

ORIGINAL

Louisiana Attorney Disciplinary Board	
FILED by:	<i>Donna P. Burgess</i>
<u>Docket#</u>	<u>Filed-On</u>
22-DB-006	12/12/2022

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: GREGORY SWAFFORD**

**DOCKET NO. 22-DB-006**

---

**REPORT OF HEARING COMMITTEE # 23**

---

**INTRODUCTION**

This attorney disciplinary matter arises out of formal charges filed by the Office of Disciplinary Counsel (“ODC”) against Gregory Swafford (“Respondent”), Louisiana Bar Roll Number 22165.<sup>1</sup> ODC alleges that Respondent violated the following Rules of Professional Conduct: 8.1(b) and (c), and 8.4(a) (c) and (d).<sup>2</sup>

**PROCEDURAL HISTORY**

The formal charges were filed on February 18, 2022. Respondent filed an answer to the charges on April 20, 2022. The hearing of this matter was held on September 26, 2022. Deputy Disciplinary Counsel Christopher D. Kiesel appeared on behalf of ODC. Respondent appeared pro se.

For the following reasons, the Committee finds there was clear evidence of dishonesty on the part of Respondent in his dealings with Complainant, Ms. Bouligny, and he admitted that he

---

<sup>1</sup> Respondent was admitted to the practice of law in Louisiana on April 23, 1993. Respondent is currently eligible to practice law.

<sup>2</sup> Rule 8.1 states, in pertinent part: “An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: ... (b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6; or (c) Fail to cooperate with the Office of Disciplinary Counsel in its investigation of any matter before it except for an openly expressed claim of a constitutional privilege.”

Rule 8.4 states, in pertinent part: “It is professional misconduct for a lawyer to: (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; ... (c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) Engage in conduct that is prejudicial to the administration of justice; ...”

has never repaid her the original \$50,000 investment. Thus, the committee recommends a sanction of suspension of one year and one day for Respondent, along with an order requiring restitution be paid to Ms. Bouligny, including all costs and fees she has incurred therewith.

### **FORMAL CHARGES**

The formal charges read, in pertinent part:

#### **Failure to Cooperate**

On March 25, 2021, the ODC received a complaint ("Complaint") from Suzanne R. Bouligny ("Ms. Bouligny") regarding Respondent. The Complaint was opened for investigation as ODC 39140.

On April 12, 2021, the ODC sent a cover letter and the Complaint to Respondent, via certified mail (return receipt requested), to his Louisiana State Bar Association ("LSBA") primary/secondary/preferred bar registration address of 4734 Franklin Avenue, New Orleans, Louisiana 70122. On April 14, 2021, delivery of the same was accepted on Respondent's behalf.

On April 22, 2021, Respondent requested and received an extension of time until May 19, 2021 to provide his written response to the Complaint. Respondent failed to provide any response by that extended deadline.

As a result of Respondent's failure to cooperate with the ODC in its investigation, a subpoena had to be issued to compel production of relevant records and to take Respondent's sworn statement. The subpoena ordered Respondent to produce specifically identified documents and written communications, including his response to the Complaint, by July 22, 2021. Respondent failed to do so. More than six months later, Respondent still has not complied with the subpoena's production directive.

On August 9, 2021, the ODC attempted to take Respondent's sworn statement. Therein, Respondent refused to answer any substantive questions regarding the Complaint allegations, and instead invoked his Fifth Amendment right against self-incrimination. An adverse inference should be drawn against Respondent based on his refusal to testify in response to probative evidence offered against him.

#### **Respondent's Additional Misconduct**

Ms. Bouligny first met Respondent around seven years ago through a mutual friend. Ms. Bouligny was told that Respondent purchased, remodeled and flipped houses for a profit. In December 2019, Ms. Bouligny spoke to Respondent and told him that she was interested in investing in his next project. Ms. Bouligny states that Respondent then called and informed her "about the property located at 700-702 Caffen Avenue, New Orleans, La. which he owned and would like for me to invest in."

