

Although it has not been urged by appellant, it appears likely that the legislature intended that the word "seller" include both the husband and the wife where they were joint owners. Since we have held that the wife was not the husband's agent in this case, it would follow that the broker's contract would not be enforceable against either spouse if the above interpretation is correct. This result would be consistent with a similar holding based on *Pasley*, since it is undisputed that the broker in this case was fully aware of the fact that the husband and wife were joint owners.

In my opinion, neither of the appellants should be held liable on the real estate broker's contract involved herein.



The ALASKA BAR ASSOCIATION,
Plaintiff,

v.

Quincy BENTON, Respondent.

No. 817.

Supreme Court of Alaska.

Aug. 21, 1967.

Disciplinary proceeding was brought against attorney. The Supreme Court of Alaska held that conviction on plea of guilty of grand larceny in State of Washington justifies disbarment.

Attorney disbarred.

1. Attorney and Client ⚖️60

Use of word "total" or word "permanent" in order of disbarment adds no additional force or effect to disbarment, since Alaska Bar Rule does not establish degrees of disbarment. Alaska Bar Rules, rule 1, § 16.

2. Attorney and Client ⚖️60

Effect of order of disbarment is that subject is removed from rolls as a member of Bar with accompanying legal conse-

quences and remains in that status unless and until he has been reinstated in accordance with procedure provided for in Alaska Bar Rule. Alaska Bar Rules, rule 1, § 16.

3. Attorney and Client ⚖️61

Effect of order of disbarment is not to create total or permanent incapacity for attorney to be reinstated as member of the Bar, since Alaska Bar Rule provides for reinstatement after disbarment under same procedure as for reinstatement after suspension for a year or more. Alaska Bar Rules, rule 1, § 16.

4. Attorney and Client ⚖️61

If disbarred attorney, who has been convicted of grand larceny, should be pardoned or otherwise freed of the obligation of his sentence within two years or possibly less, and there is proof of reformed conduct, he may be reinstated to the Bar in less than five years. Alaska Bar Rules, rule 1, § 16.

5. Attorney and Client ⚖️39

Conviction on plea of guilty of grand larceny in the State of Washington justifies disbarment. Alaska Bar Rules, rule 1, §§ 13(c), 16.

James N. Wanamaker, Clouse & Wanamaker, Anchorage, for plaintiff.

No appearance by or on behalf of respondent.

OPINION

PER CURIAM.

On July 15, 1965, the respondent member of the Alaska Bar was convicted on a plea of guilty of the crime of grand larceny in the State of Washington. It was the judgment of the Superior Court of King County, Washington that respondent serve a term of not more than fifteen years and a minimum term to be fixed by the Board of Prison Terms and Paroles and that the sentence be suspended on condition: (1) That he be under the charge of a parole officer and follow implicitly the instructions of the Board of Prison Terms and Paroles and the rules and regulations promulgated by the

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Board for his conduct, during the term of the sentence, and (2) That he serve two months in King County Jail, with credit for time already served and thereafter make restitution and remain under the care of a psychiatrist as long as necessary.

On August 19, 1965, a Trial Committee of three of the Alaska Bar Association found that respondent's conduct required the imposition of discipline and unanimously recommended that he "be disbarred from the further practice of law; that his certificate to practice be revoked".

On December 17, 1966, the Board of Governors, by the affirmative vote of four members recommended to this court that the respondent be suspended from the practice of law for a period of five years. Two members of the Board dissented from the recommendation stating that in their belief the "Board should adopt the Trial Committee's recommendation of total disbarment."

Pursuant to Section 13(c) of Rule I of the Alaska Bar Rules, the matter was set for hearing before this court on March 22, 1967, for consideration of the question of whether the recommendation of the Board or the recommendation of the Trial Committee should be adopted by this court, in view of the fact that respondent's suspended sentence placed him in a state of parole supervision for a maximum period of fifteen years.

