***People v. Diane Dishlacoff Dalmy*. 18PDJ069. June 26, 2019.**

Following a sanctions hearing, the Presiding Disciplinary Judge disbarred Diane Dishlacoff Dalmy (attorney registration number 18758), effective July 31, 2019.

Dalmy pleaded guilty to a felony charge of conspiracy to commit wire fraud in 2018. The United States District Court in New Haven, Connecticut sentenced her to prison for thirty-six months. Through her conduct, Dalmy 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 C.R.C.P. 251.5(b) (any criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer amounts to grounds for discipline).

The case file is public per C.R.C.P. 251.31. Please see the full opinion below.

SUPREME COURT, STATE OF COLORADO ORIGINAL PROCEEDING IN DISCIPLINE BEFORE THE OFFICE OF THE PRESIDING DISCIPLINARY JUDGE 1300 BROADWAY, SUITE 250 DENVER, CO 80203	
Complainant: THE PEOPLE OF THE STATE OF COLORADO **Respondent:** DIANE DISHLACOFF DALMY, #18758	Case Number: **18PDJ069**
OPINION AND DECISION IMPOSING SANCTIONS UNDER C.R.C.P. 251.19(c)	

Diane Dishlacoff Dalmy ("Respondent") pleaded guilty to a felony charge of conspiracy to commit wire fraud. She was sentenced to prison for thirty-six months. Respondent's crime reflected adversely on her honesty, trustworthiness, or fitness as a lawyer in other respects and thus violated Colo. RPC 8.4(b) and C.R.C.P. 251.5(b). Respondent will be disbarred for her misconduct.

I. PROCEDURAL HISTORY

On October 30, 2018, the Office of Attorney Regulation Counsel ("the People") filed a complaint with the Presiding Disciplinary Judge ("the Court") and sent copies via certified mail the same day to Respondent's then-counsel. When the due date for Respondent's answer had passed, the People sent her a reminder letter on December 10, 2018. On December 21, 2018, Respondent was granted an extension of time to answer the complaint until January 18, 2019. On that day, her lawyer moved to withdraw as counsel, and the People moved for entry of default because Respondent had not filed an answer. On February 12, 2019, the Court granted Respondent's counsel's motion to withdraw, denied the People's motion for default, and gave Respondent until March 5, 2019, to answer the People's complaint. She still did not file an answer.

The People again moved for entry of default. When Respondent failed to respond, the Court granted the People's motion on April 16, 2019. Upon the entry of default, the Court deemed all facts set forth in the complaint admitted and all rule violations established by clear and convincing evidence.[1] The Court set a sanctions hearing for June 21, 2019.

[1] *See* C.R.C.P. 251.15(b); *People v. Richards*, 748 P.2d 341, 346 (Colo. 1987).

On June 10, 2019, the People filed a status report and a motion to permit Respondent to appear at the hearing by telephone. The People stated that Respondent only recently learned of the hearing, yet she was willing to go forward and to appear by telephone from the prison in Arizona where she is housed. The Court authorized Respondent's telephone testimony.

At the sanctions hearing held under C.R.C.P. 251.15(b) on June 21, 2019, Kim E. Ikeler represented the People. Respondent appeared pro se by telephone. The Court admitted the People's exhibits 1-4 and heard testimony from Respondent.

II. FACTUAL FINDINGS AND RULE VIOLATIONS

Facts and Rule Violations Established on Default

Respondent was admitted to practice law in Colorado on October 25, 1989. She is thus subject to the Court's jurisdiction in this disciplinary proceeding.[2]

Respondent, a specialist in securities law, performed securities-related legal work for several public companies ("subject companies"). Between about January 2009 and July 2016, Respondent knowingly and willfully conspired with others (the "co-conspirators") to carry out a wire fraud scheme to defraud investors who had purchased stock in the subject companies. Respondent was aware that these companies were under the control of the co-conspirators, who were running fraudulent stock promotions for the companies.

The co-conspirators disseminated materially false information of a positive nature about one or more of the subject companies through email marketing blasts, telephone solicitations, press releases, and other media. As a result, share prices for company stock were artificially inflated. The co-conspirators then sold their stock holdings at a profit, stopped the fraudulent stock promotions, and allowed share prices to plummet, leaving investors with worthless stock. Respondent participated in the stock promotion aspect of the conspiracy by helping the co-conspirators gain access to lists of investors who were solicited during the fraudulent stock promotion campaigns. Funds were wired into Respondent's trust account as payment for facilitating the co-conspirators' acquisition of the investor list.

In addition, Respondent participated in the conspiracy by writing, and permitting a co-conspirator to write in her name, fraudulent opinion letters that were used to unrestrict the co-conspirators' stock so it could be freely traded on the open market. These letters permitted the co-conspirators to sell their shares at times of their choosing, including to coincide with their fraudulent stock promotion campaigns, without concern for various federal securities rules.

