

## LOUISIANA ATTORNEY DISCIPLINARY BOARD

IN RE: MICHAEL PETER ARATA

DOCKET NO. 16-DB-016

**FINDINGS & RECOMMENDATIONS**

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This matter is before the Hearing Committee on formal charges filed on February 2, 2016 against Michael Peter Arata, Bar No. 21448 who was licensed to practice law in the State of Louisiana on October 16, 1992.

The Office of Disciplinary Counsel seeks permanent disbarment. Respondent suggests that disbarment is the more appropriate sanction. For the following reasons, the Committee recommends that Respondent be disbarred but NOT permanently.

**I. FINDINGS OF FACTS**

The Respondent has no prior disciplinary record. Respondent was interim suspended by Order of the Louisiana Supreme Court effective February 17, 2016. *In re Arata*, 2016-0203 (La. 2/17/2016), 184 So.3d 671. Thus, the Respondent has already endured a suspension exceeding three years. By agreement made by the Respondent with the Chief Disciplinary Counsel on April 12, 2016, disciplinary action in this matter was held in abeyance pending an appeal of the criminal convictions.

Respondent is married with two adolescent children to support.

In 2015, the Respondent was convicted by a jury in the United States District Court for the Eastern District of Louisiana on eight felony counts involving conspiracy and wire fraud arising from fraudulent claims and submissions to obtain tax credits under a program instituted by the State of Louisiana that affords tax credits for expenditures made in Louisiana involving the movie

film industry. The tax credits were claimed in connection with the renovation of an old building to become a studio for post-production film work at 807 Esplanade Avenue in New Orleans.

Peter M. Hoffman and Susan Hoffman were two co-defendants convicted with Respondent.

It is undisputed, and the parties agree, that the Respondent was convicted of multiple felonies (see Verdict Form, ODC Exhibit 2). The gist of the conviction was that Respondent submitted paperwork falsely claiming that costs & expenses had been incurred for the studio, when they had not been. The Verdict Form, ODC Exhibit 2, adopts by reference the criminal acts set forth in the Second Superseding Indictment, so set forth below are those specific acts for which Respondent was convicted, copied verbatim from the Second Superseding Indictment ( ODC Exhibit 1), to-wit:

**COUNT 1**  
**(Conspiracy)**

**A. THE CONSPIRACY:**

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2. Beginning on or about March 1, 2006, and continuing until on or about July 3, 2012, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN, MICHAEL ARATA, SUSAN HOFFMAN**, and others known and unknown to the Grand Jury, did knowingly and willfully combine, conspire, confederate and agree with each other to:

- a. use and cause to be used a private and commercial interstate carrier in furtherance of and for the purpose of executing the scheme and artifice to defraud set forth in paragraph 2 of Counts 6 through 20; in violation of Title 18, United States Code, Section 1341; and

- b. transmit and cause to be transmitted by means of wire communications in interstate commerce, writings, signs, signals, pictures and sounds in furtherance of and for the purpose of executing the scheme and artifice to defraud set forth in paragraph 2 of Counts 6 through 20; in violation of Title 18, United States Code, Section 1343.

**B. WAYS AND MEANS TO ACCOMPLISH THE CONSPIRACY:**

The defendants and co-conspirators carried out the conspiracy in the following ways and through the following means, among others:

1. prepared and filed, and caused to be prepared and filed, with the State of Louisiana materially false and misleading tax credit applications and supporting documents that fraudulently claimed that certain expenditures had been made relative to 807 Esplanade when, in truth and in fact, the expenditures had not been made as claimed;
2. prepared and submitted, and caused to be prepared and submitted, to the auditors and to the State of Louisiana materially false and misleading internal accounting books and records to make it appear as if certain expenditures had been made when, in truth and in fact, the expenditures had not been made as claimed;
3. prepared and submitted, and caused to be prepared and submitted, to the auditors and to the State of Louisiana materially false and misleading payment receipt certifications to make it appear as if certain items had been paid for and received when, in truth and in fact, the items had not been paid for and had not been received;
4. prepared and submitted, and caused to be prepared and submitted, to the auditors and to the State of Louisiana materially false, misleading and fraudulent invoices in support of fraudulent expenditures;

5. conducted and caused to be conducted materially false and misleading circuitous bank transfers of money to make it appear that certain items were paid for when, in truth and in fact, the items had not been paid for, and
6. prepared and submitted, and caused to be prepared and submitted, to the auditors proofs of payment that were materially false and misleading in that only outgoing money transfers were disclosed to the auditors when, in truth and in fact, the money had been immediately returned to the originating bank account and the return money transfers were not disclosed to the auditors.

