

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF DOROTHY G. BUNCE. }

No. 22707

FILED

AUG 25 1995

ORDER OF DISBARMENT

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

This is an automatic appeal from a decision of a hearing panel of the Northern Nevada Disciplinary Board of the State Bar of Nevada. See SCR 105(3)(b).

On December 5, 1991, this court entered an order temporarily suspending attorney Dorothy G. Bunce from the practice of law pursuant to SCR 111(1). We concluded that documents tendered by bar counsel conclusively demonstrated that Bunce had been convicted, pursuant to an Alford plea¹, of one count of attempting to obtain money and property under false pretenses, a "serious crime" warranting temporary suspension under SCR 111(2). Accordingly, we temporarily suspended Bunce from the practice of law and referred this matter to the Northern Nevada Disciplinary Board for the initiation of formal disciplinary proceedings in which the sole issue to be determined was the extent of discipline to be imposed.

On January 22, 1992, a formal disciplinary complaint was filed charging Bunce with violating SCR 203(2) (criminal act adversely reflecting on honesty, trustworthiness, and fitness) and SCR 203(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation). Bunce did not file an answer, thereby admitting the charges. SCR 105(2).

On April 15, 1992, and May 26, 1992, Bunce presented testimony to a hearing panel of the Northern Nevada Disciplinary

Board in mitigation of her actions. The motion was opposed. On June 5, 1992, the disciplinary panel entered a decision recommending disbarment.

On July 8, 1992, acting bar counsel, Steven Shulman, sent this court several documents suggesting that Bunce may have continued to practice law in disregard of this court's order of temporary suspension. On August 5, 1992, this court ordered Bunce to show cause why she should not be held in contempt. On September 11, 1992, Bunce filed a response.

On July 12, 1994, Bunce moved this court for an extension of time within which to file an opening brief. The motion was opposed. On January 25, 1995, this court entered an order allowing Bunce to file her "extremely untimely" opening brief because of the serious nature of these proceedings. Briefing was finally completed in this court on May 17, 1995.

Bunce contends that the evidence submitted to the disciplinary panel did not support the panel's recommendation of disbarment. Specifically, Bunce contends that the only evidence introduced against her was her conviction, which was subsequently vacated when she completed a NRS chapter 458 substance abuse treatment program. Bunce further contends that the setting aside of her conviction should mitigate her discipline. Pursuant to NRS 458.300, an alcohol or drug addict who has been convicted of a crime may elect treatment before sentencing. A judgment of conviction is an absolute prerequisite to such an election. If the defendant successfully completes the treatment to the satisfaction of the district court, the judgment of conviction will be set aside. NRS 458.330(1); Hanks v. State, 105 Nev. 839, 784 P.2d 5 (1989). Bunce's conviction constitutes clear and convincing evidence that she committed the misconduct. The subsequent setting aside of her conviction does not make her immune to disciplinary action. See Burleigh v. State Bar, 98 Nev. 140, 643 P.2d 1201 (1982) (attorney who had murder charges against him dismissed was nonetheless disbarred when bar found that

conclude that, under the circumstances of this matter, evidence surrounding the setting aside of Bunce's conviction is more appropriately presented in a petition for reinstatement.

Bunce next contends that the panel applied the wrong burden of proof. Specifically, Bunce contends that the panel's decision indicates that it required her to prove mitigating factors by clear and convincing evidence. Bunce contends that the bar has the burden of proving its case by clear and convincing evidence. This contention lacks merit. The bar proved that Bunce had been convicted of a crime by clear and convincing evidence. The panel properly required Bunce to prove mitigation. See *Goldman v. Nevada Comm'n on Judicial Discipline*, 108 Nev. 251, 264, 830 P.2d 107, 115-16 (1992); see also *In Re Temple*, 596 A.2d 585 (D.C. 1991); *Petition of Johnson*, 322 N.W.2d 616 (Minn. 1982).

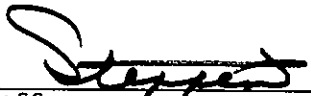
Bunce next contends that she demonstrated that her actions were mitigated by mental disability or chemical dependency. Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation, and must examine the record anew and exercise independent judgment. See *In re Kenick*, 100 Nev. 273, 680 P.2d 972 (1984). Having reviewed the record and the pleadings, we conclude that, regardless of whether Bunce had to prove mitigation by clear and convincing evidence or by a mere preponderance, the panel properly concluded that Bunce had not proven that her actions were mitigated by mental disability or chemical dependency.

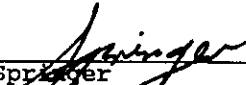
Further, our review of the record and pleadings reveals that Bunce was convicted of a crime involving moral turpitude. The crime of attempting to obtain money or property under false pretenses "necessarily involve[s] an intent to defraud or intentional dishonesty for the purpose of personal gain." *In re Cochrane*, 92 Nev. 253, 254, 549 P.2d 328, 329 (1976). "[A]n attempt or conspiracy to commit a crime demonstrates moral

turpitude to a like degree as the commission of the crime itself.'" Burleigh v. State Bar of Nevada, 98 Nev. 140, 146, 643 P.2d 1201, 1204 (1982) (quoting In re Wright, 69 Nev. 259, 265, 248 P.2d 1080, 1083 (1952)).

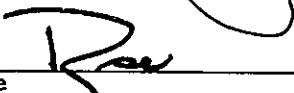
Accordingly, we approve the decision and recommendation of the hearing panel. Bunce is disbarred from the practice of law in this state, effective December 5, 1991, the date this court temporarily suspended Bunce. Any future application for reinstatement shall be made in accordance with SCR 116. Bunce shall also pay disciplinary costs in the amount of \$1,437.03. The parties shall comply with the notice provisions of SCR 115. Finally, in light of our decision to disbar Bunce, we make no factual finding regarding whether she was in contempt of this court. Rather, if Bunce files a petition for reinstatement in the future, we direct the bar to consider as an issue in the reinstatement proceeding whether Bunce violated our order of temporary suspension.

It is so ORDERED.²


Steffen, C. J.


Springer, J.


Shearing, J.


Rose, J.

cc: Laurence Digesti, Chairman,
Northern Nevada Disciplinary Board
C.A. Olendorff, Bar Counsel
Executive Director, State Bar of Nevada
Dee Shore, Admissions Office,
Supreme Court of the United States
Charlotte Hunter Arley