



STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE REAL ESTATE APPRAISERS BOARD

COPY

In the Matter of:

KONSTANTIN BELENKY, SCGRE
Certification # 42RG00193600

CONSENT ORDER

CERTIFIED TRUE COPY

This matter was opened before the New Jersey State Real Estate Appraiser Board (the "Board") upon the Board's receipt of information that respondent Konstantin Belenky pled guilty, on June 24, 2009, to one count of Theft by Unlawful Taking or Disposition, a third degree crime, in violation of N.J.S. 2C:20-3. Respondent's guilty plea was entered in Superior Court in Morris County. When entering his guilty plea, respondent admitted under oath to having engaged in theft of funds, checks and U.S. currency from the Elk's Lodge (also known as the Benevolent Protective Order of the Elks) between October 1, 2005 and September 1, 2007, and admitted that his conduct was with the intent to deprive the Elk's Lodge of its property. Respondent was sentenced, on February 18, 2011, to a two year non-custodial term of probation. In addition, respondent was required to forfeit current public employment, was ordered to pay assessments and fines in an aggregate amount of \$155.00, and was ordered to undergo DNA testing and pay all costs associated with the testing.

Respondent appeared before the Board for an investigative hearing on January 25, 2011, represented by Peter Zipp, Esq., and then

testified under oath about the circumstances which led to his arrest and subsequent guilty plea. Respondent testified that, in his role as treasurer of the Elks Lodge, he signed three checks, in an aggregate amount totaling approximately \$285,000, made payable to Anthony Crecco. The proceeds were used to pay off "markers" for debts that respondent and Mr. Crecco had amassed, as gambling "partners," in Atlantic City casinos. When testifying before the Board, respondent maintained that on each of the three occasions, all of the funds taken were in turn replaced within forty-eight hours.¹

Respondent testified that the criminal conduct occurred because of his need, along with Mr. Crecco, to pay off the gambling debts which they incurred in Atlantic City. He admitted that he had lost substantial sums of money engaging in casino gambling, to include amounts above and beyond those that the checks drawn on the Elks Lodge were used to repay. Respondent testified that he recently, in November 2010, began attending meetings of Gamblers Anonymous ("GA") twice weekly, however he also stated that he had not resolved in his own mind whether he was or was not a "compulsive" gambler.

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Respondent's testimony on this point is inconsistent with the terms of the plea bargain that he entered with the State, as one requirement of the plea bargain was that he and Mr. Crecco pay \$35,460 in funds which were alleged to have not been repaid to the Florham Park-Fairfield Elks Lodge (respondent was held jointly and severally liable to repay those funds with a co-defendant, Anthony Crecco). Respondent testified, when appearing before the Board, that although he "[had] no idea how ... any money [could be] missing," he nonetheless "didn't want to argue" and therefore agreed to repay the sum. Respondent testified that he made the repayment in full, and has not obtained any contribution from Mr. Crecco for Mr. Crecco's share of the repayment obligation.

In addition to Mr. Belenky's testimony, the Board also considered testimony offered by six character witnesses who testified on Mr. Belenky's behalf, to include testimony offered by two attorneys who had working relationships with Mr. Belenky, appraisers that have worked with (or against) Mr. Belenky and a member of the Elks Lodge.² The witnesses testified uniformly that they continued to fully trust Mr. Belenky, as a friend and as a professional. All suggested that Mr. Belenky had been completely forthright in admitting his misconduct, that Mr. Belenky appeared to be sincerely remorseful for his actions, and that Mr. Belenky had consistently been fair in all of his conduct related generally to the practice of appraising and/or assessments. An additional ten letters, from other colleagues and friends, all of which attested generally to Mr. Belenky's good character, were also submitted on Mr. Belenky's behalf.

N.J.S. 45:14F-10.1 provides that an appraiser who is convicted of any crime involving theft, as set forth in chapter 20 of Title 2C of the New Jersey Statutes, is subject to disqualification from licensure. The statute further provides, however, that an appraiser may remain eligible for licensure if he or she demonstrates to the board clear and convincing evidence of rehabilitation.³

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The witnesses who offered character testimony on behalf of Mr. Belenky were Saul Wolfe, Esq., Jeffrey D. Gordon, Esq., William H. Steinhardt, MAI, CRE, Richard Carabelli (assessor for Franklin Township), Rick Kline (assessor in East Windsor) and Philip Maenza (member of Elks Lodge).

