

The Supreme Court of the State of Louisiana

IN RE: MICHAEL PETER ARATA

No.2020-B-01487

IN RE: Disciplinary Counsel - Applicant Other; Findings and Recommendations
(Formal Charges);

April 20, 2021

Disbarment imposed. See per curiam.

PDG

JLW

JDH

SJC

JTG

WJC

JBM

Crain, J., concurs.

Supreme Court of Louisiana

April 20, 2021



Chief Deputy Clerk of Court
For the Court

04/20/21

SUPREME COURT OF LOUISIANA

NO. 2020-B-1487

IN RE: MICHAEL PETER ARATA

ATTORNEY DISCIPLINARY PROCEEDING

PER CURIAM

This disciplinary matter arises from formal charges filed by the Office of Disciplinary Counsel (“ODC”) against respondent, Michael Peter Arata, an attorney licensed to practice law in Louisiana but currently on interim suspension based upon his conviction of a serious crime. *In re: Arata*, 16-0203 (La. 2/17/16), 184 So. 3d 671.

UNDERLYING FACTS

In May 2014, respondent and two co-defendants, Peter Hoffman and Susan Hoffman, were indicted in the United States District Court for the Eastern District of Louisiana on multiple charges of defrauding a state tax credit program of approximately \$1.1 million in connection with the renovation of a historic New Orleans mansion into a post-production film studio. In April 2015, a jury found respondent guilty of one count of conspiracy to commit mail and wire fraud, seven counts of wire fraud, one count of mail fraud, and four counts of making false statements to the FBI. The jury acquitted respondent of twelve additional counts of wire fraud.

Following his conviction, respondent filed a motion for judgment of acquittal. In December 2015, United States District Court Judge Martin Feldman granted respondent’s motion with respect to all counts except the conspiracy to commit mail

and wire fraud count and one count of wire fraud. On January 27, 2016, Judge Feldman sentenced respondent to four years of probation, including 300 hours of community service, and fined him \$15,000.

The United States government then sought a preliminary order of forfeiture seeking a personal money judgment against respondent and his co-defendants in the amount of \$1,132,480.80. After finding that only \$223,434.25 of the government's requested amount was subject to forfeiture, Judge Feldman issued a personal money judgment in that amount against respondent and his co-defendants and held them liable jointly and severally for the payment of said judgment.

Appeals were taken to the United States Fifth Circuit Court of Appeals. After considering the matter, the court of appeal reinstated respondent's convictions with respect to six counts of wire fraud, one count of mail fraud, and all but one count of making false statements to the FBI, essentially reinstating the jury verdict as to all but one count. The court of appeal also vacated respondent's sentence and remanded the matter to the district court for re-sentencing. Finally, the court of appeal affirmed the forfeiture award. On May 20, 2019, the United States Supreme Court denied a petition for writ of certiorari, and respondent's conviction became final.

On February 19, 2020, Judge Feldman sentenced respondent to five years of probation, fined him \$15,000, which respondent had already paid, and issued a special assessment in the amount of \$1,200. On March 19, 2020, respondent and the United States government signed an agreement terminating all litigation in the criminal case against him. The government also agreed that it would not seek to collect more than 40% (\$89,373.70) of the forfeiture judgment from respondent.

DISCIPLINARY PROCEEDINGS

In February 2016, the ODC filed formal charges against respondent, alleging that his conduct as set forth above violated the following provisions of the Rules of

Professional Conduct: Rules 8.4(a) (violation of the Rules of Professional Conduct), 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Respondent answered the formal charges, "steadfastly maintain[ing] his innocence," and denied he violated the Rules of Professional Conduct as alleged.¹ Accordingly, the matter proceeded to a formal hearing on the merits.

Formal Hearing

The hearing committee conducted the hearing on November 5, 2019, after the finality of respondent's criminal conviction. Both respondent and the ODC introduced documentary evidence, including hundreds of letters attesting to respondent's good character. Respondent called several witnesses to testify before the committee, including character witnesses. He also testified on his own behalf and on cross-examination by the ODC. The most relevant testimony follows.

WILLIAM GIBBENS' TESTIMONY

Mr. Gibbens, who represented respondent in his criminal case, testified that a hearing on restitution and forfeiture took place in the case. Following the hearing, Judge Feldman found that the State of Louisiana suffered no loss; thus, no restitution was ordered. Neither Louisiana nor the United States government appealed the ruling regarding restitution. Therefore, in Mr. Gibbens' opinion, respondent caused no financial harm. Mr. Gibbens, however, acknowledged the forfeiture judgment against respondent and his co-defendants. He also indicated that Peter Hoffman, one of respondent's co-defendants, signed an affidavit indicating he received the entire

¹ It should be noted that respondent filed his answer to the formal charges on April 12, 2016, long before he and the United States government reached their March 19, 2020 agreement.

