

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL,

Petitioner,

v.

Vincent P. Loccisano Esq.,

Respondent

Public Reprimand No. 2023-13

ORDER OF PUBLIC REPRIMAND

This matter came before the Board on a Petition for Discipline and a Stipulation of the Parties waiving hearing and requesting that the matter be resolved by the imposition of a public reprimand. On September 11, 2023, the Board voted to accept the stipulation of the parties and their joint recommendation. It is ORDERED and ADJUDGED that Vincent P. Loccisano, be and he, is publicly reprimanded. A summary of the charges giving rise to the reprimand is attached to this order.

Whereupon, pursuant to Supreme Judicial Court Rule 4:01, Section 8(3), and the Rules of the Board of Bar Overseers, Section 3.56, it is ORDERED AND ADJUDGED that Vincent P. Loccisano, be and hereby is PUBLICLY REPRIMANDED.

BY: Jesse M. Boodoo, Member
BOARD OF BAR OVERSEERS

DATED: November 8, 2023

VINCENT P. LOCCISANO

BBO # 652403

Public Reprimand No. 2023-13

**Order (public reprimand) entered by the Massachusetts Board of Bar Overseers of the
Supreme Judicial Court on November 8, 2023.**

Following a stipulation with bar counsel, the respondent received a public reprimand for making false statements in a real estate transaction in which he was acting in his personal capacity, not as counsel for a party.

SUMMARY¹

The respondent was the sole trustee of a family trust. He and members of his family are the trust's beneficiaries. In 2015, as trustee for the trust, the respondent purchased real property located at 16 East Pasture Road in Aquinnah, Massachusetts. The seller also owned a one-third interest in an abutting parcel. The respondent offered the seller \$5,000 to buy the seller's one-third interest in the abutting parcel, but the seller refused, citing a "handshake" agreement he had made with the respondent to sell the interest for \$29,500. Over the next four years, the respondent made additional offers to purchase the one-third interest; these were declined. An August 20, 2020 offer attached a purchase and sale agreement offering a total of \$7,500; this was also declined. Immediately thereafter, the respondent falsely told the seller that there was an abandoned rusty oil tank on the parcel, and that the seller was responsible for one-third of the cost of its removal. The respondent knew this statement was false; he knew there was no oil tank on the abutting property. He followed this with further knowingly false statements, among them that the tank may have caused contamination and that the cost to the seller to remediate would be \$2,000-\$3,000. After the seller requested a photo of the tank, the respondent fraudulently produced a stock image of an oil tank from the internet. Questioned by an individual acting as the seller's broker, the respondent dug in deeper, stating falsely that he was not the owner of 16 East Pasture Road but only a trustee acting on behalf of the beneficiaries; that certain steps needed to be taken to test the soil for possible contamination; and that the remediation costs could go as high as \$30,000-\$50,000. These statements were false; the respondent knew that, as a beneficiary of the trust that had purchased 16 East Pasture Road, he was in fact an owner of the property. He emailed the broker photographs purporting to depict the neighboring land with the "oil tank." He knew the photos were fake. The respondent received a voice mail message from the Chief of the Aquinnah Fire Department, seeking access to his property, 16 East Pasture Road due to reports of an oil tank. Denying permission to the Chief, the respondent invented a story that the supposed owner of his property was "recently retired intelligence" who monitored the

¹ Compiled by the Massachusetts Board of Bar Overseers' Office of General Counsel based on the record of proceedings before the board.

property with several dozen cameras. All of this was bogus. Despite the warnings, the Chief toured the parcel and found no evidence of an oil tank or soil contamination.

In a Petition for Discipline, bar counsel charged the respondent with violating Rule 8.4(c) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and 8.4(h) (lawyer shall not engage in conduct reflecting adversely on his or her fitness to practice law). The respondent answered and stipulated with bar counsel to violating both rules. He admitted the facts alleged in the Petition for Discipline. Jointly, the parties recommended that the board impose a public reprimand. We accept the stipulation and impose a public reprimand.