**C. OVERT ACTS:**

In furtherance of and to conceal the conspiracy and accomplish its purposes, the defendants, **PETER HOFFMAN, MICHAEL ARATA, SUSAN HOFFMAN**, and others known and unknown to the Grand jury, committed and caused to be committed at least one of the following overt acts, among others, in the Eastern District of Louisiana and elsewhere:

1. between on or about October 2, 2008 and October 6, 2008, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for construction work;
2. between on or about October 2, 2008 and October 6, 2008, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for film equipment;
3. on or about November 6, 2008, prepared and caused to be prepared a materially false and misleading affidavit relative to the purchase of film equipment;
4. on or about December 1, 2008, e-mailed and caused to be e-mailed materially false and misleading bank fund-transfer requests to the auditors;

5. on or about December 2, 2008, e-mailed and caused to be e-mailed materially false and misleading bank fund-transfer requests to the auditors;
6. on or about December 9, 2008, e-mailed and caused to be e-mailed materially false and misleading internal accounting documents to the auditors;
7. on or about December 29, 2008, e-mailed and caused to be e-mailed photographs of film equipment fraudulently claimed to have been purchased for 807 Esplanade;
8. on or about December 29, 2008, provided and caused to be provided materially false and misleading financial documents, invoices and payment verifications to the auditors;
9. on or about February 4, 2009, prepared and caused to be prepared a materially false and misleading vendor payment certification for film equipment;
10. on or about February 4, 2009, prepared and caused to be prepared a materially false and misleading vendor payment certification for construction;
11. on or about February 9, 2009, e-mailed and caused to be e-mailed a materially false and misleading vendor payment certification for construction costs to the auditors;
12. on or about February 25, 2009, e-mailed and caused to be e-mailed a materially false and misleading internal accounting record;
13. on or about February 26, 2009, e-mailed and caused to be e-mailed a materially false and misleading application and support documents for film infrastructure tax credits to the State of Louisiana;
14. on or about May 14, 2009, e-mailed and caused to be e-mailed materially false and misleading vendor payment certifications and invoices for construction and film equipment to the State of Louisiana;

15. on or about April 7, 2009, e-mailed and caused to be e-mailed materially false and misleading invoices for construction and film equipment to the State of Louisiana;
16. on or about September 4, 2009, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for construction, legal fees, and construction finance supervision fees;
17. on or about September 8, 2009, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for construction, developers' fees, and general contractor fees;
18. on or about September 9, 2009, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for developers' fees and interest fees;
19. on or about September 14, 2009, conducted and caused to be conducted circuitous bank transfers of funds in order to create the appearance of payments for developers' fees and construction;
20. on or about October 27, 2009, e-mailed and caused to be e-mailed materially false and misleading bank fund-transfer requests, supporting bank records, and invoices to the auditors;
21. on or about November 24, 2009, prepared and caused to be prepared a materially false and misleading vendor payment certification for interest payments, legal fees, construction, auditor fees, and overhead;
22. on or about November 24, 2009, prepared and caused to be prepared a materially false and misleading vendor payment certification for project management fees, office rent and consultant fees;

23. on or about November 30, 2009, e-mailed and caused to be e-mailed materially false and misleading correspondence to the auditors regarding confirmation letters and equipment purchase information;
24. on or about December 1, 2009, faxed and caused to be faxed a materially false and misleading vendor payment certification for interest payments, legal fees, construction, auditor fees and overhead to the auditors;
25. on or about December 1, 2009, faxed and caused to be faxed a materially false and misleading vendor payment certification for project management fees, office rent and consultant fees to the auditors;
26. on or about December 19, 2009, e-mailed and caused to be e-mailed materially false and misleading correspondence to the auditors regarding equipment purchases, legal fees, audit fees, interest expenditures, office rent, and invoices;
27. on or about December 21, 2009, e-mailed and caused to be e-mailed materially false and misleading invoices for legal services to the auditors;
28. on or about December 29, 2009, e-mailed and caused to be e-mailed materially false and misleading correspondence to the auditors regarding equipment purchases, equipment consultant fees, legal fees, office rent, and supervisory fees;
29. on or about December 31, 2009, e-mailed and caused to be e-mailed materially false and misleading correspondence to the auditors regarding supervisory fees, lease agreements, interest payments, and office rent;
30. on or about January 7, 2010, e-mailed and caused to be e-mailed materially false and misleading correspondence to the auditors regarding legal fees, office rent, audit fees, equipment consultant fees, and interest payments;

