

IN THE SUPREME COURT  
OF THE STATE OF OREGON

RECEIVED

JUN 13 2005

In re: )  
Complaint as to the Conduct of )  
NIKOLAUS ALBRECHT, )  
Accused. )

DISCIPLINARY COUNSEL  
Case No. 95-195  
OPINION OF THE TRIAL PANEL

Bar Counsel: Charles L. Best and Martha Hicks

Counsel for the Accused: Marc D. Blackman

Disciplinary Board: Susan G. Bischoff, Albert J. Bannon,  
and Howard Freedman

INTRODUCTION

Factual Background.

In March 2002, the Supreme Court disbarred Nikolaus Albrecht for knowingly and intentionally engaging in a scheme to launder drug money for or on behalf of a drug dealer named Brian Charlesworth.<sup>1</sup> This conduct was found to violate 18 USC § 1956(a)(1)(B)(i); DR 1-102(A)(2)(prohibiting criminal actions that reflect adversely on honesty, trustworthiness, or fitness to practice law); DR 1-102(A)(3)(prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 7-102(A)(7)(prohibiting assisting a client in conduct the lawyer knows is illegal); and DR 7-102(A)(8)(prohibiting knowing engagement in illegal conduct). *See In Re Albrecht*, 333 Or 520, 482 P3d 887 (2002). Charlesworth did not testify at the hearing that resulted in Albrecht's disbarment.

The facts of the underlying case as found by the Supreme Court are briefly summarized as follows:

Between 1978 and 1980, Albrecht represented Curtis Farber in a variety of real estate matters. They also became social friends. Sometime in or around 1980, Farber was charged with and convicted of murder in connection a drug deal. Albrecht did not represent Farber in the criminal case; however, he did attend the trial. During the course of the trial, Albrecht learned

<sup>1</sup> Brian Charlesworth has been known by a variety of other names. When he first began his dealings with Albrecht he went by the name of David McGuire.

that his friend and client had been engaged in illegal drug distribution activities during most of their attorney-client relationship and friendship.

Although Farber was sentenced to life in prison, he was paroled in March 1987. Upon his release from prison, he returned to his illegal drug activities by selling cocaine that he acquired from persons he had met in prison. One of those persons was Brian Charlesworth.

Several months after his release, Farber contacted Albrecht to perform legal services in connection with real estate purchases for investors that Farber had recruited. The investment process involved Farber bringing Albrecht money in the form of cash, cashier's checks, and money orders, which would in turn be deposited into Albrecht's client trust account and later used to fund property purchases. Albrecht performed some level of legal services in connection with four real estate deals, but did so without the benefit of a fee agreement. Albrecht was paid for the legal services he performed; however, he does not recall the manner or the amounts of these payments. One of these four real estate deals involved Brian Charlesworth – then using the name McGuire. Albrecht met Charlesworth briefly on one occasion in the course of this real estate deal.

Because the arrangement between Farber and Albrecht involved frequent use of Albrecht's client trust account, on May 1, 1989, after closing the four transactions noted above, Albrecht opened a new client trust account to handle the Farber real estate investment transactions – the Farber Ltd. Trust Account. The process of depositing cash and cashier checks in amounts less than \$10,000, which occurred in two of the Farber real estate purchases, continued. Less than two weeks after the account was opened, Albrecht wrote a check to Farber for more than \$58,000 – almost the entire amount of money in the account. Immediately thereafter, Farber left the state. Albrecht has had no significant contact with Farber since that time.

A month or so after Farber left the state, Charlesworth approached Albrecht asking Albrecht to perform the same services for him as Albrecht had done for Farber. Albrecht agreed. Throughout the relationship between Albrecht and Charlesworth, Albrecht made various deposits for Charlesworth in the form of cash and cashier's checks. Virtually all of these deposits were structured in amounts less than \$10,000. Albrecht used the Farber Trust Account.<sup>2</sup> Four real estate transactions were closed using this arrangement. Albrecht at no time performed any legal services for Charlesworth or otherwise assisted in closing the transactions.

