

**People v. Michelle M. Borzillo. 16PDJ029. September 8, 2016.**

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Michelle M. Borzillo (attorney registration number 15761) from the practice of law, effective October 13, 2016.

In 2007, Borzillo purchased a home in Virginia for \$850,000.00. She financed the home with Wells Fargo Bank. From about 2009 through December 2013, Borzillo knowingly and intentionally devised a scheme to defraud Wells Fargo in connection with the short sale of her Virginia home to a person who lived in the home with her, with whom she was in a committed personal relationship. On December 2013, Borzillo closed on the short sale of her home, extinguishing her debt to Wells Fargo and completing her scheme.

In November 2015, Borzillo pleaded guilty to one count of felony bank fraud in violation of 18 U.S.C. § 1344. In her plea, she admitted she acted willfully, knowingly, and with the specific intent to violate the law when she committed the fraud. Borzillo was sentenced to twelve months and one day imprisonment and two years of supervised release, and was ordered to pay \$288,497.00 in restitution to Wells Fargo.

Through this conduct, Borzillo violated Colo. RPC 8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). Her conduct constitutes grounds for discipline under C.R.C.P. 251.5(b) (grounds for discipline include any criminal act that reflects adversely on a lawyer's honesty and trustworthiness).

Please see the full opinion below.

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| <p style="text-align: center;">SUPREME COURT, STATE OF COLORADO</p> <p style="text-align: center;">ORIGINAL PROCEEDING IN DISCIPLINE BEFORE<br/>THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE<br/>1300 BROADWAY, SUITE 250<br/>DENVER, CO 80203</p> |  |                                         |
| <p><b>Complainant:</b><br/>THE PEOPLE OF THE STATE OF COLORADO</p> <p><b>Respondent:</b><br/>MICHELLE M. BORZILLO</p>                                                                                                                                |  | <p>Case Number:<br/><b>16PDJ029</b></p> |
| <p style="text-align: center;"><b>OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)</b></p>                                                                                                                                           |  |                                         |

In November 2015, Michelle M. Borzillo (“Respondent”) pleaded guilty to one count of felony bank fraud in violation of 18 U.S.C. § 1344. On February 19, 2016, she was sentenced to jail for twelve months and one day and two years of supervised release, and was ordered to pay \$288,497.00 in restitution to Wells Fargo Bank. She then failed to participate in this disciplinary proceeding. Her misconduct warrants disbarment.

### **I. PROCEDURAL HISTORY**

On March 22, 2016, Catherine S. Shea, of the Office of Attorney Regulation Counsel (“the People”), filed a complaint in this matter with Presiding Disciplinary Judge William R. Lucero (“the Court”). The People served the complaint the same day by certified and regular mail to Respondent’s registered business address of 9801 Alydar Court, Nokesville, Virginia 20181 and her home address of P.O. Box 534, Bristow, Virginia 20136, along with instructions for filing an answer. Respondent failed to answer the complaint, and the Court granted the People’s motion for entry of default on June 6, 2016. Upon the entry of default, the Court deemed all facts set forth in the People’s complaint admitted and all rule violations established by clear and convincing evidence.<sup>1</sup>

On August 17, 2016, the Court held a sanctions hearing under C.R.C.P. 251.15(b). Shea represented the People, and Respondent did not appear. The Court admitted exhibits 1-3.

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<sup>1</sup> See C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

## **II. ESTABLISHED FACTS AND RULE VIOLATIONS**

Respondent took the oath of admission and was admitted to the bar of the Colorado Supreme Court on July 31, 1986, under attorney registration number 15761.<sup>2</sup> She is thus subject to the Court's jurisdiction in this disciplinary proceeding.<sup>3</sup>

In 2007, Respondent purchased a home in Nokesville, Virginia for \$850,000.00.<sup>4</sup> She financed the home with Wells Fargo Bank ("Wells Fargo") with a first and second mortgage totaling \$807,500.00.<sup>5</sup> From about 2009 through December 2013, Respondent knowingly and intentionally devised a scheme to defraud Wells Fargo in connection with the short sale of her Virginia home to a person who lived in the home with Respondent.<sup>6</sup> As part of her scheme, Respondent arranged for her home to be listed on the market after the person living there with her received financing to ensure he would be the first successful bidder on the home.<sup>7</sup> She misrepresented to Wells Fargo that the sale was an arm's length transaction when it was not.<sup>8</sup> The proposed buyer of the house was an individual who was in a committed personal relationship with Respondent, and they planned to remain in the home following completion of the short sale to him.<sup>9</sup> She also falsely informed Wells Fargo in writing that she had serious financial difficulties as the result of a pay freeze at her work, though in fact her income had increased.<sup>10</sup> Finally, Respondent represented to Wells Fargo that she would vacate her home once it sold, as provided in the short sale agreement, and she received \$3,000.00 from Wells Fargo for relocation services based upon this misrepresentation.<sup>11</sup>