Respondent also ghost-wrote fraudulent opinion letters for the subject companies in

[2] *See* C.R.C.P. 251.1(b).

another attorney's name and permitted a co-conspirator to do so. Some of the letters were of the type used to un-restrict stock. Others were "adequacy" letters that were posted on a website maintained by an electronic securities marketplace that had earlier prohibited Respondent from posting opinion letters on its website. Respondent used another attorney's name to fraudulently circumvent that prohibition. Respondent's opinion letters were materially false in numerous respects, including as to whether the issuing company was a shell company, whether the shareholder was an affiliate of the issuer, whether the transactions described in the letters actually had occurred, and whether Respondent had performed the due diligence that she described in the letters.

Respondent also participated in the conspiracy by advancing funds from her trust account to the co-conspirators, knowing the co-conspirators would not use the funds for legitimate purposes. These funds belonged to other clients of her law practice who did not know about this use of their funds.

Between February 2015 and July 2016, Respondent laundered a portion of the proceeds of the wire transfer scheme for the co-conspirators. She helped a co-conspirator open bank accounts for a private company, Queen Asia Pacific Ltd. These bank accounts were used to receive proceeds of the scheme from a brokerage account in Queen Asia's name. Respondent knew that the funds received in Queen Asia's bank accounts were the proceeds of the stock promotion scheme. She periodically received money in Queen Asia's bank accounts, transferred those funds into her trust account, and then transferred the funds again to co-conspirators. Respondent knew this two-step process helped to conceal the funds derived from the stock promotion scheme and also helped to hide any connection between the source and recipients of the funds. She laundered approximately $825,000.00 on behalf of the co-conspirators.

On February 6, 2018, Respondent appeared in the United States District Court in New Haven, Connecticut, in case number 18CR0002. She waived indictment and pleaded guilty to the felony of conspiracy to commit wire fraud in violation of 18 U.S.C. § 371 and 18 U.S.C. § 1343. Respondent was sentenced to prison for three years, followed by three years of supervised release. Restitution in the amount of $2,000,000.00 was ordered to be paid on a joint and several basis with the other related defendants.

Through the conduct described above, Respondent violated Colo. RPC 8.4(b), which provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects. She also violated C.R.C.P. 251.5(b), which provides that a criminal act reflecting adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects constitutes grounds for discipline.

Factual Findings at Sanctions Hearing

Respondent made a statement at the sanctions hearing, explaining that she wished to do so to maintain a sense of dignity and integrity. After suffering at the hands of an alcoholic, abusive father, she said, she ultimately graduated from college and entered law school, hoping to make a difference as a lawyer. She initially worked for a major law firm and then decided to open a law practice operating out of her home so she could focus on raising her three children.

In 2009, Respondent said, she was reeling from the death of her mother, a divorce after twenty-seven years of marriage, a botched surgery, and the stress of raising a thirteen-year-old daughter on her own, yet she kept striving to provide good legal services to her clients. But she made "egregious mistakes" in her law practice. She said she had an erroneous understanding of applicable law concerning opinion letters she issued for clients. She insisted she was unaware of the stock scam that one of her clients orchestrated. Respondent admitted that she misused client funds in her trust account, though she testified that her actions caused her clients no actual losses.

Nevertheless, she said, she accepts responsibility for her conduct. Respondent averred that she feels "sick to her stomach" about the stock scam. She never intended to scam anyone, she maintained. She said she pleaded guilty because she "should have known" about the scheme and also because she believed she would likely receive a harsher sentence if she defended the criminal charges. She regrets her decisions "every day," she said.

At the age of sixty-five, Respondent testified, she has now lost nearly everything: her freedom, her assets, and her retirement funds. On her release from prison, she intends to accept a promised offer of employment in a "humanitarian" field. Through that work, she hopes to save money for her own needs and also to pay restitution to the victims of the stock scam.

On cross-examination, Respondent agreed that by authoring opinion letters, lawyers serve a "gatekeeper" role. By failing in her gatekeeping role, she conceded, she caused millions of dollars in losses. She also admitted that her conduct had the potential to weaken public confidence in securities markets.

III. SANCTIONS

The American Bar Association *Standards for Imposing Lawyer Sanctions* ("ABA *Standards*")[3] and Colorado Supreme Court case law guide the imposition of sanctions for lawyer misconduct.[4] 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

[3] Found in ABA Annotated Standards for Imposing Lawyer Sanctions (2015).
[4] *See In re Roose,* 69 P.3d 43, 46-47 (Colo. 2003).

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 to maintain personal integrity when she committed a serious criminal act.

Mental State: By entering default, the Court deemed established the allegation in the complaint that Respondent "knowingly and willfully conspired with others . . . to carry out a wire fraud scheme to defraud investors . . . ."[5] Respondent's knowing state of mind is further evidenced by her plea agreement, in which she stipulated that she knowingly and willfully entered into a conspiracy.[6]

Injury: As established by entry of default, Respondent laundered approximately $825,000.00 on behalf of the co-conspirators, and along with other defendants she was ordered to pay $2,000,000.00 in restitution. On this basis, the Court finds that Respondent caused serious financial injury to others.