On or about July 18, 1989, Charlesworth brought Albrecht the sum of \$76,000 in small cashier's checks, made payable to Albrecht, and all dated on or about July 17. The deposit of these cashier's checks was found to have been structured to take place over a period of two months, with each deposit in an amount of less than \$10,000.<sup>3</sup> Albrecht's action to structure

---

<sup>2</sup> The court found this to be a distinction from how the Farber deposits were made. This panel agrees. Additionally, as will be discussed in greater detail below, the panel questions the use of the Farber Trust Account for the Charlesworth real estate dealings.

<sup>3</sup> At the time of the original hearing in the underlying case, Albrecht offered no explanation for structuring the July 17, 1989 cashier check deposits in amounts less than \$10,000 and/or over a two-month period. At the time of the present hearing, Albrecht had absolutely no recollection of the transactions at issue.

deposits of the cashier checks in this manner was a significant factor in the court's determination that Albrecht "knew that Charlesworth's [McGuire's] money came from unlawful activity and that it was being cycled through his trust account to disguise that fact from the authorities."

#### Procedural Posture.

On or about May 18, 2003, Charlesworth wrote to Justice Robert Durham. Justice Durham was the sole dissenting judge in the Albrecht disbarment decision. This letter was received as evidence by this panel and is attached to this opinion as Exhibit 101. In the letter Charlesworth asserted that Albrecht had no reason to know that he (Charlesworth) was involved in drug activities or any money laundering scheme. He further asserted that Albrecht was in no way involved in structuring the deposits of the July 17, 1989 cashier's checks as found by the Supreme Court.

The Charlesworth letter to Justice Durham led to a formal motion by Albrecht's attorney, Marc Blackman, to reopen the disciplinary proceeding and vacate the order of disbarment. The Bar responded in opposition to Albrecht's motion in September 2003. On November 18, 2003, the court denied the motion to reopen the entire disciplinary proceeding, but referred the case to the Disciplinary Board for assignment to a trial panel to conduct a supplemental hearing on the record to determine the facts "respecting the making of Charlesworth's statements in the affidavit and the letter and the truth of those statements." Further, "the trial panel will file the record and its findings of fact respecting the Charlesworth statements with the court. Any party who is dissatisfied with the findings of fact of the trial panel may file an objection with [the Supreme Court] court within 28 days after filing by the trial panel. Any party wishing to file a response to an objection may file such response within 21 days of the filing of the objection."

#### The Hearing.

On August 11, 2004, this matter came before a trial panel consisting of Susan G. Bischoff, Chair, Albert J. Bannon, Esq., and public member Howard Freedman. Martha M. Hicks, Assistant Disciplinary Counsel, and Charles S. Best represented the Oregon State Bar. Marc D. Blackman represented Mr. Albrecht.

### DISCUSSION AND FINDINGS OF FACT

#### The Charlesworth Letter.

At the time of the original hearing in this matter, Charlesworth was in prison and/or awaiting a final appellate decision on his drug dealing and money laundering activities. Because of this and other possible 5th Amendment considerations pending at the time, Charlesworth declined to testify at the original hearing and offer the mitigating information included in his May 2003 letter. He was also fearful of retaliatory conduct by law enforcement officials in light of his refusal to offer evidence against individuals with whom he had engaged in criminal conduct over the years.

According to Charlesworth, upon his release from Federal Prison sometime in late 2002, he inquired about Albrecht. In or around this same time period Albrecht learned that Charlesworth was out of prison on parole and took steps to contact Charlesworth through his parole officer.<sup>4</sup> In early 2003, a former member of the bar, Larry Olstad, contacted Charlesworth about a construction project that Charlesworth might be interested in working on. Charlesworth and Olstad had known each other professionally and socially prior to Charlesworth's federal incarceration. In the course of discussing the construction project, Olstad gave Charlesworth a copy of the March 2002 Supreme Court opinion disbaring Albrecht. The two discussed Albrecht on two or three occasions.

Shortly after receiving a copy of the Albrecht opinion, Charlesworth contacted Albrecht about writing a letter to the court on Albrecht's behalf. There was little evidence offered as to the nature of this meeting or the specifics of any discussion. The only evidence regarding the letter itself reveals that Charlesworth wrote the letter with some "grammatical assistance" from his girlfriend at the time. It should be noted here, that given Charlesworth's demeanor at the hearing, educational background, ability to answer questions presented to him, the panel finds it difficult to accept Charlesworth's statement that he had little if any help preparing the letter attached as Exhibit 101. The only evidence offered relative to Albrecht's involvement with the letter was that he did not assist in writing it, and he didn't believe a letter from Charlesworth would be of any benefit to Albrecht. The panel finds that Albrecht did not solicit Charlesworth to write the letter or take any part in its preparation.

