

MASSACHUSETTS SUPREME JUDICIAL COURT

In re Otis

438 Mass. 1016 (2003) · Decided January 31, 2003

SUMMARY

The Massachusetts Supreme Judicial Court affirmed the disbarment of Susan P. Otis following her federal conviction for conspiracy to commit bankruptcy fraud. The court held that disbarment was the usual and presumptive sanction for the serious felony involving fraud and that no special mitigating circumstances justified an indefinite suspension instead.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
JURISDICTION	Massachusetts
DECIDED	January 31, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Susan P. Otis appealed from a single justice's judgment disbarring her from the practice of law after her federal conviction for conspiracy to commit bankruptcy fraud.
STANDARD OF REVIEW	The court reviewed de novo the sanction ordered by the single justice, while giving substantial deference to the Board of Bar Overseers' recommendation and ensuring that the discipline was not markedly disparate from sanctions imposed in comparable cases.
PRECEDENTIAL VALUE	Published opinion; precedential Massachusetts Supreme Judicial Court decision concerning attorney discipline following a serious felony conviction.
PARTIES	Susan P. Otis v. Bar Counsel

TOPICS

- bankruptcy fraud
- appellate procedure
- standard of review
- bankruptcy

PRACTICE AREAS

- attorney discipline
- legal ethics
- bankruptcy fraud
- appellate procedure

QUESTIONS PRESENTED

1. Whether disbarment or the lesser sanction of indefinite suspension was appropriate after Otis's felony conviction for conspiracy to commit bankruptcy fraud.
2. Whether the absence of client-related conduct, health and family issues, pro bono representation, reputation, and lack of prior discipline constituted special mitigating circumstances warranting deviation from presumptive disbarment.

HOLDINGS

1. Disbarment is the appropriate sanction for Otis's conviction because the felony involved intentional fraud and a conspiracy to commit fraud, and the misconduct was not an isolated act but extended over several years.
2. The court declined to apply a private-citizen exception and held that Otis's claimed mitigating circumstances did not warrant reducing the sanction.

KEY QUOTATIONS

"We begin with the premise that disbarment is the "usual and presumptive sanction" for conviction of a serious crime." (438 Mass. 1016)

" "[D]isbarment or indefinite suspension is the usual sanction imposed" following a felony conviction." (438 Mass. 1016)

"Here, the respondent's conviction was based on various acts perpetuating a fraud over the course of several years, and the fraud cannot fairly be characterized as "isolated." " (438 Mass. 1017)

FACTUAL BACKGROUND

Otis was convicted of conspiracy to commit bankruptcy fraud based on wrongful conduct spanning several years, from 1989 until at least 1996, involving fraudulent claims on federal income tax returns and fraud connected with judicial proceedings. She argued that the conduct did not involve clients or the practice of law and offered health and family issues, pro bono service, reputation, and lack of prior discipline as mitigating circumstances. The court found that the conduct involved fraud on a court and that the claimed mitigating circumstances did not justify a lesser sanction.

PROCEDURAL HISTORY

Otis was convicted in the United States District Court for the District of Massachusetts of conspiracy to commit bankruptcy fraud. Bar counsel then petitioned the Board of Bar Overseers for discipline. The hearing committee and the board recommended disbarment retroactive to the date of Otis's temporary suspension, and the single justice entered a judgment of disbarment. The Supreme Judicial Court affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Stein, 233 F.3d 6, 22-23 (1st Cir. 2000), cert. denied, 532 U.S. 943 (2001)
- Matter of Kennedy, 428 Mass. 156, 156 (1998)
- Matter of Tobin, 417 Mass. 81, 88 (1994)
- Matter of Alter, 389 Mass. 153, 156 (1983)
- Matter of Concemi, 422 Mass. 326, 329-30 (1996)
- Matter of Goldberg, 434 Mass. 1022 (2001)
- Matter of Labovitz, 425 Mass. 1008, 1008 n.1 (1997)
- Matter of Kerlinsky, 428 Mass. 656, 666 (1999)
- Matter of Grant, 10 Mass. Att'y Discipline Rep. 144 (1994)
- Matter of Rogers, 1 Mass. Att'y Discipline Rep. 251 (1991)
- Matter of Saab, 406 Mass. 315, 327 (1989)
- Matter of Kennedy, 428 Mass. 156, 158-59 (1998)
- Matter of Dawkins, 412 Mass. 90, 96-97 (1992)
- Matter of Stein, S.J.C. No. BD-1999-025 (May 30, 2001)
- Matter of Golenbock, S.J.C. No. BD-1999-024 (May 30, 2001)