In re Armaluuk, 10 ROP 75 (2003)
In the Matter of
FRANCISCO ARMALUUK,
Respondent.

DISCIPLINARY PROCEEDING
NO. 02-05

Supreme Court, Disciplinary Tribunal
Republic of Palau

Heard: March 3, 2003
Decided: March 21, 2003
⊥76
Disciplinary Counsel: Michael Fineman

Counsel for Respondent: Oldiais Ngiraikelau

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice, R. BARRIE MICHELSEN, Associate Justice.

PER CURIAM:

This is a disciplinary proceeding in which Francisco Armaluuk, a trial counselor licensed to practice law in the Republic of Palau, is charged with violations of this Court's Disciplinary Rules and Procedures and the American Bar Association Model Rules of Professional Conduct[1] (hereinafter referred to as the "Disciplinary Rules" and "Model Rules," respectively). Specifically he is charged with two counts of dishonesty in violation of Disciplinary Rule 2(b) and Model Rule 8.4(c) and one count of conduct prejudicial to the administration of justice in violation of Model Rule 8.4(d). The complaint arises from certain representations made by Mr. Armaluuk to the Land Court and the Palau Central Bank ("the Bank") concerning his interest in real property in Koror. Because we believe there is clear and convincing evidence that Mr. Armaluuk violated these Rules, we will schedule a hearing on sanctions.

FINDINGS OF FACTS

Pursuant to Palau's on-going land registration program, in November 1993 the Land Claims Hearing Office issued Determinations of Ownership for Cadastral Lots 040 B 07 and 040 B 08 (hereinafter "Lot 7" and "Lot 8" respectively). These Determinations recited that Mr. Armaluuk was the individual owner of both lots. No Certificates of Title were issued at that time. On May 21, 1996, Mr. Armaluuk conveyed five parcels, including Lots 7 and 8, to himself and his children, ("the 1996 deed"). Thus, he reduced his stake in the lots from sole owner to partial owner. The 1996 deed also purported to impose a restriction that "[i]n any event that these properties become for sale or transfer my [Mr. Armaluuk's] signature and Francia F.

[1]The Model Rules have been incorporated into the ROP Disciplinary Rules and Procedures by Disciplinary Rule 2(h).

Armaluuk are required." Mr. Armaluuk did not inform the Land Court of this ownership change, so when the Certificates of Title were issued for the lots in ⊥77 February 1997, they indicated that Mr. Armaluuk was sole owner–a misstatement he made no effort to correct. In fact, he reinforced this impression on April 24, 1997 when he filed an affidavit with the Land Court reasserting he was "the owner" of Lot 8 and requesting the Land Court reissue the Certificate of Title for that lot because the original had been accidentally burned. The Land Court reissued the Certificate as requested on May 13, 1997.

In early February 1999, Mr. Armaluuk was planning to borrow money from Palau Central Bank and to that end he submitted a loan application on February 5, 1999. He listed under "assets owned" Lots 7 and 8. Three days before, he had submitted to the Land Court another affidavit, which stated that he had lost the re-issued Certificate of Title for Lot 8 and requested another replacement certificate. He specifically stated he had been "awarded the Certificat[e] of Land Ownership." Once again Mr. Armaluuk failed to disclose to the Land Court that there were additional owners of the property. Furthermore, as part of his loan application, he executed an "affidavit of collateral" averring that "Cadastral Plot No. 040 B 07 is the individual property of Francisco Armaluuk."[2] On March 24, 1999 as part of the loan documentation, Mr. Armaluuk executed a warranty deed ("the 1999 deed") with the Bank that recited that he was "well seised in fee" of Lots 7 and 8. The deed made no mention of additional owners nor did Mr. Armaluuk secure the signature of Francia Armaluuk as required by the 1996 deed. He eventually defaulted on the loan. He was sued, judgment was entered against him, and as part of a judicial sale, the Bank quitclaimed Lot 8 to Regis Akitaya. During post-judgment proceedings, Mr. Armaluuk's children, through counsel, challenged the validity of the Bank's mortgage. They asserted that because the land was given to them by deed, Mr. Armaluuk only retained a fractional interest, and could not convey any interest to the Bank without the signature of Francia Armaluuk.

Although their deed had been recorded in 1996, it was only when the Bank deeded Lot 8 to Mr. Akitaya that Mr. Armaluuk's children requested, and the Land Court issued, new Certificates of Title in their names for the lots. The Land Court also issued a Certificate of Title for Lot 8 pursuant to a request from Mr. Akitaya. Litigation continues on the validity of the sale and who has superior title.

