

FILE NO. C9-93-1342

STATE OF MINNESOTA

IN SUPREME COURT

In Re Petition for Disciplinary Action
against LOUIS B. OBERHAUSER, JR.,
a Minnesota Attorney,
Registration No. 80408.

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

The above-captioned matter was heard on September 12, 2003, at the Federal Prison Camp in Duluth, Minnesota, by the undersigned acting as Referee by appointment of the Minnesota Supreme Court. Timothy M. Burke appeared on behalf of the Director of the Office of Lawyers Professional Responsibility (Director). Jack Neveaux appeared on behalf of Respondent Louis B. Oberhauser, Jr., who was personally present throughout the proceedings. The hearing was conducted on the Director's Petition for Disciplinary Action.

Respondent submitted written arguments at the hearing. The Director submitted written argument and proposed findings of fact, conclusions of law, and a recommendation for appropriate discipline, mailed on September 26, 2003. Respondent submitted proposed findings, conclusions, and recommendation and his reply brief on October 3, 2003.

Respondent has admitted the factual allegations made by the Director and, in his reply brief, admits a violation of Rule 8.4(b) of the Minnesota Rules of Professional Conduct.

Based on the documents submitted, the testimony and exhibits received at the hearing, the arguments of counsel, and the entire file, the Referee makes the following:

FINDINGS OF FACT

1. Respondent is 70 years old. He was admitted to practice law in the State of Minnesota on May 16, 1961. Respondent last practiced law in Wayzata, Minnesota.

2. In 1999, Respondent was indicted and charged with money laundering, wire fraud, mail fraud and conspiracy. The matter arose out of Respondent's involvement with K-7, Inc. ("K-7"). Respondent was counsel for K-7, the principals of which ran a "ponzi" scheme.

3. On October 16, 2000, the jury found Respondent guilty of two felony-level counts of money laundering, in violation of 18 U.S.C. §§ 2 and 1956(a)(1)(A)(i), and not guilty of 64 counts. The jury found that Respondent knowingly laundered \$160,000 in proceeds from the fraudulent investment scheme through his client trust account. While the transfer was directed by K-7, and was to a legitimate charity, the government's theory was that the charitable transfer was a public relations subterfuge to gain the confidence of investors in K-7, and that the majority of investor funds in K-7 were fraudulently misappropriated by the K-7 principals.

4. Respondent may have had a pecuniary motive. Respondent billed \$80,000 in attorneys' fees from K-7, but only was paid \$30,000.

5. Trial judge Donovan Frank, upon defense's post-trial motion, vacated the guilty verdicts and alternatively ordered a new trial. That decision was reversed on appeal.

6. On February 27, 2003, Respondent was sentenced to 15 months in prison and ordered to pay \$160,000 in restitution. On April 16, 2003, Respondent was, and he currently remains, incarcerated.

7. Respondent's sentence constituted a downward departure from the Guideline Range of 30-37 months.

8. Respondent has paid the restitution ordered as part of his sentence.

9. Respondent presented evidence from two character witnesses, plus letters submitted at Respondent's sentencing from more than 140 people who testified that in their opinion Respondent was honest and truthful and had performed many laudatory services for his family and community. This evidence constitutes relevant mitigation to be considered in disposition.

10. Respondent has substantial experience in the practice of law.

11. Respondent has a disciplinary history as follows:

a. On June 22, 1988, Respondent was issued an admonition for failing to promptly transfer his clients' file to their new attorney.

b. On August 11, 1988, Respondent was placed on a two-year private probation for neglecting client matters and failing to keep his clients informed of the status of those matters.

c. On December 2, 1993, Respondent was publicly reprimanded for obtaining payment for release of an invalid lien that Respondent had placed on his client's homestead for work billed in 1973. *In re Oberhauser*, 508 N.W.2d 521 (Minn. 1993).

d. On March 2, 1995, Respondent was issued an admonition for failing to respond to multiple discovery requests in a title registration proceeding, failing to communicate with the client, and failing to return an abstract to the client for six months.

e. By opinion filed July 2, 1998, Respondent was suspended from the practice of law for 90 days, commencing 14 days from the date of the opinion, for misrepresentations to the Internal Revenue Service, the Minnesota Department of Revenue and the Director; backdating a tax return; and failing to timely file federal and state tax returns. *In re Oberhauser*, 581 N.W.2d 309 (Minn. 1998). By order filed November 4, 1998, Respondent was reinstated to the practice of law. *In re Oberhauser*, 585 N.W.2d 790 (Minn. 1998).