31. on or about January 12, 2010, e-mailed and caused to be e-mailed an Operating Agreement in support of illegitimate legal fees;
32. on or about January 20, 2010, e-mailed and caused to be e-mailed a materially false and misleading representation letter to the auditors;
33. on or about January 20, 2010, e-mailed and caused to be e-mailed a materially false and misleading application and support documents for film infrastructure tax credits to the State of Louisiana;
34. on or about February 2, 2010, prepared and caused to be prepared a materially false and misleading affidavit relative to the purchase of film equipment and the relationship between the defendants and certain companies;
35. on or about February 3, 2010, mailed and caused to be mailed materially false and misleading correspondence with attached affidavits, interest payment support, and invoices for project management, equipment consulting and office rent;
36. on or about June 29, 2012, e-mailed and caused to be e-mailed materially false and misleading bank fund-transfers and invoices to the auditors in support of developer's fees and interest payments; and
37. on or about July 3, 2012, e-mailed and caused to be e-mailed a materially false and misleading audit report to the State of Louisiana.

All in violation of Title 18, United States Code, Section 371.

**COUNTS 2 - 5**  
**(Wire Fraud)**

1. Beginning on or about March 1, 2006, and continuing until on or about July 3, 2012, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN** and **MICHAEL ARATA**, and others known and unknown to the Grand Jury, did knowingly



and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises by submitting and causing to be submitted materially false, misleading and fraudulent information to the auditors and to the State of Louisiana for the purpose of obtaining film infrastructure tax credits relative to 807 Esplanade.

2. On or about the dates specified in each count below, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN** and **MICHAEL ARATA**, and others known and unknown to the Grand Jury, for the purpose of executing and attempting to execute the scheme and artifice to defraud set forth in paragraph 2 of this section, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, as more particularly described below:

COUNT	DATE	DESCRIPTION OF WIRE COMMUNICATION
2	February 9, 2009	E-mail transmitted between Louisiana and outside the State of Louisiana sending payment certification for \$2,002,480.00 in construction to the auditors.
3	February 25, 2009	Email transmitted between Louisiana and outside the State of Louisiana attaching General Ledger of Seven Arts Pictures Louisiana, LLC.
4	February 26, 2009	E-mail transmitted between Louisiana and outside the State of Louisiana sending application for film infrastructure tax credits and supporting documents to the State of Louisiana.
5	January 12, 2010	E-mail transmitted between Louisiana and outside the State of Louisiana sending Operating Agreement in support of claimed legal fees to the auditors.

All in violation of Title 18, United States Code, Sections 1343 and 2.

**COUNTS 6 - 20**  
**(Wire Fraud)**

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2. Beginning on or about March 1, 2006, and continuing until on or about July 3, 2012, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN, MICHAEL ARATA, SUSAN HOFFMAN**, and others known and unknown to the Grand Jury, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises by submitting and causing to be submitted materially false, misleading and fraudulent information to the auditors and to the State of Louisiana for the purpose of obtaining film infrastructure tax credits relative to 807 Esplanade.
3. On or about the dates specified in each count below, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN, MICHAEL ARATA, SUSAN HOFFMAN**, and others known and unknown to the Grand Jury, for the purpose of executing and attempting to execute the scheme and artifice to defraud set forth in paragraph 2 of this section, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, as more particularly described below:

COUNT	DATE	DESCRIPTION OF WIRE COMMUNICATION
6	April 7, 2009	E-mail transmitted between Louisiana and outside the State of Louisiana sending invoices for \$2,002,480.00 in construction and \$1,027,090.00 in film equipment to the State of Louisiana.
7	May 14, 2009	E-mail transmitted between Louisiana and outside the State of Louisiana sending invoices and vendor payment certifications for \$2,002,480.00 in construction and \$1,027,090.00 in film equipment to the auditors and to the State of Louisiana

13	December 21, 2009	E-mail transmitted between Louisiana and outside the State of Louisiana sending invoices for legal services, Loan and security agreements, and an operating agreement to the auditors
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All in violation of Title 18, United States Code, Sections 1343 and 2.