The Charlesworth affidavit filed in conjunction with Albrecht's motion to reopen the disciplinary case contains no testimony of substance and will not be addressed here.

#### Truth of Charlesworth's Letter and Hearing Testimony.

The panel does not find Brian Charlesworth to be a credible witness. We reach this conclusion based on a variety of factors. First, it is undisputed that Charlesworth is a convicted felon and has spent a good deal of his life engaging in criminal conduct, manipulating the truth to his personal benefit, falsifying documents for personal gain, avoiding financial responsibilities associated with his conduct, and hiding assets.

Second, and as noted above, the panel questions whether Charlesworth possesses the skill and ability to craft the letter and thus doubts that Charlesworth was in fact the author, or primary author, of the letter. Additionally, the letter itself contains a number of misstatements or misrepresentations. Charlesworth's statements in the letter claiming he has reformed his unlawful ways is contrary to the evidence showing that he has violated his parole on more than one occasion since the May 2003 letter. The assertion in the letter that he has never used drugs of any kind is contrary to his sworn testimony at the hearing. Another example, and the most important one from the panel's standpoint, is the statement indicating that Albrecht was paid nothing for handling the multitude of banking transactions. Charlesworth did not admit to the

---

<sup>4</sup> This isolated testimony about Albrecht's efforts to contact Charlesworth through his parole officer in early 2003 is the only evidence suggesting that Albrecht initiated any contact with or the possible assistance of Charlesworth prior to Charlesworth's letter of May 2003.

falsity of this statement until it was pointed out to him that over a relatively short period he had paid Albrecht (or Albrecht had paid himself with Charlesworth's authorization) over \$10,000.

It is also undisputed that Charlesworth has never and would never "snitch" on a codefendant or coconspirator. The panel is of the opinion that the same character trait that prompts Charlesworth to avoid turning state's evidence on his criminal colleagues would also prompt him to come forward in an effort to help out a colleague who has been harmed by his actions or criminal conduct. This is especially true where, as in the present case, there is no risk to him personally.

Finally, the factual scenario described by Charlesworth regarding how the July 17, 1989 cashier checks were actually deposited into the Farber trust account is simply not believable. Although Charlesworth asserts he personally held the checks so that Albrecht could not see that they contained the same date, Albrecht would have seen them as he endorsed each of the checks for deposit.

~~Therefore~~ even if the scenario as described by Charlesworth were indeed true, the panel scheme to launder drug money for or on behalf of Charlesworth. The panel reaches this conclusion based on the following facts:

- At the time Charlesworth first approached Albrecht about using his client trust account, he told Albrecht that Farber had taken off with his (Charlesworth's) money - the \$58,200 Albrecht had paid to Farber from the Farber Ltd. Trust account. It is the panel's opinion that prudence and common sense on the part of Albrecht would dictate that he not engage in business with an individual who claims to have an adversarial relationship with an existing client, Farber. At a minimum, the allegation should have raised a red flag and/or been cause to set up a separate trust account for Charlesworth's transactions.
- Albrecht had met Charlesworth on only one occasion when he was approached by Charlesworth to use his trust account. Farber, a person known by Albrecht to have a history of dealing in the sale and trafficking of drugs, had introduced them.
- Albrecht and Charlesworth both claim that Charlesworth appeared to be a successful businessman. Charlesworth did not offer, and Albrecht never asked, how or why a successful businessman would not have banking accounts that could be utilized for the real estate transactions.
- Albrecht was not asked to nor did he perform any legal work for Charlesworth or any of the Charlesworth "investors." Despite this, Albrecht was paid in excess of \$10,000 over a relatively short period of time.
- The cashier checks making up the \$76,000 were all payable to Albrecht. Charlesworth claims that Albrecht did not look at the checks at the time he endorsed them to determine the date of issue, the payee, or the payor. He also claims that

Albrecht did not look at the checks for the purpose of completing a deposit slip, nor apparently when he initialed the slips for cash back. It is not reasonable for an experienced attorney who is aware of the importance of managing client trust accounts to pay so little attention to banking transactions involving a trust account, nor is it reasonable or believable for an attorney to have a complete lack of memory of the number and circumstances surrounding the deposits of the checks.