ABA *Standards* 4.0-7.0 – Presumptive Sanction

The presumptive sanction here is disbarment per ABA *Standard* 5.11, which calls for disbarment when a lawyer engages in serious criminal conduct a necessary element of which includes fraud.

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.[7] Three aggravating factors are present here: Respondent's dishonest motive, her substantial experience in the practice of law, and the fact that her conduct was illegal.[8] In mitigation, the Court considers her lack of prior discipline, the other penalties imposed for her conduct, and her remorse.[9] Respondent also testified to personal and emotional problems she experienced around the time of her misconduct, but because she did not introduce corroborating evidence, the Court applies relatively little weight to that mitigating factor.[10]

[5] Compl. ¶ 3.
[6] Compl. Ex. 1.
[7] *See* ABA *Standards* 9.21 & 9.31.
[8] ABA *Standards* 9.22(b), (i), and (k).
[9] ABA *Standards* 9.32(a), (k), and (i).
[10] ABA *Standard* 9.32(c).

Analysis Under ABA *Standards* and Colorado Case Law

The Court recognizes the Colorado Supreme Court's directive to exercise discretion in imposing a sanction and to carefully apply aggravating and mitigating factors,[11] mindful that "individual circumstances make extremely problematic any meaningful comparison of discipline ultimately imposed in different cases."[12] 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.

Here, the People request disbarment. Respondent asks instead that the Court consider directing her to permanently resign her law license. The Court is not, however, authorized to accept permanent resignation of a law license in a disciplinary proceeding.[13]

In this case, the ABA *Standards* call for disbarment as a presumptive sanction, and case law supports imposition of that discipline.[14] Although significant mitigating factors may overcome the presumption of disbarment, the slight predominance of mitigating factors here cannot justify reducing the presumptive sanction of disbarment for misconduct of this magnitude.[15] The Court thus disbars Respondent.

IV. CONCLUSION

The undisputed facts establish that Respondent wrote fraudulent opinion letters, converted other clients' funds for her co-conspirators' use, and used her trust account to launder funds generated by a fraudulent scheme. Respondent's grave misconduct warrants disbarment.

---

[11] *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).

[12] *In re Attorney F.*, 285 P.3d at 327 (quoting *In re Rosen*, 198 P.3d 116, 121 (Colo. 2008)).

[13] C.R.C.P. 251.19(c) (setting forth available dispositions of a disciplinary proceeding); *see also* C.R.C.P. 227(8) (providing that a lawyer may only resign from the practice of law if no disciplinary proceeding is pending against the lawyer).

[14] *See, e.g., People v. Sichta*, 948 P.2d 1018, 1018-20 (Colo. 1997) (disbarring a lawyer who was sentenced to thirty-three months in prison for convictions of wire fraud and securities fraud); *People v. Frye*, 935 P.2d 10, 10-11 (Colo. 1997) (disbarring a lawyer convicted of felony conspiracy to commit securities fraud and felony fraudulent and prohibited practices-securities fraud).

[15] *See, e.g., People v. Finesilver*, 826 P.2d 1256, 1258-59 (Colo. 1992) (finding that even a significant number of mitigating factors was insufficient to justify a sanction less than disbarment given the serious nature of the lawyer's conversion of funds and forgery); *People v. Young*, 864 P.2d 563, 564 (Colo. 1993) (accepting a stipulation to disbarment for a lawyer who converted clients' funds, and stating that the lawyer's absence of disciplinary history, cooperation with disciplinary authorities, and payment of restitution were insufficient to justify a sanction less than disbarment for misconduct of such magnitude).

V. ORDER

The Court therefore **ORDERS**:

1. **DIANE DISHLACOFF DALMY**, attorney registration number **18758**, will be **DISBARRED** from the practice of law. The **DISBARMENT SHALL** take effect only upon issuance of an "Order and Notice of Disbarment."[16]

2. To the extent applicable, 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 motions **on or before Wednesday, July 10, 2019**. Any response thereto **MUST** be filed within seven days.

5. The parties **MUST** file any application for stay pending appeal **on or before Wednesday, July 17, 2019**. Any response thereto **MUST** be filed within seven days.

6. Respondent **SHALL** pay the costs of this proceeding. The People **SHALL** file a statement of costs **on or before Wednesday, July 10, 2019**. Any response thereto **MUST** be filed within seven days.

DATED THIS 26th DAY OF JUNE, 2019.

[original signature on file]

_____

WILLIAM R. LUCERO
PRESIDING DISCIPLINARY JUDGE

[16] In general, an order and notice of sanction will issue thirty-five days after a decision is entered under 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.

Copies to:

Kim E. Ikeler Office of Attorney Regulation Counsel	Via Email k.ikeler@csc.state.co.us
Diane Dishlacoff Dalmy Respondent #25737-014 FPC Phoenix Federal Correctional Institute 37930 N. 45th Avenue Phoenix, AZ 85086	Via Email and First-Class Mail CNRossiter@bop.gov
Cheryl Stevens Colorado Supreme Court	Via Hand Delivery