**COUNT 21**  
**(Mail Fraud)**

1. The allegations contained in paragraphs 1 through 9 of the General Allegations section and section B of Count 1 of this Second Superseding indictment are realleged and incorporated by reference as though fully set forth herein.
2. On or about February 3, 2010, in the Eastern District of Louisiana and elsewhere, the defendants, **PETER HOFFMAN, MICHAEL ARATA, SUSAN HOFFMAN**, and others known and unknown to the Grand Jury, for the purpose of executing and attempting to execute, and in furtherance of, the scheme and artifice to defraud set forth in paragraph 2 of Counts 6 through 20 above, did knowingly send and cause to be sent, delivered, and moved by private and commercial interstate carriers correspondence dated February 2, 2010, addressed to an auditor for the State of Louisiana with attached affidavits, corporate agreements, and invoices for project management, equipment consulting, and office rent.

All in violation of Title 18, United States Code, Sections 1341 and 2.

**COUNTS 22 - 25**  
**(False Statements)**

On or about January 27, 2014, in the Eastern District of Louisiana, in a matter within the jurisdiction of the United States Department of Justice, a department of the Government of the United States, the defendant, **MICHAEL ARATA**, did knowingly and willfully make materially false, fictitious

and fraudulent statements and representations to a Special Agent of the Federal Bureau of Investigation as more particularly described in each count below:

COUNT	DESCRIPTION OF STATEMENT
22	<b>MICHAEL ARATA</b> stated that he terminated his relationship with defendant <b>PETER HOFFMAN</b> in or about July 2009, when in truth and in fact, as he then well knew, he had continued working with <b>PETER HOFFMAN</b> including reviewing and preparing information for the January 20, 2010 application for tax credits and other tax credit related business ventures.
23	<b>MICHAEL ARATA</b> stated that he was not aware that \$350,000 in legal fees were submitted to the State of Louisiana for tax credits, when in truth and in fact, as he then well know, he was aware that \$350,000 in legal fees had been submitted to the State and he had personally provide information to the auditors in support of the claimed legal fees in order to assist in the completion of the January 20, 2010 application for tax credits.
24	Regarding film equipment reported in the February 26, 2009 tax credit application to the State of Louisiana, <b>MICHAEL ARATA</b> stated that the film equipment had been "acquired" in that the equipment would be contributed to 807 Esplanade by the vendor as a business partner, when in truth and in fact, as he then well knew, the equipment had not been acquired or contributed and that he had repeatedly advised the auditors and the State that the equipment had been <u>purchased and paid for</u> .
25	<b>MICHAEL ARATA</b> stated he thought he fully disclosed both sides of the transactions for construction and equipment expenditures to the auditors, when in truth and in fact, as he then well knew, he had purposely concealed the circular transactions from the auditors.

All in violation of Title 18, United States Code, Section 1001.

Considering the above criminal convictions, the Respondent offered mitigating circumstances as to his good character. The committee finds that the numerous letters and testimony from witnesses are not sufficient to establish good character as a factual matter, nor does the committee find any evidence that the Respondent was lacking good character (except for the egregious criminal convictions). The committee finds the issue of character to be neutral as a mitigating factor.

The letters and testimony offered by Respondent about character carry insufficient weight because they are from friends or people who naturally desire to help someone they know as a friend, or as the client of the Respondent. Moreover, there is no genuine means to cross-examine

these people as to the full character of the Respondent. Furthermore, most humans would offer favorable character testimony about someone they know where there are no consequences to the person for not being candid about a subjective matter like this.

Following the criminal conviction, the Federal Court ordered no restitution. An Order of forfeiture was entered against Respondent in the amount of \$1,132,480.80 to be paid by Respondent and the two co-defendants. The committee accepts as fact the testimony of William Gibbens (the criminal trial attorney for Respondent) that Respondent would owe one-third of this amount. Mr. Gibbens further testified that he is seeking, by motion with the Federal Court, to have another co-defendant held responsible for the full amount of the forfeiture on grounds that Respondent never received any benefit of the \$1,132,480.80 that comprised the amount of tax credits granted by the State. The forfeiture order was entered to compel the three co-defendants to return the tax credits of \$1,132,480.80 awarded by the State of Louisiana for the project at 807 Esplanade Avenue.