- Albrecht offered no explanation for the manner in which the July 17, 1989 group of cashier's checks was deposited at the time of the original hearing. He had no recollection of any of the transactions at the August 11, 2004 hearing. His testimony was that his wife handled the books for his law practice, yet she was not called to testify to shed additional light on this series of Charlesworth transactions.
- Charlesworth's statements that he "went out of his way" to avoid Albrecht suspecting him of drug distribution, including calling on Albrecht to leave his office and travel to the bank to meet him on multiple occasions, sometimes more than once per day, would have increased the likelihood of Albrecht becoming suspicious in the eyes of any reasonably intelligent attorney.

#### Standard/Burden of Proof

There was discussion at the hearing as to which party bears the burden of proof, and what standard of proof is necessary given the rather unique procedural posture of the case and role of the trial panel. The panel has concluded that the burden of proof of clear and convincing evidence remains with the Bar. The panel also finds that the Bar has met that burden based upon the record as a whole.<sup>5</sup>

#### CONCLUSION

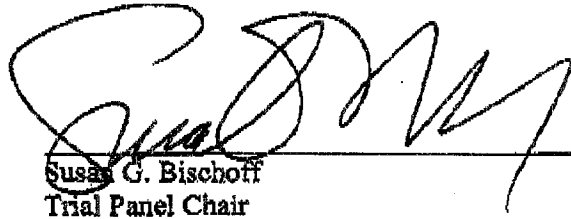
In response to the questions posited by the Supreme Court, the trial panel concludes: (1) Albrecht did not solicit Charlesworth to assist in getting his license to practice law reinstated, nor was he involved in the preparation of the May 2003 letter to Justice Durham; (2) Brian Charlesworth is not a credible witness, and his recitation of facts relating to the July 17, 1989 cashier's checks is not reasonable or believable and is inconsistent with his testimony at the hearing; and (3) even if the facts regarding the deposit of these cashier's checks over a two month period were as asserted by Charlesworth, all objective and reasonable inferences lead to

---


<sup>5</sup> At the request of Albrecht's attorney, the panel agreed to review the underlying record to the extent we felt it necessary to reach a decision in the case. The panel did not review records of the prior hearing beyond those that were admitted into evidence in the current proceeding. In reaching its decisions, the panel relied heavily on the previous factual findings of the court. We have also concluded that except as may be inherently inconsistent with the limited jurisdiction or directions of the court, the panel is bound by the court's previous findings.

the conclusion that it remains highly probable that Albrecht knew the conduct in which he was participating with Charlesworth was designed to launder money received in connection with unlawful activities.

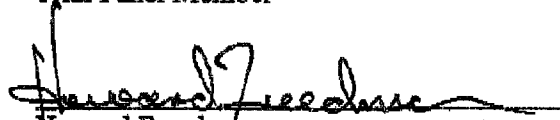
DATED this 10 day of June 2005.



Susan G. Bischoff  
Trial Panel Chair



Albert J. Bannon, Esq.  
Trial Panel Member



Howard Freedman  
Trial Panel Public Member

May 18, 2003

Dear Justice Robert D. Durham,

I am writing to you because you disagreed with the disbarment of Nikolaus Albrecht. The court decision was given to me by another lawyer. You were right. I tricked Mr. Albrecht when I used him to launder money. He could not have known the truth. I am Brian Charlesworth, and I do.

I could not testify before now because of worry over self-incrimination and retaliation by the government while in prison. Now that I am out and the statute of limitations has run on all of my crimes, I am free to talk because I have nothing more to lose or gain by telling the truth. I want to do the right thing.

A few months ago I was released from prison after eleven years. I have lost everything I ever owned, including all the money and the property which I got through drug dealing, and I have paid my debt to society by spending eleven years behind bars. My life of crime is now long gone. I do not drink. I have never taken drugs, but sold. I have a good job. I regularly attend support groups for ex-cons, like Pathfinders. I have a nice girlfriend who I want to marry someday. She helped me write this letter. I want to start life over with a clean slate, but I have one outstanding debt for incriminating an innocent man and totally ruining his life.