Absent mitigating or aggravating circumstances, the board has imposed public reprimands where lawyers act deceptively outside the practice of law. Matter of Shanley, 27 Mass. Att’y Disc. R. 801 (2011). In addition, the Supreme Judicial Court has imposed less severe sanctions where an attempted fraud does not actually result in “money changing hands,” in other words, where the misconduct does not cause a loss. Matter of Grew, 23 Mass. Att’y Disc. R. 232 (2007) (one-year suspension for conviction on charges of insurance fraud outside practice of law; single justice notes that sanction would be more severe if misconduct took place in capacity as lawyer).² See also, Admonition No 08-12, 24 Mass. Att’y Disc. R. 876 (2008) (attorney’s misrepresentations to IRS and DOR were purely private). In this case, despite the respondent’s efforts to buy the land for less than fair market value, he did not succeed in doing so. Moreover, the respondent’s actions took place in his individual capacity, not as an attorney on behalf of a client. Accordingly, a public reprimand is appropriate. Although this is a close case, in such instances we may defer to the experience of bar counsel in resolving the matter. However, we serve notice on the bar that even private fraudulent conduct will not necessarily be limited to a public reprimand. In appropriate cases, we will consider license suspensions even if the misconduct did not involve representation of a client or the practice of law more generally.

DISSENT

We disagree with our colleagues in the majority. While two factors suggest a lighter sanction than in other cases under Mass. R. Prof. C. 8.4(c) and (h) (the misconduct occurred outside the practice of law and the respondent’s conduct did not cause harm to the victim), these factors do not always result in a public reprimand or admonition. In similar circumstances, the Supreme Judicial Court has suspended law licenses. Given the serious, brazen and serial nature of the respondent’s deceitful misconduct, we would reject the stipulation as too lenient and remand the case for hearing.

² Although Attorney Grew’s license was suspended, his conduct resulted in a criminal conviction, an important distinguishing feature for this case. In general, lawyers who are convicted of “serious felonies” will be disbarred or indefinitely suspended, regardless of the nature of the conduct leading to the crime.

One of the leading cases favoring a suspension is actually cited by the majority, Matter of Grew, 23 Mass. Att’y Disc. R. 232 (2007). There, the respondent perpetrated insurance fraud in his personal capacity. He was convicted in a New Hampshire court and the Supreme Judicial Court suspended his law license in Massachusetts (on a petition for reciprocal discipline) for one year. Like this case, Grew took place outside the practice of law and resulted in no loss to the putative victim. Nonetheless, the single justice suspended the respondent’s license. *See also* Matter of Richard A. Dalton, 31 Mass. Att’y Disc. R. 121, 124 (Case No. BD-2013-005) (2015) (license suspension of one year and one day for misrepresentation in personal bankruptcy case in addition to failure to cooperate with bar counsel and comply with terms of administrative suspension); Matter of Sementelli, 29 Mass. Att’y Disc. R. 584, 599-600 (2013) (fraudulent conduct in personal real estate transaction would merit, on its own, suspension of one year);³ Matter of Jensen, 27 Mass. Att’y Disc. R. 487 (2011) (six-month suspension for multiple lies on job application); Matter of Gleason, 10 Mass. Att’y Disc. R. 141 (1994) (two-year suspension rather than disbarment for lawyer who engaged in fraud in real estate transaction not involving his law practice); Matter of Jacobson, 7 Mass. Att’y Disc. R. 123 (1991) (one-year suspension for defrauding investor).

The respondent engaged in calculated fraud over a period of time. The misconduct did not result from a momentary lapse in judgment. Although he was not representing a client, he took advantage of his legal training and experience in a scheme to deprive a neighbor of the fair value of his property interest. Such conduct should be punished by more than a public reprimand.

³ The respondent in Sementelli received a total license suspension of eighteen months. In addition to personal misconduct, the board concluded that in a separate matter she engaged in a conflict of interest and related wrongdoing.

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