

IN RE: S. EDWARD FIRESTONE

S.J.C. Judgment of Disbarment entered by Justice Cordy on September 8, 2004.¹

MEMORANDUM AND ORDER

This matter is before the court on a Petition for Reciprocal Discipline filed by bar counsel against the respondent, Attorney S. Edward Firestone. Attorney Firestone was disbarred by the District of Columbia Court of Appeals on May 22, 2003, after having pled guilty to eighteen counts of mail fraud (in violation of 18 U.S.C. § 1341), on April 29, 2002, before Judge Wolf, in the United States District Court for the District of Massachusetts. The essence of his admitted crimes was the receipt of insurance benefits for several years on a claim of total disability due to a psychiatric condition, while being gainfully employed practicing law in the District of Columbia. He was sentenced on September 27, 2002, to serve six months in Federal custody followed by thirty-six months of supervised release. Following his guilty plea, the respondent was temporarily suspended from the practice of law (to which he assented) in Massachusetts. That temporary suspension remains in effect.

Bar counsel contends that the reciprocal discipline of disbarment is appropriate in this case, citing S.J.C. Rule 4:1, § 16, as appearing in 425 Mass. 1319 (1997), which provides in these circumstances that the court may impose: "identical discipline unless (a) the imposition of the same discipline would result in grave injustice; (b) the misconduct established does not justify the same discipline in this Commonwealth; or (c) the misconduct established is not adequately sanctioned by the same discipline in this Commonwealth."

There is little question that disbarment in Massachusetts is routinely imposed for felony convictions. *Matter of Concemi*, 422 Mass. 326, 329 (1996). Certainly, standing alone, disbarment for engaging in a fraudulent scheme that extended over a lengthy period of time resulting in substantial financial loss, in violation of the Federal mail fraud statute, would not "result in a grave injustice," *Matter of Kennedy*, 14 Mass. Att'y Disc. R. 384 (1998); *Matter of Kronich*, 15 Mass. Att'y Disc. R. 334 (1999).

The respondent argues, however, that he should not be disbarred at this time, because he will be seeking to withdraw his guilty plea in Federal court (presumably based on claims of ineffectiveness of counsel and mental impairment making his plea involuntary), once counsel has been appointed to represent him in such an endeavor. Although he filed a motion for the appointment of counsel approximately one year ago, no action has been taken on that matter. My review of the proceedings before Judge Wolf suggests that such claims have little if any likelihood of succeeding, even if they are ever brought.

The respondent also claims that his crimes are specially mitigated by his diminished condition at the time they were committed, and the failure of his doctors to adequately treat it. Therefore, he asks this court to impose a lesser discipline.

After hearing from counsel, reviewing the reports provided to me, and reviewing the sentencing proceeding and presentence submissions made in the Federal court, I conclude that special mitigating circumstances as would warrant a sanction short of disbarment are not present in this case. In this regard, I concur with the sentencing judge, who also rejected the respondent's claims of diminished capacity as a basis for downward departure of his sentence.

The respondent is ordered disbarred on the basis of the imposition of that same discipline in the District of Columbia.

So ordered.

Robert J. Cordy
Associate Justice

Entered: September 8, 2004

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

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