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**California
Bar
Examination**

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IN THE MATTER OF ABIGAIL WATKINS

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CHADWICK v. STATE BAR

Columbia Supreme Court (1989)

We review the recommendation of the Review Department of the State Bar Court that petitioner, William Chadwick, be suspended from the practice of law following his misdemeanor conviction for violating federal statutes prohibiting insider trading and for related misconduct. The Review Department recommended that Chadwick be suspended from the practice of law for a period of five years; that execution of the suspension be stayed, subject to two years actual suspension. On appeal, we review the facts underlying Chadwick's conviction to determine whether they constitute moral turpitude.

Chadwick was admitted to the practice of law in Columbia in December 1973. Formerly, he was a partner in a large firm. Chadwick is currently a sole practitioner, primarily rendering legal advice about alternative investment structures. He has no prior record of discipline.

Chadwick's misconduct began in December 1981 when he acquired material, nonpublic information regarding a tender offer involving the Brunswick Corporation from a Martin Cooper, who was a bank officer and banker for the Whittaker Corporation. The Whittaker Corporation was the company attempting to take over the Brunswick Corporation. Chadwick purchased stock options of the Brunswick Corporation for himself. Later, the takeover of Brunswick by the Whittaker Corporation was publicly announced.

Chadwick was later contacted by the SEC. After consulting with counsel, Chadwick informed the SEC that he had relied upon material, nonpublic information concerning the Brunswick tender offer.

On July 1982, Chadwick was charged in U.S. District Court with one misdemeanor count of having violated 15 United States Code section 78(j). Chadwick pled guilty to the count as charged and was fined \$10,000 and ordered

to disgorge profits. The plea agreement establishes the facts relevant to the question of moral turpitude and facts that may be used to impeach Chadwick.

Thereafter, the State Bar issued an order to show cause charging Chadwick with willfully committing acts involving moral turpitude within the meaning of Business and Professions Code section 6101. These charges were based on Chadwick's illegal purchase of stock options, the acts that underlay his misdemeanor conviction.

As we have noted on numerous occasions, the concept of moral turpitude escapes precise definition. For purposes of the Rules of Professional Responsibility, moral turpitude has been described as an act of baseness, vileness or depravity in the private and social duties that a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. To summarize, it has been described as any crime or misconduct without excuse. The meaning and test is the same whether the dishonest or immoral act is a felony, misdemeanor, or no crime at all.

Chadwick argues that his willingness to comply with the SEC's investigation excuses his earlier conduct. However, the concept of excuse relates to Chadwick's conduct at the time of the violations to which he pled guilty. Here, Chadwick's guilty plea rests on facts that indicate no such excuse at the time he purchased the stock.

Chadwick also argues that, by entering into a plea agreement, he did not concede that the factual basis for the criminal plea would justify ethical discipline based on those facts. However, even if true, this proposition does not prevent this court from reviewing the factual basis of the plea to determine whether the conduct it describes justifies a finding of moral turpitude.

In this case, we agree with the Review Department's conclusion that the facts and circumstances of the particular offense and Chadwick's related conduct establish that Chadwick's acts involved moral turpitude. We adopt the Review Department's recommended discipline.

In the Matter of HAROLD SALAS, a Member of the State Bar
Review Department of the State Bar Court (2001)

In 1999, Harold Salas entered a plea to conspiracy to obstruct justice. After his conviction, the State Bar Court held a hearing to recommend appropriate discipline pursuant to Section 6102(a) of the Business and Professions Code. After the hearing, the State Bar Court recommended disbarment rather than discipline because it concluded that Salas had lied at the hearing.

In 1995, Respondent entered into a business relationship with Anna Bash, the owner/operator of Chekov Legal Services in the Little Russia neighborhood. Respondent paid Bash \$5,000 per month to market his practice to the Russian community in the City of Angels and to provide him with a secretary and a translator. Respondent would assist Bash in providing legal services, many on a pro bono basis, and Bash would refer personal injury, criminal, and other fee cases to Respondent. Respondent admitted he agreed to split fees with Bash, a non-attorney, and that this was illegal.

The District Attorney's Office filed a criminal complaint against Respondent and Bash as co-defendants in a "capping" conspiracy, alleging that Respondent paid Bash for referring clients to him. There were several charges of referral and fee-splitting, including one that alleged that Respondent issued a check for \$10,000 to Bash from the proceeds of a settlement of a personal injury case. The District Attorney claimed that the \$10,000 payment was an illegal payment in exchange for Bash's referring the case to Respondent.

Respondent and Bash were each charged with three felony counts: (1) conspiracy to commit a crime; (2) capping; and (3) conspiracy to commit an act injurious to the public. Respondent pled no contest to count three as a misdemeanor; and the District Attorney dismissed counts one and two.

In the hearing below, Respondent testified that he owed Bash \$10,000 for two months of services, and that he properly withdrew that amount from the settlement because it was a part of his contingency fee in the case. Respondent denied that the payment to Bash was for referral of the personal injury case to him.

After her own plea agreement, Bash testified against Respondent. Her testimony directly contradicted Respondent's. She did, however, confirm that she operated an office, which included substantial secretarial and translation services, and that Respondent was paying her \$5,000 a month and that \$10,000 was due when she was paid. She was adamant that the \$10,000 was for the referral.

The State Bar Court did not accept Respondent's testimony about the payment, and questioned why he would advance it before the court. The State Bar Court concluded that his lack of candor in the proceedings itself warranted a finding of moral turpitude.

Based on our review of the record, we find that the State Bar Court's finding of moral turpitude was not supported by clear and convincing evidence that Respondent had testified falsely and hence was guilty of moral turpitude. The State Bar bears the burden to prove moral turpitude by clear and convincing evidence. We conclude that the State Bar did not carry its burden here.

Normally, we would defer to a finding of fact from the State Bar Court. But in this case, Respondent contends that the hearing officer did not apply the burden of proof correctly. Respondent argues that there is no reasonable and logical explanation for why he would insist on his version of this one payment, other than the fact that he believes it to be true. It would have been easier, he says, to admit responsibility for this referral as well. Respondent contends that directly contradicting the plea agreement would raise severe doubts as to his candor. However, he asserts that his repeated statement of the innocent

purpose of this single payment does not contradict the plea agreement, which is silent on this point.

Any determination of moral turpitude must be found by clear and convincing evidence. This includes a determination that a witness's testimony lacks candor (i.e., the witness is lying). An honest if mistaken belief in his innocence does not signal a lack of candor. A lack of candor should not be founded merely on Respondent's different memory of events.

Applying the standard of proof by clear and convincing evidence means that reasonable doubts must be resolved in favor of the accused attorney. If equally reasonable inferences may be drawn from a proven fact, the inference to innocence must be chosen. If, as is the case here, it is equally likely that Respondent is telling the truth about controverted facts, the State Bar has not met its burden of establishing clear and convincing evidence of culpability.

Reversed and remanded.