On January 5, 2020, Respondent sent Ms. Bouligny an email which described her potential involvement in the project as an investor as follows: "The proposal is that in exchange for the \$50k investment - the investor will receive the

return of the investment funds advanced plus a 50% return on the amount invested. The funds advanced are returned at the completion and sale of each project."

On January 13, 2020, Respondent came to Ms. Bouligny's home to execute the Real Estate Joint Venture Agreement ("Agreement") for the project. The Agreement confirmed that Ms. Bouligny would invest \$50,000.00 to renovate the property located at 700-702 Caffin Avenue, New Orleans, Louisiana 70122 ("Property"). Paragraph 9 of the Agreement stated that the anticipated listing price of the Property upon completion of the renovations would be \$150,000.00. Paragraph 10 of the Agreement stated that "Distributions" for the project would be as follows:

(A) Upon the sale of the subject property, proceeds will first be used to repay capital invested by Suzanne Bouligny in the amount of fifty thousand (\$50,000.00) dollars. In addition, Suzanne Bouligny shall simultaneously receive the sum of twenty-five thousand (\$25,000.00) dollars which represents the profit earned for providing the investment capital.

On that same day, Respondent texted Ms. Bouligny his routing number and Capital One Bank account number for transfer of her \$50,000.00 investment capital funds for the project. On January 14, 2020, Ms. Bouligny transferred those funds into Respondent's bank account.

After receipt of those funds, Respondent began to renovate the Property and initially kept Ms. Bouligny informed of his progress regarding the same. In March 2020, Respondent informed Ms. Bouligny that the renovations had come to a halt due to the Covid-19 pandemic. On August 31, 2020, Ms. Bouligny sent Respondent a text which stated, in pertinent part: "I'm checking in with u regarding the progression of the house. Last time we spoke about the house ... things were on hold. Looking for an update." On September 1, 2020, Respondent sent Ms. Bouligny a reply text which represented, in pertinent part: "I will call you tomorrow. Everything is good." Respondent did not call Ms. Bouligny the next day as promised.

On September 17, 2020, Ms. Bouligny met with Respondent at her house. Ms. Bouligny described that meeting as follows:

We began our conversation with a meeting update. At this point, no progress had been made since March, 2020 when I made the initial investment, a period of five (5) months. We concluded the meeting with me saying to Mr. Swafford I would like my investment (\$50,000) returned to me and I would forgo the profit. He agreed to repaying my initial investment.

On September 18, 2020, Respondent sent Ms. Bouligny a text which represented: "Thank you for your consideration. I will complete our transaction on or before October 31. I appreciate your trust and my word and my name is what I

value. Thanks." Respondent did not return Ms. Bouligny's investment capital by that promised date.

In late January 2021, Ms. Bouligny went to Respondent's home in an attempt to recoup her investment capital. Ms. Bouligny described that meeting as follows: "[W]e had a conversation outside his home. He informed me that he now needed to wait on a death certificate so that the title company would allow him to sell the property." For the reasons discussed below, Respondent's representation to Ms. Bouligny in this regard was false.

On February 3, 2021, Ms. Bouligny met with Respondent at her house. Prior to that meeting, suspicious of Respondent's prior representations to her, Ms. Bouligny accessed the Orleans Parish Assessor's Office website and discovered that the Property already had been sold on June 26, 2020 by Respondent's company, Holding Renaissance Property, LLC, for \$100,000.00.

Ms. Bouligny confronted Respondent about his prior false representations to her during their meeting on February 3, 2021:

At that moment I informed Mr. Swafford that I was aware the property that I invested in was sold on June 26, 2020. At that moment Mr. Swafford said he was waiting on the property he owned on General Pershing to be sold in order to return my investment which is totally separate from our initial contract. (see attached) That property did not play a part in our contract. He told me the [General Pershing] deal would close at the end of February, 2021.