\$223,434.25. Therefore, Mr. Gibbens is trying to get Judge Feldman to rule that there is no forfeiture against respondent.

RESPONDENT'S TESTIMONY

Respondent testified that he is guilty and does not contest his conviction. He testified, however, that there are mitigating factors present. Respondent indicated that he terminated his relationship with Peter Hoffman in 2009 after discovering Mr. Hoffman was engaging in fraud. In 2011, the government contacted respondent, and he volunteered to participate in the investigation of Mr. Hoffman not knowing that he himself was a focus of the investigation. Respondent also indicated that the mansion renovation project received \$1.1 million in tax credits but actually earned between \$4.1 and \$4.5 million in tax credits. Therefore, Louisiana suffered no loss. According to respondent, other mitigating factors present include the absence of a prior disciplinary record, a cooperative attitude toward the proceedings, character or reputation, and the imposition of other penalties or sanctions.

At the time of the hearing, respondent had completed four years of probation and more than 300 hours of community service, and he had paid the fees and fines. He also pointed out that his misconduct was not related to the practice of law. Finally, he indicated that he has an enormous amount of remorse over the damage that this has caused and that he recognizes the wrongful nature of his conduct.

Hearing Committee Report

After considering the evidence and testimony presented at the hearing, the hearing committee found that, in 2015, respondent was convicted by a jury in federal court of eight felony counts involving conspiracy and wire fraud arising from fraudulent claims and submissions to obtain tax credits under a Louisiana program that provides tax credits for expenditures made in Louisiana relative to the film

industry. Respondent and his two co-defendants claimed the tax credits in connection with the renovation of an old building into a studio for post-production film work at 807 Esplanade Avenue in New Orleans. The committee further found it is undisputed and the parties agree that respondent was convicted of multiple felonies. The gist of the convictions was that respondent submitted paperwork falsely claiming costs and expenses had been incurred for the studio when they had not. Following the criminal conviction, the federal court ordered no restitution. However, a forfeiture order was entered against respondent in the amount of \$1,132,480.80 to be paid by respondent and his two co-defendants. The committee accepted as fact the testimony of respondent's criminal defense attorney William Gibbens that respondent would owe one-third of this amount. The forfeiture order was entered to compel the three co-defendants to return the tax credits of \$1,132,480.80 awarded by Louisiana for the project at 807 Esplanade Avenue. Based on these factual findings, the committee determined respondent violated Rules 8.4(a), 8.4(b) and 8.4(c) of the Rules of Professional Conduct as charged.

The committee did not address aggravating and mitigating factors, except to note that the issue of respondent's good moral character is "neutral" as a mitigating factor.

After considering respondent's misconduct in light of the permanent disbarment guidelines set forth in Supreme Court Rule XIX, Appendix D, the committee determined there does not appear to be grounds to recommend he be permanently disbarred. Instead, the committee recommended the imposition of ordinary disbarment.

Both respondent and the ODC objected to the hearing committee's report. While respondent did not object to the recommended sanction, he did object to the committee's finding that a forfeiture order in the amount of \$1,132,480.80 was entered against him because the actual forfeiture judgment amount was \$223,434.25.

Respondent also objected to the committee's failure to find any mitigating factors, arguing that the following are present: the absence of a prior disciplinary record, timely good faith effort to rectify the consequences of the misconduct, a cooperative attitude toward the proceedings, character or reputation, and the imposition of other penalties or sanctions. The ODC objected to the recommended sanction as too lenient and argued that respondent should be permanently disbarred.

Disciplinary Board Recommendation

After review, the disciplinary board determined that, with two exceptions, the hearing committee's factual findings are not manifestly erroneous and are supported by the record. Regarding the exceptions, first the board noted that the committee incorrectly found respondent was convicted of eight felony counts of criminal conduct when, in fact, he was ultimately convicted of twelve felony counts. Second, the board noted that the committee incorrectly found the forfeiture judgment was in the amount of \$1,132,480.80 when, in fact, the judgment amount was only \$223,434.25, for which respondent and his two co-defendants were held jointly and severally liable. Elaborating on the second finding, the board also pointed out that respondent introduced exhibits after the hearing committee filed its report, showing an agreement between respondent and the United States government wherein the government agreed to seek no more than 40% of the forfeiture judgment from him. Based on these findings, the board agreed with the committee that respondent violated the Rules of Professional Conduct as alleged in the formal charges.