12. The following documents are of particular importance for Supreme Court review:

a. Hearing Exhibit 1 – Eighth Circuit opinion, *U.S. v. Oberhauser*, 284 F.3d 827 (8th Cir. 2002).

b. Hearing Exhibit 2 – Second Superseding Indictment.

c. Hearing Exhibit 4 – Judge Donovan Frank's sentence and downward departure.

d. Hearing Exhibits 5 through 11 – Details of past professional disciplinary proceedings.

- e. Hearing Exhibit 12, Tab C – Judge Donovan Frank’s order and memorandum, dated April 4, 2001.
- f. Hearing Exhibit 12, Tab D – Transcript of Sentencing.

CONCLUSIONS OF LAW

- 1. Rule 19(a), Rules on Lawyers Professional Responsibility (RLPR), provides:

Criminal Conviction. A lawyer’s criminal conviction in any American jurisdiction . . . is, in proceedings under these Rules, conclusive evidence that the lawyer committed the conduct for which the lawyer was convicted.

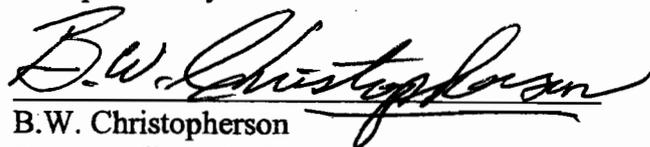
- 2. Respondent’s conduct violated Rule 8.4(b) and (c), Minnesota Rules of Professional Conduct.
- 3. Respondent’s disciplinary history, which includes five prior disciplinary matters between 1988 and 1998, aggravates Respondent’s current misconduct.
- 4. Respondent’s pecuniary motive in this matter aggravates Respondent’s misconduct.
- 5. Respondent has substantial experience in the practice of law. This aggravates his misconduct.
- 6. Respondent’s mitigating factors do not provide an adequate likelihood that Respondent will not engage in unethical or illegal conduct in the future. The mitigating factors, although significant, are not substantial enough to alter the recommended disposition, when all factors are balanced.

RECOMMENDATION FOR DISCIPLINE

Respondent Louis B. Oberhauser, Jr., was convicted of two counts of felony-level money laundering. In addition, he has a disciplinary history that includes five prior disciplinary actions against him. Respondent’s mitigation claims, while significant, do not outweigh his misconduct, particularly as aggravated by the factors set forth above, and do not meet the standard for mitigation of the sanction as set forth in Supreme Court precedent.

Accordingly, the undersigned recommends that Respondent Louis B. Oberhauser, Jr., be disbarred; or, in the alternative, should the Court find adequate mitigating circumstances, that his license to practice law be suspended for an indefinite period, and that Respondent be required to comply with Rule 24, Rules on Lawyers Professional Responsibility.

Dated: October 8, 2003


B.W. Christopherson
Supreme Court Referee

**DISCIPLINARY ACTION AGAINST
LOUIS B. OBERHAUSER, JR.
SUPREME COURT FILE NO. C9-93-1342**

**DOCUMENTS ACCOMPANYING
REFEREE'S RECOMMENDATION**

1. Pretrial Order, dated July 28, 2003
2. Order, dated August 4, 2003
3. Amended Scheduling Order, dated August 13, 2003
4. Documents submitted by Director at trial:
 - a. Petition
 - b. Answer
 - c. Petition for Temporary Suspension
 - d. Respondent's Answer to Petition for Temporary Suspension
 - e. Affidavit of Timothy Burke in Support of Petition for Temporary Suspension
 - f. Order for Temporary Suspension
 - g. Director's Exhibit List, identifying the attached Trial Exhibits 1-11
5. Trial Exhibit 12, submitted by Respondent, including:
 - a. Memorandum, identifying the attached documents at Tab A, B, 1-11, C, D, and E.
6. Director's Brief to the Referee, dated September 26, 2003
7. Respondent's Reply Brief, unsigned/undated, but faxed to the Referee on October 3, 2003