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[2]There is no matching "affidavit of collateral" in this record for Lot 8. We draw no inferences from its absence.

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CONCLUSIONS OF LAW

Standard of Proof

The standard of proof for establishing allegations of misconduct is by clear and convincing evidence. Disciplinary Rule 5(e).

Counts I and II

Counts I and II of the complaint allege violations of Disciplinary Rule 2(a) and Model Rule 8.4(c), respectively. Disciplinary Rule 2(a) prohibits "[t]he commission of any act involving . . . dishonesty . . . in the course of [the practitioner's] conduct as an attorney or otherwise." Model Rule 8.4(c) provides that "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Because these Rules are adaptations of Rules developed elsewhere, we consider cases from jurisdictions with similar rules when construing our rule. *Ngiraked v.* ⊥*78 ROP*, 5 ROP Intrm. 159, 169 n.7 (1996).

Model Rule 8.4(c) "embodies acts that involve any one of four distinct characteristics: dishonesty, fraud, deceit, or misrepresentation." *In re Davenport*, 49 P.3d 91, 97 (Or. 2002). "The term 'dishonesty' . . . is broader than its companion terms 'fraud' and 'deceit.' It connotes lack of trustworthiness and integrity." *In re Conduct of Leonard*, 784 P.2d 95, 100 (Or. 1989). In order to find a violation of Model Rule 8.4(c) or Disciplinary Rule 2(a) there must be wrongful intent. *In re Rechucher*, 7 ROP Intrm. 28, 32 (1998). An inadvertent omission or honest mistake will not support a charge of dishonesty, nor does otherwise unprofessional conduct done completely above board amount to dishonesty. *Id.* "Simply put, the question is whether the [Respondent] lied. No ethical duty could be plainer." *In re Disciplinary Proceeding Against Carmick*, 48 P.3d 311, 319 (Wash. 2002).

In this case, we focus on the following statements:

1. The April 24, 1997 affidavit addressed to the Land Court requesting a new certificate in Respondent's name as owner of Lot 8.

2. The February 2, 1999 affidavit addressed to the Land Court requesting a new certificate in Respondent's name as owner of the Lot 8.

3. Respondent's loan application of February 5, 1999 that stated he was the owner of Lots 7 and 8.

4. Respondent's "affidavit of collateral" addressed to the Bank stating he was the owner of Lot 7.

5. The sworn warranty deed to the Bank dated March 24, 1999 in which he said he was "well seised" of both lots.

Although Respondent concedes that none of the above statements can be harmonized with the 1996 deed, he argues that the facts do not reveal the intent required to support the Disciplinary Counsel's charges of dishonesty. We disagree. Respondent's actions foreclose a finding that his conduct was a series of inadvertent omissions or honest, explainable mistakes.

Mr. Armaluuk, after transferring significant interests in the lots to his children, accepted Certificates of Title that erroneously listed him as the sole owner. Respondent testified that he requested the replacement Certificate of Title for Lot 8 for his own recordkeeping. We cannot accept that rationale as a justification for not informing the Court of the ownership change, or as an explanation for not disclosing the change in two subsequent affidavits. The statements in the affidavits are inconsistent with a deed he drafted himself.

He testified that he thought he did not need to inform the court about the 1996 deed when obtaining the subsequent certificates because he recorded the 1996 deed with the Supreme Court and therefore the Court knew of it. Although recording a deed constitutes constructive notice to potential purchasers and protects prior grantees from subsequent fraud, neither the Supreme Court nor the Land Court is deemed to "know" all of the information contained in all recorded deeds. Furthermore, the Court should not be obligated to independently verify the truthfulness of statements made in affidavits. Finally, if for some reason Mr. Armaluuk believed that the court "knew" of the deed because it was recorded, such a ⊥79 misapprehension was corrected when he received the first Certificates of Title. Yet rather than ask for the Certificates to be corrected, he later signed affidavits that attested to his sole ownership in order to obtain replacements containing the same error.

With respect to the misrepresentations to the Bank, Mr. Armaluuk introduced a letter signed by him two days after the loan documents were signed, purporting to be a confirmation of a prior discussion with the Bank's manager, Hiromi Rdiall, when he disclosed the true nature of the ownership of the Lots. Respondent says the letter was written in order that the Bank would be fully informed about his ownership stake in the property. Mr. Rdiall denies that any such conversation ever took place, and further denies he ever received such a letter. We find Mr. Rdiall's testimony credible on this point. If Mr. Armaluuk planned to, or did, disclose the 1996 deed to the Bank, why did he repeat his misrepresentations of ownership in the application, in an affidavit, and in his later deed to the Bank? We conclude that Mr. Armaluuk never disclosed his limited ownership in the lots to the Bank, and thus we find that he engaged in dishonesty in his dealings with the loan application.

