

STATE OF MICHIGAN

Attorney Discipline Board

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Grievance Administrator,

Petitioner/Appellee,

v

Lisa M. Londer, P 64672,

Respondent/Appellant,

Case No. 07-127-JC

Decided: September 5, 2008

*Appearances:*

Kimberly L. Uhuru, for Grievance Administrator, Petitioner/Appellee  
Kenneth M. Mogill, for the Respondent/Appellant

**BOARD OPINION**

Respondent pled no contest to first degree retail fraud, a felony punishable by up to five years in prison and up to a \$10,000 fine. Because the crime was a felony, she was automatically suspended on an interim basis upon the acceptance of her plea of no contest in Oakland Circuit Court on June 28, 2006. MCR 9.120(B)(1). The hearing panel conducted a hearing on the order to show cause why a final order of discipline should not be entered pursuant to MCR 9.120(B)(3), and thereafter entered a report and order revoking respondent's license to practice law in Michigan. Respondent petitions for review arguing that discipline should be reduced to a suspension of less than three years. We affirm.

The hearing panel's report contains the following summary of the facts in this case, which are not in dispute on review:

The parties stipulated to numerous facts underlying Respondent's conviction. Pursuant to that stipulation and her testimony at the hearing, Respondent admitted, among other things, that:

She engaged in a pattern of fraudulent transactions at various stores of national retailer Kohl's from March 2006 through May 9, 2006, whereby she would remove items from the shelves, not pay for

the items, but then return the items for cash or store credit using receipts from prior identical purchases.

She engaged in a pattern of theft at various Kohl's stores in the metropolitan Detroit area whereby she stole merchandise from the stores and then sold the merchandise on her eBay account under the name "1legaleagle1."

She used her eBay account to sell Kohl's store credits she obtained through fraudulent means.

She entered the Troy Kohl's store on May 8, 2006, removed a Kitchen Aid mixer valued at \$399.99, then, without paying for that mixer, took it to the customer service line and returned the mixer using a fraudulent receipt from the Auburn Hills Kohl's store, receiving \$423.99 cash in the transaction.

She went to the Farmington Hills Kohl's store on May 9, 2006, removed a Kitchen Aid mixer from the store without paying for the mixer, and then placed the mixer in her car trunk. She then reentered the store carrying an empty Kohl's bag, put a floor vacuum inside the bag, and then attempted to leave the store without paying for the vacuum. A Kohl's loss prevention officer intercepted her and the Troy police arrested her at that time.

She engaged in similar fraudulent transactions and thefts of this same nature at the Kohl's stores in Novi, Pontiac, Farmington Hills, Troy, and Auburn Hills.

She took stolen merchandise from her home to a neighbor's shortly after her arrest with the intent of secreting the merchandise in case the police searched her home. She induced the neighbor to store the items in her garage on the pretext that she had an argument with her boyfriend.

She returned to the neighbor's home on May 12, 2006 to retrieve the stolen merchandise due to her concern that the police might search the neighbor's home for the stolen property. She intended to remove the items from the garage to avoid being charged with a felony should the police find the items. The neighbor, having heard news reports of Respondent's arrest, refused access to the garage and advised Respondent she had already contacted the police. [Hearing Panel Report, pp 2-3.]

The panel applied Standard 5.1 of the American Bar Association's Standards for Imposing Lawyer Sanctions, which reads, in pertinent part:

5.11 Disbarment is generally appropriate when:

(a) a lawyer engages in serious criminal conduct, a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or

(b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

Pursuant to ABA Standard 3.0 and *Grievance Administrator v Lopatin*, 462 Mich 235; 612 NW2d 120 (2000), the panel considered the ethical duty violated by respondent in this case, her mental state, the potential and actual injury caused by her misconduct, and aggravating and mitigating factors. In its well-written report, the panel concisely and clearly explained its reasoning for adhering to the presumptive, or generally appropriate, sanction of disbarment:

Upon consideration of the testimony of Respondent and Respondent's witnesses as well as the documentary evidence presented on April 23, 2007, the panel finds that Respondent has engaged in serious criminal conduct involving misrepresentation, fraud, misappropriation, and theft based on her: (i) conceiving, planning, and executing a plan to defraud Kohl's; (ii) implementing multiple methods of artifice, fraud, and deception to obtain money, goods, and store credits through fraudulent means; and (iii) creating an eBay account specifically designed to fence her stolen merchandise while simultaneously heralding her status as a member of the bar. The panel further finds that in planning, implementing, and executing such scheme, as well as attempting to avoid criminal prosecution by fraudulently inducing her neighbor to hide the stolen merchandise without regard to the potential civil and legal ramifications to the neighbor should she be found in possession of stolen property, Respondent has engaged in intentional conduct involving dishonesty, fraud, deceit, and misrepresentation which seriously and adversely reflects on her fitness to practice law.

The panel does not find any cognizable evidence of mitigation or diminished mental capacity due to Respondent's alleged depression but, to the contrary, finds evidence of aggravation due to

the repetitive and planned nature of her criminal enterprise. [Hearing Panel Report, p 4.]

