

ORIGINAL

Louisiana Attorney Disciplinary Board

FILED by: *Donna P. Burgess*

Docket#

Filed-On

11-DB-106

6/11/2013

LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: SEAN DANIEL ALFORTISH

DOCKET NO. 11-DB-106

REPORT OF HEARING COMMITTEE NO. 33

INTRODUCTION

This is an attorney disciplinary matter arising out of formal charges, consisting of one count, filed against Sean Daniel Alfortish (“Mr. Alfortish” or “Respondent”) on November 10, 2011.¹ The formal charges are based upon Respondent’s conviction for one count of conspiracy to commit mail, wire, identity document, and healthcare fraud, a felony, in violation of 18 USC 371; 18 USC 1341; 18 USC 1343; 18 USC 1028(a)(7)(C)(3)(B) and (b)(2)(B); and 18 USC 1837. Based upon this conduct, the Office of Disciplinary Counsel (“ODC”) alleges that Respondent has violated the Rules of Professional Conduct (“Rule(s)”) 8.4(b) (commission of a criminal act) and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

On January 25, 2012, Mr. Alfortish filed an answer. On February 9, 2012, the then Chairman of the Board’s Hearing Committee issued an order staying the hearing until the conviction became final. Pursuant to the ODC’s motion file on May 17, 2012, this matter proceeded as the conviction had become final. After several continuances, the hearing was held on March 26, 2013. Appearing on behalf of the ODC was Deputy Disciplinary Counsel G. Fred Ours. Mr. Alfortish appeared *pro se*, via telephone, due to his incarceration in a federal prison.

¹ Respondent remains under interim suspension by order of the court on October 19, 2011. *In re: Alfortish*, 72 So.3d 850, 2011-2190 (La. 10/19/11).

FORMAL CHARGES

The formal charges read, in pertinent part:

On August 31, 2011, in United States v. Sean Daniel Alfortish, Criminal Action No. 10-328, on the docket of the United States District Court, Eastern District of Louisiana, following a plea agreement and guilty plea, Sean Daniel Alfortish was convicted of one count of conspiracy to commit mail, wire, identity document, and health care fraud, a felony, in violation of 18 USC 371; 18 USC 1341; 18 USC 1343; 18 USC 1028(a)(7)(C)(3)(B) and (b)(2)(B); and 18 USC 1837. Sentencing was set for December 15, 2011. Mr. Alfortish has been convicted of a felony criminal offense, which constitutes serious criminal conduct in violation of Rules 8.4(b) (c) of the Rules of Professional Conduct, and which adversely reflects upon his fitness to practice law under La.S.Ct. Rule XIX; Sect. 19 B.

FINDINGS OF FACT

Mr. Alfortish committed mail, wire, identify document and healthcare fraud in violation of 18 USC §§371, 1028, 1343 and 1347. He pled guilty to a single felony count. The Factual Basis for the plea (ODC Ex. 6) establishes that Mr. Alfortish "...entered into a conspiracy to rig the outcome of the March 28 election" for the Presidency of the Louisiana Horsemen's Benevolent and Protection Association 1993, Inc. ("HBPA"). At the time, Mr. Alfortish was the incumbent President of the HBPA. A dispute had arisen within the Board as to his management of the HBPA. In furtherance of the conspiracy, Mr. Alfortish and others, at his direction, mailed fraudulent ballots, after traveling to remote locations so the ballots would bear the postmark from the supposed voters' locations. At least some of the funds used to pay for the cost of the conspiracy were charged to and paid for by the HBPA's Administrative Account (ODC Ex. 6 at p. 3).

Additionally, during his time as President, Mr. Alfortish used HBPA funds for personal expenses, including travel and gifts. A portion of the costs of these expenses was billed to the

HBPA's medical benefit trust which was supposed to be used exclusively to pay medical benefits to jockeys and other industry personnel who were beneficiaries of the trust.

Mr. Alfortish pled guilty on August 31, 2012. He specifically admitted he was guilty of the charges alleged (ODC Ex. 5 at p. 19). He also admitted the factual basis supporting the charge was accurate (ODC Ex. 5 at p. 19).

Pursuant to Supreme Court Rule XIX § 19 the Committee finds that Mr. Alfortish is bound by these judicial admissions and has therefore admitted to violating the Louisiana Rules of Professional Conduct.

RULES VIOLATED

The ODC alleged and we find that Mr. Alfortish violated Rule 8.4 (b) and (c) of the Louisiana code of Professional Responsibility which state:

It is professional misconduct for a lawyer to:

- (b) Commit a criminal act especially one that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

These acts reflect adversely on Mr. Alfortish's honesty, trustworthiness and fitness as a lawyer. Mr. Alfortish's actions also involved the fraudulent taking of money from the HBPA health care trust.

SANCTION

The ODC requests that Mr. Alfortish be permanently disbarred as the sanction for his criminal activities. Mr. Alfortish argues that the sanction imposed should be less than permanent disbarment.

Louisiana Supreme Court Rule XIX, Section 10(C) states that in imposing a sanction after a finding of lawyer misconduct, the court or board shall consider the following factors:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
2. whether the lawyer acted intentionally, knowingly, or negligently;
3. the amount of actual or potential injury caused by the lawyer's misconduct; and
4. the existence of any aggravating or mitigating factors.