Later that afternoon, Respondent sent Ms. Bouligny a text which stated: "I deal with everything head on. That's all I know and who I am." On February 4, 2021, Respondent also called Ms. Bouligny to assure her that he would return her \$50,000.00 investment capital by the end of February 2021.

On February, 23, 2021, Ms. Bouligny sent Respondent a text which stated, in pertinent part:

I trusted you with a deal that u never completed. Now I sit here and wait, wait, wait for the money u took from me and listen to all your excuses. The fact u sold the property and never mention it baffles me. At that point you could have given me the 50,000. Anyone with a decent soul and righteous heart would not have done what u did regarding this deal.

On February 24, 2021, Respondent sent Ms. Bouligny a reply text which represented: "I'm going to pay this week."

Despite numerous promises, Respondent has failed to return any portion of the \$50,000.00 investment capital to Ms. Bouligny. Respondent also has not paid to Ms. Bouligny any of the profit due to her under the Agreement following Respondent's sale of the Property in June 2020.

Ms. Bouligny describes the harm that Respondent's misconduct has caused her as follows:

I trusted Mr. Swafford due to our long-term friendship .... I relied on him and never had a doubt he would act in bad faith.

Mr. Swafford informed me on multiple occasions in January and February 2021 he would return my investment. Despite this promise, Mr. Swafford has not repaid the funds as required by the contract. What really concerns me is that Mr. Swafford was seemingly untruthful with me on February 3, 2021 before I informed him I knew about the sale of the property on Caffin. In my opinion, this is an attorney who did not perform his contractual obligations in good faith and may well have been blatantly dishonest.... By not returning my investment as promised, Mr. Swafford has disgraced the Louisiana Bar Association. It is unethical as well as criminal and he has continued to lead me on as if the investment would be paid. To this date, the money has not been returned to me.

The ODC respectfully submits that there is clear and convincing evidence that Respondent has violated Rule 8.1(b) and (c) and Rule 8.4(a), (c) and (d) of the Louisiana Rules of Professional Conduct.

### **EVIDENCE**

At the hearing held Monday, October 3, 2022, the following exhibits were admitted:

On behalf of ODC: ODC 1-9, which included Respondent's LSBA registration, the original complaint, correspondence between ODC and the Respondent regarding the complaint, and selected pleadings regarding the attempted sale of other relevant properties.

On behalf of Respondent: Exhibits provided the day of the hearing labeled R1-R44, which were admitted and included print-outs from the Louisianan assessor's website and various real estate websites regarding the sale of the property at S. Johnson Street, and text messages between Respondent and Ms. Bouligny. An affidavit labeled R45-46 was also admitted under seal for the purposes of impeachment.

Witnesses:

Respondent did not testify, invoking the 5<sup>th</sup> amendment.

Ms. Bouligny, who filed the original complaint, was the one witness who testified for ODC.

### **FINDINGS OF FACT**

The committee finds the following facts:

The evidence shows that Respondent and Ms. Bouligny entered into a contract on January 13, 2020, wherein she was to give him \$50,000 for him to use to purchase and renovate for sale, or “flip,” a property at 700 Caffin street. The evidence also shows the Caffin property was the sole basis of their contract (ODC 21-24). They entered into the “Real Estate Joint Venture Agreement” on January 13, 2020, and the assessor’s website shows Caffin sold on June 26, 2020 (ODC 35). She testified that she did not find out of the sale until she went on the assessor’s website herself in February 2021; up until that time, the text messages show that they had been in communication, with her asking for a status, and there is no direct evidence of when he informed her of the sale of the Caffin property.

The committee finds his failure to inform her about the sale of the Caffin property to be egregious. On cross-examination Respondent asked Ms. Bouligny questions about a “Substitution” of the S Johnson property for the Caffin property. He asserted that there was a meeting with Ms. Bouligny wherein he informed her that one property had been substituted for another, but under questioning she said she did not recall that conversation and did not believe there was ever a substitution.