Respondent argues on review that respondent's actions were out of character, that the panel ignored or discounted her therapist's testimony regarding the stress she was under and the depression she suffered and other asserted mitigating factors, and that the sanction imposed is disproportionate to other cases in which lawyers received lighter sanctions for seemingly worse conduct. In response, the Administrator argues that the panel's order of revocation was appropriate in light of the respondent's mental state, aggravating factors including the pattern of conduct, and the comparatively less substantial mitigating evidence. The Administrator also argues that the case law marshaled by respondent does not lead necessarily to the conclusion that the panel's order was too severe and that the existence of other shoplifting cases in which suspensions of 30 and 180 days were ordered by consent do not offer much guidance here.

As to the last point, we agree that these prior shoplifting cases, even were they contested and not consent disciplines, are not so persuasive as to provide the type of guidance sometimes afforded by a series of cases articulating a range of generally appropriate discipline. Different circumstances can lead to adjustments in discipline,<sup>1</sup> and this Board is not inclined to "simplistically characterize conduct by labels (e.g., 'assault') and then allow that characterization to dictate the level of discipline to be imposed irrespective of factual distinctions."<sup>2</sup>

Although this case has been well briefed and argued on review, the issues are, in the end, not that complex. The panel correctly and articulately assessed the situation and, in our view, accorded the proper weight to the aggravating and mitigating factors, including, in particular, the testimony of respondent's therapist.

Respondent's therapist testified that she diagnosed respondent with a major depressive episode (DSM-IV, 296.2) after respondent reported various symptoms the therapist believed stemmed from the following "pressures": "unhappy with professional life, felt she had no future, financial stress, relationship problems." When asked why respondent did this, her therapist answered: "I believe it was out of character. I believe it went against her values and beliefs,

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<sup>1</sup> *Grievance Administrator v Deutch*, 455 Mich 149, 166; 565 NW2d 369 (1997) ("attorney misconduct cases are fact-sensitive inquiries that turn on the unique circumstances of each case").

<sup>2</sup> *Grievance Administrator v Arnold M. Fink, No. 96-181-JC (After Remand)* (ADB 2001), p 13, lv den 465 Mich 1209 (2001).

definitely against her value system. But I think she had all the pressures of all of these items that I had just stated, and I think she acted out in a compulsive way depressed and just acted out.”

Respondent learned from the experience, according to her therapist:

Well, first of all she has accepted, she has accepted the responsibility for getting involved with her son in a traveling soccer team, she has a positive attitude instead of negative. She has gotten, found a job, she has joined a church, and I . . . don't believe she has had a better balance in her life, and she has been able to identify her own role in the family conflicts, and she developed coping skills needed to resolve these problems as they occur.

The therapist also testified that after her arrest respondent “developed moral and ethical standards to govern her behavior, I believe.” Then, she testified that respondent had those “standards at one time, but when all of the pressures hit her, I think she did some things that were out of character for her.” Then, the therapist testified again that respondent would conduct herself in accordance with the standards required of an attorney now because she has “chang[ed] her value[s], thoughts, feelings, and behaviors,” and because she “decreased the pressures in all of the areas that caused her to act out to begin with,” and, further, because she now had the “coping skills” to deal with pressure.

The hearing panel asked questions intended to elicit a sound answer to the question “how and why does a depressive episode translate into . . . theft?” Finally, the following exchange ensued between the panel chairperson and respondent’s therapist:

- A Okay. Well, I believe she needed the money desperately and she stole.
- Q. That’s not part of the depression, is it, that’s not part of the symptoms of depression?
- A. It’s one of the symptoms, that you go down on the symptoms, that’s what led her to steal. The poor feeling of hopelessness, helplessness, low self-esteem, low energy.
- Q. I don’t mean to beat a dead horse, but I’m really not understanding. I understand what led to the depression, but what I don’t understand is how that then . . . translates into somebody actually going out and frankly engag[ing] in a pattern of a theft, and then actually selling the goods, almost like a business to make money. So I, I mean a lot of people I would understand would have depression that would not

engage in this type of antisocial behavior, they might become withdrawn, but explain the antisocial behavior in the form of kleptomania, how that occurred in Ms. Londer's case?

- A. I believe it is a symptom of outreach due to depression.
- Q. Outrage or outreach?
- A. Outreach. Due to her depression. I believe that was one of her coping skills and she did this compulsively. That's all I can tell you.

There is no question that depression can have a serious debilitating impact on a person and can lead to self-destructive behavior. However, nothing in this record helps us find the elusive causal link pursued by the panel between respondent's depressive episode and her sophisticated theft, retail fraud and fencing operation. In short, we cannot distinguish respondent from a person without the fundamental ethical grounding that prevents one from cheating, stealing or lying when the chips are down or circumstances are dire. A member of the bar need not be impervious to stress or be superhuman, but he or she must have the character to reject the option of theft under the circumstances of this case. Accordingly, we affirm the hearing panel's order of revocation.

Board members Lori McAllister, William J. Danhof, William L. Matthews, C.P.A., Billy Ben Baumann, M.D., Hon. Richard F. Suhrheinrich, Andrea L. Solak and Thomas G. Kienbaum concur in this decision.

Board member George H. Lennon did not participate.