We hereby find that Mr. Alfortish violated a duty owed to the public and to the profession. He acted intentionally. His dishonesty was apparent from the scheme to fix his own reelection. Moreover, during these events when persons he involved in his scheme would ask whether it was lawful, he assured them that it was. Additionally, in this case there was actual injury to the Association. Mr. Alfortish was ordered to pay \$105,140.94 by the federal court as restitution. This sum was paid to the Association by the insurer of the Association.

There was substantial evidence presented as to potential aggravating and mitigating circumstances.

The potentially aggravating circumstances identified by the ABA Standards for Imposing Lawyer Discipline are:

§ 9.22 Factors which may be considered in aggravation.

Aggravating factors include:

- a. prior disciplinary offenses;
- b. dishonest or selfish motive;
- c. a pattern of misconduct;
- d. multiple offenses;
- e. bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
- f. submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- g. refusal to acknowledge wrongful nature of conduct;
- h. vulnerability of victim;

- i. substantial experience in the practice of law;
- j. indifference to making restitution;
- k. illegal conduct, including that involving the use of controlled substances.

The ODC argues that a prior “Admonition” of Mr. Alfortish should be considered as an aggravating factor. The Admonition involved a situation where Mr. Alfortish had violated the Rules in connection with his handling of legal fees he was obligated to share with co-counsel. While he did violate the rules, there did not appear to be any suggestion that he had wrongfully taken any of the money. Thus, while Mr. Alfortish does have a prior disciplinary record, to the extent it is an aggravating factor, it is only of marginal importance.

Other aggravating factors include the existence of a “dishonest and selfish motive” and substantial experience in the practice of law.

Mr. Alfortish argued to the Hearing Committee that the evidence supports the conclusion that he did not have a dishonest and selfish motive because the acts he was accused of (specifically of the medical trust loaning money to a related company) was a practice that had occurred before he took over. (Tr. pp 15-17) His argument misses the point. Trying to fix his reelection to a paid job with HBPA is of and in itself dishonest and selfish. Additionally, it is clear that he obtained reimbursement from the HBPA for expenses that were personal in nature.

His failure to recognize this fact is itself an aggravating factor. (“g. refusal to acknowledge wrongful nature of conduct;”). Throughout the hearing, Mr. Alfortish repeatedly admitted that he knew he had pled guilty and that he knew he had to be sanctioned but would then argue that his acts really were not what they appeared to be. For example, Mr. Alfortish argued that because different CPA firms had audited the Association books and found nothing wrong, the claim of insurance fraud should be rejected. Mr. Alfortish pled guilty to facts that establish proceeds from the insurance trust went to pay for expenses of his conspiracy and were

used to reimburse him for personal expenses. He cannot be excused from this fact because an auditor did not uncover such conduct. Mr. Alfortish's argument suggests he is not willing to forthrightly acknowledge the wrongful nature of his actions.

Mr. Alfortish was admitted to the practice of law in Louisiana in 1993. Therefore, he had substantial experience in the practice of law.

There were a number of factors as to which Mr. Alfortish offered evidence with respect to mitigation.

Mr. Alfortish produced substantial evidence that a number of the people involved in the horse racing industry considered him to have done an outstanding job as head of the HBPA. They also believed him to be a person of integrity. However, there was no evidence presented that any of these people were aware of the crimes he admitted. (Tr. 84).

Mr. Alfortish also offered evidence that he had represented clients zealously and effectively in his law practice and that he represented numerous clients without receiving a loan. It is also undisputed that he cooperated fully with the ODC throughout these proceedings. We consider these to be evidence of mitigating factors.

Mr. Alfortish also argued that the payment of restitution should be considered a mitigating factor. However, as noted, the restitution in this case was paid by the insurer for the HBPA. It was paid from the proceeds of an insurance policy that was purchased by the HBPA, not Mr. Alfortish. Thus, Mr. Alfortish did not pay the restitution. We consider this factor to be neutral.

CONCLUSION

While there is some evidence of mitigating circumstances, the Committee does not believe it in anyway materially minimizes the impact of Mr. Alfortish's criminal actions. At the

center of this case was a fraudulent scheme developed and implemented by Mr. Alfortish to steal the election for the Presidency of the HBPA, a job with a substantial salary. Additionally, Mr. Alfortish used HBPA funds to pay for the expenses of this scheme. These funds came in part from the monies set aside to pay for health care expenses of employees in the industry.

It was well known within the community that he was a lawyer. Thus, his actions directly resulted in disrespect for the profession. The Supreme Court has imposed a sanction of permanent disbarment in at least one analogous case. *In re: Gary Sheffield* 2007-0288 (La 6/15/2007) 985 So.2d 661.

It is the recommendation of this committee that Respondent be permanently disbarred.

New Orleans, Louisiana, this 7th day of June, 2013.

Louisiana Attorney Disciplinary Board Hearing
Committee #33

Keith M. Pyburn, Jr., Committee Chair
Matthew M. Friedman, Lawyer Member
Shaughnesena J. Seals, Public Member

By:



KEITH M. PYBURN, JR., COMMITTEE CHAIR
FOR THE COMMITTEE