On December 5, 2013, Respondent closed on the short sale of her home, extinguishing her debt to Wells Fargo and completing her scheme.<sup>12</sup> On November 6, 2015, Respondent entered into an agreement with the United States Attorney in the Eastern District of Virginia in which she pleaded guilty to one count of felony bank fraud in violation of 18 U.S.C. § 1344.<sup>13</sup> As part of her plea, Respondent admitted she acted willfully, knowingly, and with the specific intent to violate the law when she committed the fraud.<sup>14</sup> On February 19, 2016, Respondent was sentenced to twelve months and one day imprisonment and two

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<sup>2</sup> Compl. ¶ 1.

<sup>3</sup> See C.R.C.P. 251.1(b); Compl. ¶ 2.

<sup>4</sup> Compl. ¶ 5; Ex. 2 ¶ 1.

<sup>5</sup> Ex. 2 ¶ 1.

<sup>6</sup> Ex. 2 ¶ 3.

<sup>7</sup> Ex. 2 ¶ 4.

<sup>8</sup> Ex. 2 ¶ 6.

<sup>9</sup> Ex. 2 ¶ 6.

<sup>10</sup> Ex. 2 ¶ 5.

<sup>11</sup> Ex. 2 ¶ 7.

<sup>12</sup> Ex. 2 ¶ 8.

<sup>13</sup> Ex. 1.

<sup>14</sup> Ex. 2 ¶ 9.

years of supervised release, and was ordered to pay \$288,497.00 in restitution to Wells Fargo.<sup>15</sup>

Through her conduct described above, Respondent violated Colo. RPC 8.4(b) (a lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects) and Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation). Her conduct constitutes grounds for discipline under C.R.C.P. 251.5(b) (grounds for discipline include any criminal act that reflects adversely on a lawyer's honesty and trustworthiness).

## **II. SANCTIONS**

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA Standards")<sup>16</sup> and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.<sup>17</sup> When imposing a sanction after a finding of lawyer misconduct, the Court must consider the duty violated, the lawyer's mental state, and the actual or potential injury caused by the misconduct. These three variables yield a presumptive sanction that may be adjusted based on aggravating and mitigating factors.

### **ABA Standard 3.0 – Duty, Mental State, and Injury**

Duty: Respondent violated her duty to the public by failing to maintain her personal integrity when she engaged in serious felonious conduct involving fraud.

Mental State: The Court's order entering default establishes that Respondent acted with the specific intent to violate the law when she committed fraud on Wells Fargo.

Injury: Respondent's misconduct caused actual injury to Wells Fargo when she devised and carried out a scheme to defraud the bank, resulting in an award of \$288,497.00 in restitution. She also caused injury to the public and the legal profession when she committed felony bank fraud by undermining the public's trust in lawyers.

### **ABA Standards 4.0-7.0 – Presumptive Sanction**

Under ABA Standard 5.11(a), disbarment is the presumptive sanction for Respondent's misconduct in this case. That standard provides that disbarment is generally appropriate "when a lawyer engages in serious criminal conduct a necessary element of which includes . . . false swearing, misrepresentation, [or] fraud. . . ."

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<sup>15</sup> Compl. ¶¶ 5-6; Ex 3.

<sup>16</sup> Found in ABA *Annotated Standards for Imposing Lawyer Sanctions* (2015).

<sup>17</sup> See *In re Roose*, 69 P.3d 43, 46-47 (Colo. 2003).

## **ABA Standard 9.0 – Aggravating and Mitigating Factors**

Aggravating circumstances include any considerations or factors that may justify an increase in the degree of the presumptive sanction to be imposed, while mitigating circumstances may warrant a reduction in the severity of the sanction.<sup>18</sup> Four aggravating factors are present here: Respondent's dishonest or selfish motive;<sup>19</sup> refusal to acknowledge the wrongful nature of her conduct;<sup>20</sup> substantial experience in the practice of law;<sup>21</sup> and illegal conduct.<sup>22</sup> The Court is aware of only two mitigating factors: Respondent lacks a prior disciplinary record,<sup>23</sup> and she was subject to other sanctions or penalties.<sup>24</sup>

### **Analysis Under ABA Standards and Colorado Case Law**

The Court is aware of the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,<sup>25</sup> mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."<sup>26</sup> Though prior cases are helpful by way of analogy, the Court is charged with determining the appropriate sanction for a lawyer's misconduct on a case-by-case basis.

