as provided in R.C. 2913.42(A)(1). The writing, data or record is kept by or belongs to a local, state, or federal governmental entity." The fact that the writing, data or record was kept by or belonged to a local, state, or federal governmental entity elevated this offense to a felony of the third degree.

This crime is analogous to California Penal Code section 470, subdivisions (c) (forgery) and (d) (uttering/forgery).² It is also analogous to California Penal Code section 115, subdivision

² Since Cody's convictions are broad, including forgery/uttering of a *writing, record, or data*, we provide the full text of the California statute. California Penal Code section 470 provides:

(a) Every person who, with the intent to defraud, knowing that he or she has no authority to do so, signs the name of another person or of a fictitious person to any of the items listed in subdivision (d) is guilty of forgery.

(b) Every person who, with the intent to defraud, counterfeits or forges the seal or handwriting of another is guilty of forgery.

(a).³ Such crimes are classified as involving moral turpitude per se under California law. (*In re Bogart* (1973) 9 Cal.3d 743 [forgery involves moral turpitude]; *In re Kelley* (1990) 52 Cal.3d 487, 494; *In re Fahey* (1973) 8 Cal.3d 842 [crimes that involve an intent to defraud constitute moral turpitude].)

4. Ohio Revised Code Section 2913.49(B) (Identity Fraud)

Cody was convicted of identity fraud. Ohio Revised Code section 2913.49(B) provides that: "No person, without the express or implied consent of the other person, shall use, obtain, or possess any personal identifying information of another person with intent to do either of the

(c) Every person who, with the intent to defraud, alters, corrupts, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery.

(d) Every person who, with the intent to defraud, falsely makes, alters, forges, or counterfeits, utters, publishes, passes or attempts or offers to pass, as true and genuine, any of the following items, knowing the same to be false, altered, forged, or counterfeited, is guilty of forgery: any check, bond, bank bill, or note, cashier's check, traveler's check, money order, post note, draft, any controller's warrant for the payment of money at the treasury, county order or warrant, or request for the payment of money, receipt for money or goods, bill of exchange, promissory note, order, or any assignment of any bond, writing obligatory, or other contract for money or other property, contract, due bill for payment of money or property, receipt for money or property, passage ticket, lottery ticket or share purporting to be issued under the California State Lottery Act of 1984, trading stamp, power of attorney, certificate of ownership or other document evidencing ownership of a vehicle or undocumented vessel, or any certificate of any share, right, or interest in the stock of any corporation or association, or the delivery of goods or chattels of any kind, or for the delivery of any instrument of writing, or acquittance, release or discharge of any debt, account, suit, action, demand, or any other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money, or to receive or transfer certificates of shares of stock or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal, or falsifies the acknowledgment of any notary public, or any notary public who issues an acknowledgment knowing it to be false; or any matter described in subdivision (b).

³ California Penal Code section 115, subdivision (a) provides: "Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or recorded under any law of this state or of the United States, is guilty of a felony."

following: (1) Hold the person out to be the other person; (2) Represent the other person's personal identifying information as the person's own personal identifying information.”

Ohio Revised Code section 2913.49(B) meets the definition of a crime involving moral turpitude for discipline purposes since the elements of the crime “shows a deficiency in any character trait necessary for the practice of law (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties)” (*In re Lesansky* (2001) 25 Cal.4th 11, 16.) California courts have held that acts of dishonesty involve moral turpitude. (See *In re Schwartz* (1982) 31 Cal.3d 395 [scheme to defraud and obtain property under false pretenses involved moral turpitude]; *In re Fahey, supra*, 8 Cal.3d at p. 849 [crimes that necessarily involve an intent to defraud or intentional dishonesty for the purpose of personal gain involve moral turpitude]; *In re Johnson* (1992) 1 Cal. 4th 689, 698-699 [use of a fictitious name to defraud constitutes moral turpitude].)

II. RECOMMENDATION

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.)

We therefore recommend that John Cody AKA Bobby Thompson, State Bar number 93300 be disbarred from the practice of law in this state. We also recommend that he 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’s order. Finally, we recommend that costs be awarded to the State Bar in accordance with section 6086.10 of the Business and Professions Code and that such costs be

enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

PURCELL

Presiding Judge

CERTIFICATE OF SERVICE

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

I am a Court Specialist of the State Bar Court of California. 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 May 2, 2018, I deposited a true copy of the following document(s):

RECOMMENDATION OF SUMMARY DISBARMENT FILED MAY 2, 2018

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

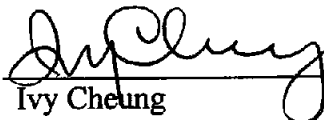
- by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

JOHN CODY
2700 EAST FRY BL #A-9
SIERRA VISTA, AZ 85635

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

Kevin B. Taylor, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in <select city>, California, on May 2, 2018.



Ivy Cheung
Court Specialist
State Bar Court