## **II. SANCTION GUIDELINES**

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

- (1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the lawyer acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

## **III. CONCLUSIONS AND RECOMMENDATIONS**

The Office of Disciplinary Counsel seeks permanent disbarment under the provisions of the Louisiana Supreme Court Rule XIX, Section 19 because the Respondent stands convicted of multiple felonies involving violations of Rule 8.4(b) (the commission of a criminal act); Rule

8.4(c) (conduct involving, fraud, deceit and misrepresentation); and Rule 8.4(a) (violating or attempting to violate the rules of professional conduct). Based on the findings of fact the committee concludes that each of these Rules were violated, and makes the following determinations as to the guidelines:

- (1) The Respondent violated a duty owed to the public and to the profession, but not to a client or the legal system;
- (2) The Respondent acted intentionally;
- (3) The pecuniary amount of the actual injury caused by the Respondent's misconduct is not apparent; and
- (4) There are no aggravating, nor mitigating factors.

Respondent seeks to apply, and this Committee will follow, Rule XIX, Appendix D, which provides guidelines to determine whether permanent disbarment is appropriate. These guidelines "are not intended to bind the Supreme Court of Louisiana in its decision-making."<sup>1</sup>

Although not binding, none of the guidelines weigh in favor of permanent disbarment:

**GUIDELINE 1.** Repeated or multiple instances of intentional conversion of client funds with substantial harm.

There is no evidence of conversion of client funds.

**GUIDELINE 2.** Intentional corruption of the judicial process, including but not limited to bribery, perjury, and subordination of perjury.

There is no evidence of bribery, corruption of the judicial process or perjury. The Respondent was convicted of lying to the FBI. That is an egregious act, but it is not perjury.

**GUIDELINE 3.** An intentional homicide conviction.

There was no homicide.

**GUIDELINE 4.** Sexual misconduct which results in a felony criminal conviction such as rape or child molestation.

This is inapplicable.

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<sup>1</sup> Rule XXI, Appendix D states: "The following guidelines illustrate the types of conduct which might warrant permanent disbarment. These guidelines are not intended to bind the Supreme Court of Louisiana in its decision making. It is hoped that these guidelines provide useful information to the public and to lawyers concerning the types of conduct the Court might consider to be worthy of permanent disbarment."

**GUIDELINE 5.** Conviction of a felony involving physical coercion or substantial damage to person or property, including but not limited to armed robbery, arson, or kidnapping.

There is no evidence of any violent act by the Respondent.

**GUIDELINE 6.** Insurance fraud, including not limited to staged accidents or a widespread runner-based solicitation.

This is inapplicable.

**GUIDELINE 7.** Malfeasance in office which results in a felony conviction, and which involves fraud.

The Respondent did not hold public office, so this is inapplicable.

**GUIDELINE 8.** Following notice, engaging in the unauthorized practice of law subsequent to resigning from the Bar Association, or during the period of time in which the lawyer suspended from the practice of law or disbarred.

The Respondent had no prior disciplinary actions.

**GUIDELINE 9.** Instances of serious attorney misconduct or conviction of a serious crime, misconduct or conviction is preceded by suspension or disbarment for prior instances of serious attorney misconduct or conviction of a serious crime.

Although there are a multitude of serious crimes involved, there were no prior instances of any attorney misconduct by the Respondent.

Applying the Supreme Court guidelines, there does not appear to be grounds to recommend permanent disbarment. Accordingly, the Committee does not recommend permanent disbarment, but does recommend disbarment.<sup>2</sup> The Committee further recommends that the Respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

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<sup>2</sup> A lesser discipline would also be appropriate in this case if one analogizes the Respondent's conduct to that involving felony tax fraud which is similar to this case. In effect, the Respondent here was engaged in tax fraud. The base line disciplinary sanction for attorneys who have been convicted of felony tax evasion is a substantial suspension from the practice of law. *In re Samuel H. Thomas*, 38 So.3d 248, 254 (La. 2010) ("The jurisprudence indicates the baseline disciplinary sanction for attorneys who have been convicted of felony tax evasion is a substantial suspension from the practice of law"). In *Thomas*, the respondent was permanently disbarred, but chiefly because he also had a prior disciplinary conviction.

New Orleans, Louisiana, this 2<sup>nd</sup> day of December, 2019.

Respectfully submitted,



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WADE P. WEBSTER  
COMMITTEE CHAIR, Hearing Committee #37

ROBERT JOHNSTON  
LAWYER MEMBER

LINDA ELLIS  
LAY MEMBER

(JOHNSTON AND ELLIS DO NOT CONCUR  
WITH FOOTNOTE 2)