

SUPREME COURT OF GEORGIA

In the Matter of Frederick Andrew Gardner

286 Ga. 623, 690 S.E.2d 611 (2010) · No. No. S10Y0690 · Decided March 1, 2010

SUMMARY

The Supreme Court of Georgia considered Frederick Andrew Gardner's petition for voluntary discipline or surrender of his law license after he pleaded guilty to misdemeanor obstruction of a police officer. The court concluded that his false statements during an investigation involving mortgage fraud warranted acceptance of his voluntary surrender, which was tantamount to disbarment.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Per Curiam; All the Justices
JURISDICTION	Georgia
DECIDED	March 1, 2010
DOCKET	No. S10Y0690
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary matter before the Supreme Court of Georgia on the respondent's Alternative Petition for Voluntary Discipline or Voluntary Surrender of License.
PRECEDENTIAL VALUE	Published opinion; disciplinary sanction decision

TOPICS

- real estate
- mortgages
- remedies

PRACTICE AREAS

- legal ethics and attorney discipline
- professional responsibility
- real estate transactions
- mortgage fraud

QUESTIONS PRESENTED

1. What sanction is appropriate for Gardner's misdemeanor obstruction conviction and resulting violation of Georgia Rule of Professional Conduct 8.4(a)(3)?
2. Whether the court should accept Gardner's voluntary surrender of his license rather than impose a suspension.

HOLDINGS

1. Although suspension or disbarment may be appropriate depending on the circumstances, acceptance of Gardner's voluntary surrender of his license, tantamount to disbarment, was the correct sanction given his obstruction of an investigation into mortgage fraud and the surrounding circumstances.

KEY QUOTATIONS

"We conclude that acceptance of Gardner's voluntary surrender of his license, which is tantamount to disbarment, is the correct sanction to impose in this matter." (613)

"Accordingly, the name of Frederick Andrew Gardner hereby is removed from the rolls of attorneys authorized to practice law in the State of Georgia." (613)

FACTUAL BACKGROUND

Gardner pleaded guilty to misdemeanor obstruction of a police officer under OCGA § 16-10-24 and received twelve months of probation. The conviction arose from Gardner's giving false information to a Georgia Bureau of Investigation agent about a real estate closing, including falsely stating that he had instructed employees to notify the lender about back-to-back closings and misleading the agent about the failure to disburse funds after the first closing. The conduct related to an underlying mortgage-fraud investigation. Gardner had no prior discipline, expressed remorse, cooperated by reporting his conviction, and was not deeply involved in the underlying scheme.

PROCEDURAL HISTORY

Frederick Andrew Gardner petitioned the Supreme Court of Georgia either to impose a suspension or to accept his voluntary surrender of his license. The State Bar responded that disbarment would best serve the public and the State Bar. The court accepted Gardner's voluntary surrender, which it stated was tantamount to disbarment, and removed his name from the rolls of attorneys authorized to practice in Georgia.

DISPOSITION

other

CASES CITED

- In the Matter of Williams, 284 Ga. 96, 663 S.E.2d 181 (2008)
- In the Matter of Walker, 282 Ga. 53, 644 S.E.2d 860 (2007)
- In the Matter of Welsh, 279 Ga. 298, 612 S.E.2d 304 (2005)
- In the Matter of Porges-Dodson, 280 Ga. 433, 627 S.E.2d 545 (2006)
- In the Matter of Jackel, 275 Ga. 568, 569 S.E.2d 835 (2002)
- In the Matter of Threlkeld, 273 Ga. 331, 539 S.E.2d 823 (2001)

OPINION

PER CURIAM.

690 S.E.2d 611 (2010) In the Matter of Frederick Andrew GARDNER. No. S10Y0690. Supreme Court of Georgia. March 1, 2010. *612 Paula J. Frederick, General Counsel State Bar, Jonathan W. Hewett, Asst. Gen. Counsel State Bar, for State Bar of Georgia. PER CURIAM. This disciplinary matter is before the Court on Respondent Frederick Andrew Gardner's Alternative Petition for Voluntary Discipline or Voluntary Surrender of License in which he asks the Court either to suspend him for some period of time or to accept the voluntary surrender of his license to practice law.

In his petition Gardner admits that he pled guilty to a misdemeanor violation of OCGA § 16-10-24 (obstruction of a police officer) and was sentenced to 12 months of probation. He also admits that the conviction is a violation of Rule 8.4(a)(3) of the Georgia Rules of Professional Conduct, see Bar Rule 4-102(d).

The factual basis for the plea was that Gardner gave false information to a Georgia Bureau of Investigation agent during an interview regarding a real estate closing. Gardner falsely told the agent that he had instructed his employees to notify the lender about the back-to-back closings of the property and misled the agent as to why money had not been disbursed after the first closing.

In seeking a suspension rather than the surrender of his license, Gardner states that he has no prior discipline and expresses sincere remorse for his conduct. The State Bar filed a response in which it notes that Gardner is not in good standing with the State Bar because he has not paid his dues.

In mitigation the State Bar observes that Gardner has no prior discipline, was not deeply involved in the underlying mortgage fraud scheme that was the subject of the GBI's investigation, and cooperated in this matter by reporting his conviction to the State Bar rather than requiring the Bar to file a petition under Bar Rule 4-106(a). Nevertheless, because he gave false information about the scheme and obstructed the investigation, the State Bar concludes that the interests of the public and the State Bar would be best served by ordering that Gardner be disbarred.

While disbarment is the maximum punishment for a violation of Rule 8.4(a)(3), either suspension or disbarment is an appropriate sanction, depending on the circumstances. Compare In the Matter of Williams, 284 Ga. 96, 663 S.E.2d 181 (2008) (six-month suspension with conditions for receipt by a public officer of money not due him through the use of his office), In the Matter of Walker, 282 Ga. 53, 644 S.E.2d 860 (2007) (120-day suspension for filing fraudulent tax return), and In the Matter of Welsh, 279 Ga. 298, 612 S.E.2d 304 (2005) (12-month suspension for three counts of criminal trespass), with In the Matter of Porges-Dodson, *613 280 Ga. 433, 627 S.E.2d 545 (2006) (disbarred for unlawful conversion of government property), In the Matter of Jackel, 275 Ga. 568, 569 S.E.2d 835 (2002) (disbarred for misdemeanor sexual battery and solicitation of sodomy), and In the Matter of Threlkeld, 273 Ga. 331, 539 S.E.2d 823 (2001) (disbarred for public indecency).

In determining the appropriate level of discipline in this case, we have reviewed the facts underlying Gardner's conviction and the factors in mitigation of discipline. We recognize in particular that mortgage fraud is and has been a very serious problem in Georgia and that real estate closing attorneys are relied on by their lender clients and by the public to act ethically and lawfully to identify and prevent such fraud, rather than facilitating and concealing it as Gardner admits doing.

We conclude that acceptance of Gardner's voluntary surrender of his license, which is tantamount to disbarment, is the correct sanction to impose in this matter. Accordingly, the name of Frederick Andrew Gardner hereby is removed from the rolls of attorneys authorized to practice law in the State of Georgia. Gardner is reminded of his duties under Bar Rule 4-219(c).

Voluntary surrender of license accepted. All the Justice concur.