The Colorado Supreme Court has previously approved disbarment for lawyers who commit the crime of bank fraud.<sup>27</sup> Likewise, the Colorado Supreme Court has disbarred a lawyer for fraud involving securities.<sup>28</sup> Here, the relevant case law, the serious nature of Respondent's misconduct, the numerous aggravating factors, and Respondent's failure to participate in this proceeding all militate in favor of imposing the presumptive sanction of disbarment.

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<sup>18</sup> See ABA Standards 9.21 & 9.31.

<sup>19</sup> ABA Standard 9.22(b).

<sup>20</sup> ABA Standard 9.22(g).

<sup>21</sup> ABA Standard 9.22(i).

<sup>22</sup> ABA Standard 9.22(k).

<sup>23</sup> ABA Standard 9.32(a).

<sup>24</sup> ABA Standard 9.32(k).

<sup>25</sup> See *In re Attorney F.*, 285 P.3d 322, 327 (Colo. 2012); *In re Fischer*, 89 P.3d 817, 822 (Colo. 2004) (finding that a hearing board had overemphasized the presumptive sanction and undervalued the importance of mitigating factors in determining the needs of the public).

<sup>26</sup> *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

<sup>27</sup> *People v. Kiely*, 968 P.2d 110, 112 (Colo. 1998) (approving a conditional admission of misconduct and disbaring an attorney for making a false statement to a bank); *People v. Terborg*, 848 P.2d 346, 347 (Colo. 1995) (approving a hearing board's recommendation and disbaring a lawyer who was convicted of a single count of felony bank fraud); *People v. Hilgendorf*, 895 P.2d 544, 545 (Colo. 1993) (approving a conditional admission of misconduct and disbaring an attorney who was convicted of two felonies for making false statements to federal banks).

<sup>28</sup> *People v. Nearen*, 952 P.2d 371, 372 (Colo. 1998) (approving a conditional admission of misconduct and disbaring an attorney who was convicted of two counts of securities fraud).

### III. CONCLUSION

Respondent violated her duties to the public when she committed a serious crime involving dishonesty and fraud. The two mitigating factors present here are not sufficient to warrant departure from the presumptive sanction of disbarment. It is well established that a lawyer who engages in criminal acts involving dishonesty, fraud, deceit, or misrepresentation violates one of the most basic obligations to the public and the legal profession. Furthermore, Respondent's failure to respond to disciplinary charges suggests she is indifferent to maintaining her law license. The Court has no trouble concluding that Respondent should be disbarred.

### IV. ORDER

The Court therefore **ORDERS**:

1. **MICHELLE M. BORZILLO**, attorney registration number **15761**, is **DISBARRED**. The **DISBARMENT SHALL** take effect only upon issuance of an "Order and Notice of Disbarment."<sup>29</sup>
2. Respondent **SHALL** promptly comply with C.R.C.P. 251.28(a)-(c), concerning winding up of affairs, notice to parties in pending matters, and notice to parties in litigation.
3. Respondent also **SHALL** file with the Court, within fourteen days of issuance of the "Order and Notice of Disbarment," an affidavit complying with C.R.C.P. 251.28(d), requiring an attorney to file an affidavit with the Court setting forth pending matters and attesting, inter alia, to notification of clients and other jurisdictions where the attorney is licensed.
4. The parties **MUST** file any posthearing motion or application for stay pending appeal **on or before September 29, 2016**. Any response thereto **MUST** be filed within seven days.
5. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a "Statement of Costs" **on or before September 15, 2016**. Any response thereto **MUST** be filed within seven days.

DATED THIS 8<sup>th</sup> DAY OF SEPTEMBER, 2016.

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WILLIAM R. LUCERO  
PRESIDING DISCIPLINARY JUDGE

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<sup>29</sup> In general, an order and notice of disbarment will issue thirty-five days after a decision is entered pursuant to C.R.C.P. 251.19(b) or (c). In some instances, the order and notice may issue later than thirty-five days by operation of C.R.C.P. 251.27(h), C.R.C.P. 59, or other applicable rules.

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