

FILE NO. A07-1885
STATE OF MINNESOTA
IN SUPREME COURT

In Re Petition for Disciplinary Action
against MICHAEL LAURENCE CZARNIK,
a Minnesota Attorney,
Registration No. 257382.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

The above-captioned matter came on for hearing before the undersigned referee, appointed by the Minnesota Supreme Court, on January 16, 2008, in the Minnesota Judicial Center, St. Paul, Minnesota. Patrick R. Burns, First Assistant Director, appeared for the Office of Lawyers Professional Responsibility (hereinafter the Director). Respondent Michael Czarnik appeared, was present throughout the proceedings, and was represented by attorney Jonathan K. Reppe.

Testimony at hearing was taken from respondent. The Director offered into evidence Director's exhibits, numbered 1-7. These exhibits were received into evidence. Respondent offered into evidence Respondent's exhibits 1-7. These exhibits were received into evidence.

In his answer to the petition for disciplinary action, respondent admitted certain factual allegations made by the Director and denied others. The findings and conclusions made below are based upon respondent's admissions, the documentary evidence the parties submitted, the testimony of respondent, the demeanor and credibility of respondent as determined by the undersigned and the reasonable inferences to be drawn from the documents and testimony. If respondent's answer admits a particular factual finding made below, then even though the Director may have provided additional evidence to establish the finding, no other citation will necessarily be made.

Based upon the evidence received, including credibility determinations where appropriate and the arguments of the parties, the undersigned now, by clear and convincing evidence, makes the following:

FINDINGS OF FACT

1. Respondent was admitted to the practice of law in Minnesota in 1995.
2. From January 2001 to July 2005, respondent was affiliated with Minnesota Housing Resources, Inc. (hereinafter "MHR") in various positions including employee, shareholder and legal services contractor and Chief Financial Officer. MHR is a Minnesota corporation which administers contracts for the rehabilitation of low income housing units.
3. Respondent served as Chief Financial Officer for MHR through at least Spring of 2005. (Director's Ex. 6.) In his role as Chief Financial Officer, respondent took care of most of the human resource and financial issues with MHR (Director's Ex. 7).
4. Prior to March 7, 2005, respondent had worked with a tax preparer in gathering information to be used in the preparation of both his own individual tax returns for 2004 and the MHR tax return for 2004. (Director's Exhibit 5.)
5. Respondent was employed by Dream Home Development (DHD) from February 2004 through January 2005. During that time, respondent continued to serve as Chief Financial Officer for MHR and provided legal services to MHR on a contract basis.
6. Subsequent to leaving DHD, respondent and other former employees of DHD brought suit against DHD seeking payment of past due wages and reimbursement for expenses.

7. On March 10, 2005, respondent's deposition was taken under oath in the *Michael Czarnik et al. v. Dream Home Development et al.* matter. In that deposition, respondent testified as follows:

Q. From January of 2004 to January of 2005 did you have any sources of income other than Dream Home Development?

A. Define sources of income.

Q. Did you receive any monies from any other - - from anywhere?

A. Stocks, bonds?

Q. Sure, stocks, bonds?

A. Yes.

Q. So with the exception of publicly traded stocks and your bonds did you ever receive any sources of income from anything else?

A. No.

* * *

Q. Did you receive any distributions from Minnesota Housing Resources in '04?

A. No.

Q. Receive any income from them at all?

A. No.

Q. In '03 did you receive any?

A. I shouldn't say - - I'll go back. Before I did receive salary from Minnesota Housing Resources, before I moved to Dream Home, before I actually became an employee of Dream Home.

Q. Did Minnesota Housing Resources ever pay any of your expenses?

A. No.

Q. Did you ever receive any payments from them whatsoever?

A. No. In the context again after I became employed at Dream Home Development.

* * *

Q. As the CFO of Minnesota Housing Resources you reviewed their budget, reviewed their expenditures, correct?

A. Correct.

Q. Do you know if there were any monies for legal fees paid in the year 2004?

A. I don't remember. I don't believe there - - in 2004?

Q. Yes.

A. In 2004 there were expenses for legal.

Q. For who?

A. I think for Bethel & Associates.

(Director's Ex. 1, pp. 11, 57-58, and 63.)

8. As more fully noted below, respondent's testimony was false.

9. In 2004, MHR paid respondent legal fees in the amount of at least \$10,500

(Director's Exs. 2 and 3).

10. Respondent had also been paid \$20,000 in wage income from MHR in 2004 (Director's Ex. 4).

11. Respondent's 2004 income tax return reflects the \$20,000 in wages paid to him by MHR in 2004, and \$23,172 in gross receipts from a legal consulting business. Respondent testified that of the \$23,172 in consulting gross receipts reported on his 2004 tax return, \$10,500 was from the payments made to him by MHR. He testified that he could not recall who had paid him the balance of \$12,672 in payments reported on his

tax return. He did not disclose those additional payments in response to the questions asked of him at his deposition.

12. As to the \$10,500 in payments to respondent by MHR for legal fees, those payments were made to respondent by way of four checks issued to him from April through October 2004. Respondent testified that, during 2004, he had discussions with the Chief Executive Officer of MHR regarding his providing MHR legal services and the manner in which he would be paid for those services. He spent in excess of 70 hours rendering the legal services to MHR and kept contemporaneous time records of the services rendered. He prepared invoices in support of each of the payments to him by reviewing his time records and the work product generated in providing the legal services. He submitted each invoice to MHR separately and he himself signed each of the checks issued in payment of the legal services.

13. As to the \$20,000 in wages paid to respondent, he testified that those payments were made in early 2004 and represented back due wages owed to him. He testified that MHR had not paid him his salary for some time prior to the \$20,000 in payments. He testified that MHR was able to make the \$20,000 in salary payments due to him because they were able to acquire some property against which they were able to obtain a mortgage loan that was used, in part, to pay respondent's back due salary. Respondent testified that his involvement in setting up this transaction was significant.

14. Because of the nature and extent of respondent's involvement in the financial affairs of MHR; the amount of money paid to respondent by MHR in 2004, both as wages and as contract payments for legal services rendered; the number of payments made to respondent in 2004 by MHR; respondent's significant involvement in the MHR transactions that made it possible for him to be paid \$20,000 in back due wages; the fact that respondent separately invoiced MHR for each of the six contractor

payments he received; that respondent signed the checks from MHR to himself; that respondent, shortly before his March 10 deposition, participated in gathering and providing to a tax preparer information used in preparing both his and MHR's 2004 income tax returns; and the relatively close proximity in time between the payments made to respondent by MHR and his deposition testimony, it is not credible or likely that respondent was unaware of the payments that had been made to him by MHR at the time of his March 10, 2005, deposition. Further, the questions asked of respondent clearly called for disclosure of the payments he received from MHR.

CONCLUSION OF LAW

Respondent's conduct in giving false testimony under oath violated Rule 8.4(c) and (d), Minnesota Rules of Professional Conduct.

RECOMMENDATION

1. That respondent Michael Laurence Czarnik be indefinitely suspended from the practice of law, effective immediately upon the issuance of the Supreme Court's decision.
2. That he be eligible to apply for reinstatement after six months from the date of the Court's decision.
3. That the requirements of Rule 18 (a)-(c), Rules on Lawyers Professional Responsibility (RLPR), not be waived.
4. That respondent comply with the requirements of Rule 26, RLPR.
5. That respondent pay to the Director's Office \$900 in costs and an amount in disbursements to be determined in compliance with Rule 24, RLPR.

Dated: Feb 25, 2008.

By


JOHN J. WEYRENS
REFEREE