There are texts from November 2021, wherein it’s clear that Ms. Bouligny was aware of an issue with the need to get a death certificate to clear title on a property for sale, but the property they are discussing is not clear. She also testified that at some point she was aware he needed to sell another property that was not the Caffin property in order to pay her back, but neither these texts nor her testimony prove that a “substitution” occurred. Significantly, there is also no

document that the committee has seen – formal or informal – that supports the assertion that there was a substitution of the properties. We find that this was not adequately proven. The committee finds there was no evidence that the contract was changed by mutual agreement.

The evidence supports a finding that Respondent has not repaid Ms. Bouligny any of her money; the contract clearly established that this was not a gift to Respondent, but rather an investment by Ms. Bouligny, to be repaid at the sale of the subject property. Respondent insinuated that the Caffin property sale was not enough to be able to pay Ms. Bouligny back, but most importantly there is no evidence that she was kept informed – and Ms. Bouligny specifically denied – that he ever informed her of the sale of Caffin. The committee is not certain when Respondent claims that a substitution took place, or when he informed her that he would need to sell the S Johnson property to repay her; however, Documents provided by Respondent himself, show that the property at S Johnson sold in September 28, 2021, for \$110,000 (R 20); even if there was a substitution of this property for the Caffin property, Respondent has still not repaid to Ms. Bouligny any of her investment from these or other proceeds. The committee finds this to be especially egregious.

Ms. Bouligny was the only witness to take the stand, and in cross-examination, an affidavit was admitted for the purposes of impeaching her credibility; however, the committee does not find that the information in the affidavit entirely discredits her testimony. The documents in evidence corroborate her testimony that a contract regarding a specific property was entered into, that the subject property was sold, and she has still not been repaid her investment.

Regarding taking the fifth, Ms. Bouligny did testify that she had gone to the police station to try and get help getting her money back, and they told her that was a civil matter. While the committee is not aware of any potential criminal prosecution, we did not take a negative inference

of Respondent's refusal to testify, as he may reasonably believe he could face criminal prosecution at a later date. While ODC and the committee did not get to ask Respondent questions, the committee did consider the evidence and testimony that he entered via cross-examination of Ms. Bouligny, despite his taking the fifth.

### **RULES VIOLATED**

The committee finds the following violations:

Rule 8.1(b) and (c) - the evidence shows that Respondent did fail to cooperate with the ODC, as he never sent a substantive formal response to the initial Letter and Complaint from ODC. He clearly got the letter, as he replied asking for an extension, but never sent a subsequent response. They were forced to subpoena him for records and for a sworn statement. He never complied with a request for records, but did offer a sworn statement, wherein he took the fifth, and refused to answer the questions. His failure to cooperate is somewhat mitigated by the fact that he did participate in the hearing of the matter, where he offered documentary evidence for the first time, and some facts through his cross-examination of Ms. Bouligny.

Rule 8.4(a), (c) and (d) – regarding whether or not there is evidence of fraud, deceit, dishonesty, or misrepresentation, the committee finds:

There are many instances in the record that Respondent represented that he intended to pay Ms. Bouligny back her money, yet he has never done so; thus, he misrepresented to her when she would be repaid her investment.

The evidence also shows that the Caffin property was the subject of the contract, and he did not inform her when it sold, nor did he give her any money from the sale, which the committee finds to be both dishonest and deceitful.

We do not feel there was evidence of fraud.



We do not feel there was evidence of conduct prejudicial to the administration of justice.

### **SANCTION**

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.

Here, Respondent violated duties owed to the public and the profession. He acted knowingly and intentionally. Respondent's misconduct caused actual harm to Ms. Bouligny. She has lost the \$50,000 she invested with Respondent, and is yet to be repaid. Also, she has expended additional money trying to recoup that investment.