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The statute lists factors to be considered in determining whether an individual has affirmatively demonstrated rehabilitation, which include: (1) the nature and responsibility of the position which the convicted individual will

The Board finds that the crime that Mr. Belenky pled guilty to is a disqualifying offense, as that term is defined at N.J.S. 45:14F-10.1. Additionally, the Board finds that the crime is one which involves moral turpitude and is one that relates adversely to the practice of real estate appraising, and respondent's conviction therefore constitutes grounds for the suspension or revocation of his certification pursuant to N.J.S.A. 45:1-21(f). Respondent's actions shattered a fundamental trust that was placed in him in his fiduciary role as treasurer of a civic organization, and clearly breached fundamental ethical precepts. Indeed, we find respondent's conduct, while not directly related to his practice of appraising, to nonetheless be fundamentally at odds with the Ethics Rule of the Uniform Standards of Professional Appraisal Practice, which states that "an appraiser must promote and preserve the public trust inherent in appraisal practice by observing the highest standard of professional ethics."

While the Board therefore finds that the criminal misconduct in which respondent engaged could clearly form a predicate to support the revocation of his certification as an appraiser, we have determined, based on the mitigation presentations that have been made, that cause exists to impose a penalty less severe than revocation. Mr. Belenky has demonstrated that he is sincerely remorseful for his actions, and he has

hold; (2) the nature and seriousness of the offense; (3) the circumstances under which the offense occurred; (4) the date of the offense; (5) the age of the individual when the offense was committed; (6) whether the offense was an isolated or repeated instance; (7) any social conditions which may have contributed to the offense; and (8) any evidence of rehabilitation. N.J.S. 45:14F-10.1(b).

consistently accepted full responsibility for his conduct. The crime he committed appears to be an isolated, if not aberrant, incident of misconduct, and there simply is nothing in the record before the Board that would support any suggestion that Mr. Belenky's professional integrity, in his capacity as an appraiser, was compromised. Further, the evidence presented in mitigation demonstrates that respondent has garnered a high degree of trust and admiration from professionals who have interacted with him in the course of his appraisal practice.

On balance, the Board concludes that respondent's actions warrant the imposition of a two year period of suspension, the first six months of which are to be served actively and the remainder to be stayed and served as a probation. In order to seek to assure that respondent's return to practice will not present any risk to public welfare, we will require that respondent secure an evaluation, by a psychologist or psychiatrist with expertise in evaluating gambling addictions, during the period of suspension. We explicitly reserve the right to impose conditions or limitations on respondent's resumed practice of appraising should cause to do so be identified during the evaluation. Finally, we order that respondent reimburse the Board costs related to the investigation of this matter, in an agreed upon amount of \$2,500.

Respondent agreeing herein to the resolution of this matter on the terms set forth herein, and the parties desiring to resolve this matter without need for further administrative proceedings, and the Board finding that good cause exists for the entry of this Order:

IT IS on this 16th day of May , 2011

ORDERED:

1. Respondent Konstantin Belenky's certification to practice real estate appraising in the State of New Jersey is hereby suspended for a period of two years, commencing on May 16, 2011. The first six months of the period of suspension - from May 16 through November 15, 2011, shall be served as a period of active suspension. Respondent shall not engage in any practice of appraising (regardless whether that practice would or would not otherwise require respondent to hold certification) during the period of active suspension. Provided that respondent complies with all terms and conditions set forth herein and/or in any supplemental orders that may be entered by the Board, the remainder of the period of suspension - from November 16, 2011 through May 15, 2013 - shall be stayed and served as a period of "probation."

2. Respondent shall, within ninety days from the date of entry of this Order, submit to a psychological evaluation, to be conducted by a New Jersey licensed psychiatrist or psychologist, acceptable to the Board, with expertise in evaluation of gambling addiction. The approved professional shall submit a report to the Board, not later than September 15, 2011, detailing the results of the psychological evaluation, and shall include therewith any findings or diagnoses made and/or any treatment recommendations, to include recommendations whether continued participation in GA and/or a course of psychotherapy is indicated. The report to be produced shall be considered to be a confidential document in its entirety.

3. The Board expressly reserves the right, following its

review of the report to be prepared by an approved mental health professional (see paragraph 2 above), to enter a supplemental Order in this matter, which Order may include the imposition of any conditions or limitations which the Board shall, in its discretion, deem to be appropriate or reasonable based on recommendations made in said report.

4. Respondent is assessed investigative costs, in an agreed upon amount of \$2500, to be paid in full upon entry of this Order.

NEW JERSEY STATE REAL ESTATE
APPRAISER BOARD

By: Frank A. Willis
Frank A. Willis
Board President

I represent that I have carefully read and considered this Order, and consent to the entry of the Order by the Board.

Konstantin Belenky
Konstantin Belenky

Consent to form and entry of Order.

Peter J. Zipp, Esq.
Peter J. Zipp, Esq.