The board then determined respondent intentionally violated duties owed to the public and the legal profession. While the federal court found no actual pecuniary loss to Louisiana, the board found respondent's conduct had the potential to harm Louisiana and its taxpayers. Respondent's convictions and associated criminal conduct also tarnished the legal profession's reputation. Relying on the

ABA's Standards for Imposing Lawyer Sanctions, the board determined the baseline sanction is disbarment.

In aggravation, the board found a dishonest or selfish motive, a pattern of misconduct, multiple offenses, substantial experience in the practice of law (admitted 1992), and illegal conduct. In mitigation, the board found the absence of a prior disciplinary record, full and free disclosure to the disciplinary board or a cooperative attitude toward the proceedings, character or reputation, imposition of other penalties or sanctions, and remorse.

In determining an appropriate sanction to recommend, the board noted that respondent's final sentence imposed in his criminal case was well below the sentence recommended under the federal sentencing advisory guidelines. The board also placed great weight on the federal district court judge's comments when he sentenced respondent. After finding that greed played no part in respondent's actions, the judge further stated, "Nor did Mr. Arata receive any proceeds from the film infrastructure expenditures associated with the project; Peter Hoffman alone, and by his own candid admission, profited from the tax credit scheme."

After further considering this court's prior jurisprudence addressing similar misconduct, the board recommended respondent be disbarred, retroactive to the date of his interim suspension.

Neither respondent nor the ODC filed an objection to the disciplinary board's recommendation.

DISCUSSION

Bar disciplinary matters come within the original jurisdiction of this court. La. Const. art. V, § 5(B). When the disciplinary proceedings involve an attorney who has been convicted of a crime, the conviction is conclusive evidence of guilt and the sole issue presented is whether respondent's crimes warrant discipline, and

if so, the extent thereof. Supreme Court Rule XIX, § 19(E); *In re: Boudreau*, 02-0007 (La. 4/12/02), 815 So. 2d 76; *Louisiana State Bar Ass'n v. Wilkinson*, 562 So. 2d 902 (La. 1990). The discipline to be imposed in a given case depends upon the seriousness of the offense, the circumstances of the offense, and the extent of the aggravating and mitigating circumstances. *Louisiana State Bar Ass'n v. Perez*, 550 So. 2d 188 (La. 1989).

The record of this matter indicates that respondent was convicted in federal court of multiple counts of conspiracy, mail and wire fraud, and lying to the FBI. Therefore, he has violated Rules 8.4(a), 8.4(b), and 8.4(c) of the Rules of Professional Conduct as charged.

The record also supports a finding that respondent knowingly and intentionally violated duties owed to the public and the legal profession. While the criminal case against respondent found no actual harm, the potential for significant harm existed. The applicable baseline sanction is disbarment. The record supports the aggravating and mitigating factors found by the disciplinary board.

Turning to the issue of an appropriate sanction, we agree with the hearing committee and the board that respondent's conduct does not warrant permanent disbarment. Instead, disbarment is the most reasonable sanction under the facts of this matter. In support, we take guidance from *In re: Gilmore*, 16-0967 (La. 10/19/16), 218 So. 3d 100, and *In re: Tillman-Fleet*, 20-1040 (La. 3/2/21), ___ So. 3d ___. In *Gilmore*, an attorney was convicted in federal court of racketeering by accepting bribes in exchange for taking favorable actions on behalf of individuals and organizations having business before the Monroe City Council, of which the attorney was an elected member. We declined to impose permanent disbarment in light of the testimony of character witnesses and other mitigating factors as well as the reasons given by the federal district court judge for imposing a more lenient sentence than called for by the sentencing guidelines. Instead, we imposed ordinary

disbarment. In *Tillman-Fleet*, an attorney received approximately \$53,000 in federal grant funds through fraudulent means. The attorney's criminal matter was resolved through a pre-trial diversion program, and she paid \$3,500 in restitution. For this misconduct, we imposed ordinary disbarment.

In light of this case law and the numerous mitigating factors present, we will adopt the board's recommendation and disbar respondent.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Michael Peter Arata, Louisiana Bar Roll number 21448, be and he hereby is disbarred, retroactive to February 17, 2016, the date of his interim suspension. His name shall be stricken from the roll of attorneys and his license to practice law in the State of Louisiana shall be revoked. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.