#### ***ABA Standards***

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. Standard 6.12 Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding. 7.2 Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system.

The committee finds the following aggravating factors:

- Prior disciplinary history (2018 suspension);
- Refusal to acknowledge wrongful nature of the conduct;

- Substantial experience in the practice of law; and
- Indifferent to making restitution.

### *Case Law*

The committee did not find any case law exactly on point. Two cases that involved dishonesty and an equivalent sum of money were considered:

In *In re Bernstein*, 2007-1049 (La. 10/16/07), 966 So.2d 537, respondent misappropriated approximately \$50,000 from two law firms over an extended period of time in violation of Rule 8.4(a) and (c). The respondent attempted to characterize his misconduct as “in the nature of a breach of contract” with those firms; he did make full restitution to both firms. *Id.* at 540-542. The Court noted that “[c]andor and honesty are a lawyer’s stock in trade.” *Id.* at 544. The Court found that the respondent’s actions “demonstrate a fundamental lack of honesty which falls far below the standards expected of attorneys admitted to the bar of this state.” *Id.* Aggravating factors present were dishonest or selfish motive, a pattern of misconduct, multiple offenses, substantial experience in the practice of law, and illegal conduct. *Id.* at 542. The Court found no reason to deviate from the baseline sanction of disbarment. *Id.* at 545.

In *In re Sharp*, 2009-0207 (La. 6/26/09), 16 So.3d 343, 350, the respondent “converted to his own use approximately \$50,000 belonging to his law firm and ...initially lied to his partners upon being confronted with his misconduct.” The respondent’s misconduct violated Rules 1.15(a) and 8.4(a) and (c). *Id.* aggravating factors present were dishonest or selfish motive, a pattern of misconduct, vulnerability of the victim, and substantial experience in the practice of law. *Id.* at 350-351. The Court found no reason to deviate from the baseline sanction of disbarment, and ordered the respondent “to make full restitution to his former law firm.”

### ***Sanction***

Regarding Mr. Swafford, the hearing committee did not find any evidence of an ongoing pattern of misconduct in Respondent's dealings with the public, and while Respondent was dishonest with Ms. Bouligny, a dishonest or selfish motive is not clear from the evidence. The committee also did not find any evidence of an attorney-client relationship. The Respondent did not comply with some of the rules and orders of the ODC, but did cooperate in the end with the hearing; the committee does not find clear evidence of bad faith. Overall, the committee did not feel that Mr. Swafford's conduct rose to the level of the cases cited that called for disbarment.

However, due to the dishonest nature of his dealings with Ms. Bouligny and his lack of remorse and failure to repay her, we feel a sanction of suspension of one year and one day is appropriate. The committee also seeks an order requiring restitution be paid to Ms. Bouligny, as well as repayment to her of any funds expended in seeking repayment, including court costs and attorney fees she has incurred or will incur in the future.

### **CONCLUSION**

The committee recommends a sanction of suspension for one year and one day for Respondent. The committee finds there was clear evidence of dishonesty on the part of Respondent in his dealings with Ms. Bouligny, and he admitted that he has never repaid her the \$50,000 investment. Thus, additionally the committee recommends an order requiring restitution be paid to Ms. Bouligny, including all costs and fees she has incurred therewith. Finally, the committee recommends that the Respondent be assessed with the costs and expenses of the proceeding pursuant to Rule XIX, §10.1.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Elicia D. Ford to sign on their behalf.

New Orleans, Louisiana, this 18<sup>th</sup> day of October, 2022.

**Louisiana Attorney Disciplinary Board  
Hearing Committee # 23**

**Elicia D. Ford, Committee Chair  
Alexis P. Joachim, Lawyer Member  
Thomas W. Mitchell, Public Member**

*/s/ Elicia D. Ford*

**BY:**

\_\_\_\_\_  
**Elicia D. Ford, Committee Chair  
For the Committee**