

IN THE MATTER OF DONALD A. EDWARDS,
A Member of the State Bar of Michigan,
Respondent
No. DP-50/80

Decided: April 2, 1982

OPINION OF THE BOARD

Respondent was charged with forging the signature of a deceased notary public on a deed and other irregular business practices. The hearing panel entered an Order of Suspension for 90 days. Both the Grievance Administrator and Respondent moved for review. We modified discipline to a suspension of 30 days and deny the Grievance Administrator's Motion for Remand to the Hearing Panel for further proceedings.

Respondent, Donald A. Edwards, and Complainant, Leslie Ulrich, rented individual office space from Oscar Passarell prior to 1968. Mr. Passarell, a notary public, owned his own insurance agency and the building in which Respondent worked. From time to time, the three men were involved in business matters calling for shared expertise. Mr. Passarell offered to sell his insurance agency to Respondent due to Passarell's failing health. Respondent and another attorney decided to buy the agency and asked complainant Ulrich to join them. The Complainant paid no monies toward this purchase, but was to contribute via future real estate deals and by lending his professional knowledge to the venture. Subsequently, the joint business began in 1968 or 1969. Mr. Passarell continued to notarize documents for the others periodically. Passarell died in January, 1970; both Respondent and Complainant knew of his death and attended his funeral. On July 2, 1970, Lenore Misel deeded her property to Complainant and this Deed was witnessed by Respondent and another person. The Misel Deed was notarized by the purported signature of the deceased Oscar Passarell. Several weeks later, Complainant noting the improper notarization, prevailed upon Respondent to prepare a new Quit Claim Deed for the transaction. This Deed was prepared and executed in October 1970, with the original parties re-signing and a genuine notary employed. The formal complaint included references to various other Deeds, but the hearing panel findings are limited to this transaction and we adopt those findings with the conclusion that no other misconduct occurred.

Due to a later acrimonious break-up of the business, and conflicts involving loans between Respondent and Complainant, Respondent filed a complaint against the present Complainant with the state licensing board. Complainant, apparently in retaliation, filed this grievance against Respondent approximately 7 years following the alleged misconduct.¹

I.

Respondent, Donald Edwards, was charged in a two count Formal Complaint with making, alternating and/or forging deeds and other instruments involving title to, or an interest in real property. Count II alleged that Respondent uttered and published these instruments by recordation. The hearing panel sustained part of the charges under Count I, finding that Respondent placed the signature of a notary public on a deed six months after the death of the notary and presenting it for recording. The remaining allegations in Counts I and II were found unsupported by a preponderance of the evidence. Respondent was suspended for 90 days. Both parties petitioned for review. We modify the discipline to a discipline of 30 days.

Complainant and Respondent were involved in numerous business transactions as characterized by the Complainant, "I would have a chance to pick up a piece of property and equity in a piece of property, if I didn't have the total amount of money, Mr. Edwards [Respondent] would produce the money. We would hold it jointly, sell it on a new contract * * * for profit." [Tr. at 95].

Over the course of these financing arrangements, Respondent claimed that Complainant became obligated to him in the amount of approximately \$35,000 [Tr. at 27]. This dispute became the subject of a civil suit filed by Respondent against Complainant [Tr. at 101 and 221].

In his Request for Investigation, Complainant claimed that Respondent had forged or altered signatures on six instruments involving title to real property. Respondent admitted to placing the signature of a notary public on the Misel deed of July 2, 1970 [Tr. at 84]. As to the other allegations of improprieties, there exists only conflicting testimony of the self-interested parties. Among this conflicting testimony, there are suggestions that, in the course of their business relationship, Complainant had signed numerous deeds in blank [Tr. at 226 and 251], that signatures of notary publics had been signed in blank [Tr. at 327], that the signature of Complainant's wife had been signed in blank [Tr. at 35], and that Respondent had signed the name of the Complainant on deeds without Complainant's consent [Tr. at 49].

The Grievance Administrator appeals the hearing panel decision, claiming that the panel's conclusions are clearly erroneous and that this Board should remand for further proceedings, or, in the alternative, sustain the imposition of discipline. We deny the motion to remand.

In the instant case, contradictory testimony is pervasive throughout the record. When such contradictory testimony is elicited from the parties who are highly self-interested, questions of credibility and demeanor are of the utmost importance. In re McGinnis, State Bar Grievance Board No. 32344-A (1975). A reading of the record only confirms the suggestion that much of the testimony is tainted by self-interest and based upon retaliatory motives. In evaluating this record, we cannot wholly ignore suggestions that a grievance was initiated with a retaliatory motive. The Complainant's motive in filing the Request for Investigation becomes particularly relevant when the Complainant testifies as a witness to allegations of misconduct. In such a situation, questions as to credibility and demeanor must be evaluated in order to judge the weight and sufficiency of the proofs. This factor lends further support to affirmation of the hearing panel dismissal of the several charges not related to notarization of the single Misel Deed dated July 2, 1970 which was found by

the hearing panel to be the only basis for discipline. A careful examination of the record indicates that the panel findings had "proper evidentiary support on the whole record" Grievance Administrator v Estes, 390 Mich 585, 593; 212 NW2d 903 (1973).

II.

Although the forged notarization is a serious matter, the record fails to indicate that Respondent's misconduct was perpetrated with intent to defraud or for personal gain, and therefore, we feel that a reduction of suspension is in order. In the case of In re Donnelly, No. 35637-A (Mich ADB 1979), similar facts were presented. Respondent Donnelly was charged with misconduct arising out of his actions as counsel in a civil case in which he filed a notarized affidavit purportedly signed by his client, but actually signed by the Respondent. The Board affirmed dismissal within the total factual context presented, due to respondent's possession of a valid power of attorney, comments by the Judge that Respondent had no evil intent, failure of the client to file a grievance and the long delay between the initial grievance and the Request for Investigation. Of course, Respondent's actions herein went beyond the "faulty practice and bad form" noted in Donnelly.

The hearing panel findings are affirmed, the suspension is modified to 30 days and the Motion to Remand is denied.

¹ Respondent not having raised the timeliness of the grievance as an issue in this cause before the Panel or the Board, the Board will not decide whether Complainant's grievance was timely filed.