After Curt Farber left town with my money, Mr. Farber called me and sent back \$35,000. I told Mr. Albrecht that Mr. Farber left town because of his difficulty in finding employment and respect here. This made sense because Mr. Albrecht had worked to help Farber get his chiropractic license and his real estate license, but was unsuccessful.

I chose to launder cash from drug deals. I told Mr. Albrecht that I would like to continue investing in real estate in the way he had helped Mr. Farber. I knew that Mr. Albrecht would refuse to help me if he suspected that I had drug money. Mr. Farber warned me about this. I went out of my way to make sure that Mr. Albrecht would not suspect anything illegal. I told him that I had made good money owning a foam rubber factory called Universal Foam, which was actually true. I mentioned that I bred and showed English Mastiff dogs, raised Arabian horses, and had a landscaping and tree trimming business, and remodeled and rented houses, all of which was also true. When I came to his office, I dressed in a clean suit and tie, shiny shoes, and drove a late model Cadillac. I told him that I wanted privacy for personal reasons and did not want anyone knowing the kind of property I bought. I asked him to hold my money in an account until I was ready to purchase property.

Mr. Albrecht had little to do with the transactions or the deposits of the funds. It was routine for him, but important to me. I paid him nothing. He was happy to help in what he believed was a good cause. His wife was a real estate broker and had an adjacent office. She also worked in Mr. Albrecht's office and told me that she did his books and deposits. On July 17, 1989 I laundered \$76,000 in cash by buying cashiers checks in small amounts, most for \$3,000, in the name of David

Δ Exh 101



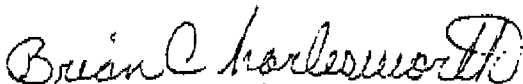
McGuire, which was my alias at that time. The next day I brought them to Mr. Albrecht's office and asked him to hold the money in his trust account for a future property purchase. Mr. Albrecht wrote a receipt for \$76,000 and dated it for July 18 and gave it to me. After I left his office I thought that he might become suspicious when he noticed that I bought all of the cashier checks on the same date, most for \$3,000, and so I returned to his office to take back the checks. His wife was there, but he had gone off to court. The checks were still in her desk. I told her that I had received bad news about the property and needed most of the money returned. I gave her back the receipt of \$76,000 which Mr. Albrecht had written a short while earlier, and took back the checks. This is why the receipt for \$76,000 was in his file when he turned it over to the Bar, otherwise I would have destroyed it. I left her two \$3,000 checks and asked her to deposit them into Mr. Albrecht's trust account.

Then I had the problem of what to do with the rest of the checks. I had no bank account of my own. If I cashed the checks and bought new ones, it would take extra time, waste fees, and could cause suspicion.

The next day I called Mr. Albrecht and asked him to meet me at his bank, which was across the street from his office. I told him that I wanted to meet him at the bank because I wanted to deposit a cashier check and take some cash back to pay a worker. I used this as an excuse to meet him at the bank instead of his office. I held the checks and then handed them to the teller. This way Mr. Albrecht did not have a chance to notice that all were dated July 17. The first time that I did this, on July 19, I brought only one \$3,000 check to the bank, just to see how it would work. It worked, and I came back the same day with two more. With later deposits, I brought two or three checks. A few times I called him and told him that I was already at the bank, and asked him to come there. On September 8, 1989 I brought \$8,750 in cash to his office and told him that I had won it in a poker game, which was not true. Once or twice, when Mr. Albrecht was away, I left some checks with his wife to deposit.

I deposited most of the \$76,000 that way between July 18 and September 11, 1989. The only reason I did this was to fool Mr. Albrecht. I used a few of the original checks to pay for other debts, and this is why the total deposits by September 11, 1989 were less than the original receipt for \$76,000 dated July 18, 1989.

By deceiving Mr. Albrecht and the court I ruined the long career of a good lawyer and destroyed his life. I am sorry for having injured others by my crimes but I have paid for those with eleven years of my life. Now I sincerely want to make right this tragic case which is also all my fault.



Brian Charlesworth  
P.O. Box 5284  
Portland, OR 97208-5284