Mr. Armaluuk also argues the Bank had notice of the 1996 deed because he recorded it with Clerk of Courts. He may be correct that the Bank would have found the 1996 deed had it performed a title search, but we are not sitting in this proceeding to determine whether the Bank could have better protected itself by performing a title search. The issue here is whether Mr. Armaluuk violated his responsibilities as an officer of this court.

Respondent's explanation for his executing the 1996 deed is confusing and not convincing. His primary defense is that the purpose of the 1996 deed was to avoid having the lots become an asset of his other relatives after his death. He wanted the lots to be owned by his

children. The simple way to accomplish that goal is to execute a will. *See* 25 PNC § 102. All land that is individually owned may be transferred by will. 25 PNC § 301. Alternatively, if Mr. Armaluuk did not want to wait that long, he could have deeded the property to his children during his lifetime. *See id*. Rather than utilize either of these two, obvious, uncomplicated approaches, he conveyed the property to himself and his children, but otherwise continued to represent to others that the property was still in his name only. We also note that his retention of a fractional interest in the property defeats what he insists was the purpose of the transaction–to prevent other relatives from claiming an interest in the property adverse to his children.

Of particular interest is the "restriction" in the deed that requires his daughter's signature–not just his–for any transfers. Arguably, it means that any transfers of title by Mr. Armaluuk, even if limited to his own fractional interest, can be considered void without the signature of Francia Armaluuk. What possible purpose could that clause have except to provide Francia with the opportunity, as in this case, to repudiate subsequent acts of conveyances by Mr. Armaluuk and to defeat claims of others who relied on Mr. Armaluuk's false representations that he was the sole owner?

It also should be noted that over the course of many years neither Mr. Armaluuk nor his children ever requested that the Land Court issue Certificates of Title based on the 1996 deed. Under the totality of circumstances, we cannot conclude that the ⊥80 failure to ask for a correct Certificate of Title was innocent oversight.

With respect to Respondent's misrepresentations made when obtaining the replacement Certificate of Title in 1999, the request is accompanied by sufficient circumstantial evidence for us to conclude that Mr. Armaluuk's request to the Land Court was part and parcel of an attempt to lead the Bank to believe that he was the sole owner of Lot 8 for the purpose of securing a loan that his fractional interest in the property could not support. It is clear that his dealings with the Bank were ongoing during that period, and he requested another certificate only three days before completing the loan application. The proximity of these events convinces us that Mr. Armaluuk's failure to disclose to the Land Court the change in ownership as to Lot 8 was not an honest omission.

We find that Respondent was knowingly untruthful when he filed the "affidavit of loss" with the Land Court in regard to his ownership of Lot 8 in 1997. He was knowingly untruthful when he filed the "affidavit of loss" with the Land Court in regard to his ownership of Lot 8 in 1999. He also was knowingly untruthful when he signed the "affidavit of collateral" regarding his ownership of Lot 7, and when he signed the original loan application wherein he asserted he was the owner of both lots. Finally, he intentionally misled the Bank when he signed the 1999 deed alleging he was sole owner. Mr. Armaluuk's representations no less than five times that he was the only owner of the lots in question leave this Tribunal with no other conclusion than he has knowingly violated the prohibition against dishonesty.

Count III

Model Rule 8.4(d) provides that "[i]t is professional misconduct for a lawyer to . . .

engage in conduct that is prejudicial to the administration of justice." "The focus is on whether the conduct cause[d] or has the potential to cause harm or injury to the administration of justice." *In re Shadel*, 5 ROP Intrm. 265, 269 (1996) (internal quotes and ellipsis and citations omitted). Mr. Armaluuk's conduct was the direct cause of the Land Court's issuance of conflicting Certificates of Title. The resolution and finality of land ownership in Palau has been an ongoing and complex process. Mr. Armaluuk's conduct complicated this already difficult issue and thus his actions prejudiced the administration of justice.

The "focus of [Model Rule 8.4(d)] is on the effect of the lawyer's conduct on the administration of justice, not on what the lawyer intended." *In re Dugger*, 54 P.3d 595, 604 (Or. 2002). Accordingly, even if we accepted any of Mr. Armaluuk's explanations for his actions, we must look to the repercussions of that conduct.

CONCLUSION

We hereby find, by clear and convincing evidence, that Francisco Armaluuk has violated Model Rules 8.4(c) and (d) and Disciplinary Rule 2(a). A hearing as to the appropriate sanction for these violations will forthwith be scheduled.