Respondent did not file a memorandum as he had been invited to do and did not appear for the hearing on March 22, 1967. The Alaska Bar Association filed a memorandum and made its appearance. It pointed out that it was the view of a majority of the Board that:

(1) Because of the provision of Sec. 16 of Rule I of the Alaska Bar Rules which requires clear and convincing proof of eligibility for reinstatement, a five year suspension would have the same effect as "total disbarment" if respondent's conduct did not improve.

(2) The door should not be entirely closed upon the possibility that respondent would reform his conduct to the extent that he would be a worthy member of the Alaska Bar Association.

State Bar Counsel pointed out that should respondent complete the five years of suspension and reapply for admission, the question of whether or not he was still on parole would be a pertinent matter to be considered by the trial committee hearing his petition for reinstatement, together with facts concerning his conduct during the intervening five years.

It appears that the concern of the Board that the door would be closed on the possibility of readmission of respondent in the event he should reform his conduct and become a worthy member of the Alaska Bar is based on a misinterpretation of the effect of an order of disbarment. It is noted that disbarment is described as "total disbarment" and used in a context which suggests that the Board is of the belief that an order of disbarment would forever foreclose respondent from applying for readmission and that this effect would be obviated by an order of suspension.

[1,2] The fact is that "total" adds no additional force or effect to "disbarment". Nor does "permanent", which is often used in conjunction with "disbarment", add any force or effect to an order of disbarment. Alaska Bar Rule I does not establish degrees of disbarment. The effect of an order of disbarment is that the subject is removed from the rolls as a member of the Bar with the accompanying legal consequences and remains in that status unless and until he is reinstated in accordance with the procedure provided for in section 16 of Alaska Bar Rule I.¹

[3,4] The effect of an order of disbarment is not to create a total or permanent incapacity for the subject to be reinstated as a member of the Bar. Section 16

1. In re Oliver, 97 Utah 1, 89 P.2d 229, 234 (1939) summarizing Kepler v. State Bar, 216 Cal. 52, 13 P.2d 509 (1932);

State ex rel. Neb. State Bar Ass'n v. Butterfield, 172 Neb. 645, 111 N.W.2d 543, 546 (1961).

of Rule I provides for reinstatement after disbarment under the same procedure as for reinstatement after suspension for a year or more. (See first paragraph of section 16 of Rule I.) No maximum period of time is established as a condition precedent to application for reinstatement after disbarment. Conceivably, respondent in this case could be pardoned or otherwise freed of the obligation of his sentence in the State of Washington within two years or possibly less. That development, plus proof of reformed conduct could result in his reinstatement in the Bar in less than five years.²

[5] Because the court is of the opinion that the recommendation of the Trial Committee is realistic and should be followed, it is ordered that respondent be disbarred.



Harry A. JOHNS, Cross-Appellant,

v.

STATE of Alaska, DEPARTMENT OF HIGHWAYS and Employers Liability Assurance Corporation, a foreign insurance corporation, and the Alaska Workmen's Compensation Board, Cross-Appellees.

Nos. 732, 743.

Supreme Court of Alaska.

July 27, 1967.

Workmen's compensation proceeding. Cross appeal by claimant from orders of the Superior Court, Third Judicial District, Edward V. Davis, J., denying a writ of execution and an order awarding attorney fees to claimant. The Supreme Court, Rabinowitz, J., held that where workmen's compensation claimant who was awarded compensation made no effort to use statutory method of enforcing an award

against defaulting employer, Superior Court correctly denied claimant's motion for writ of execution in employer's appeal to Superior Court from board's award.

Affirmed.

1. Workmen's Compensation ⇨1894

Workmen's compensation claimant's insolvency or financial irresponsibility in and of itself is not sufficient ground upon which to base finding of "irreparable injury" necessary to stay payment of amounts required by an award pending final decision. AS 23.30.125(c).

2. Workmen's Compensation ⇨1894

To warrant the superior court's enjoining of payments in whole, or in part, the employer must produce evidence not only of workmen's compensation claimant's insolvency or financial irresponsibility but must also demonstrate the existence of a probability that the merits of the appeal will be decided adversely to the claimant. AS 23.30.125(c).

3. Workmen's Compensation ⇨1894

Evidence pertaining to claimant's financial irresponsibility or insolvency was not sufficient to warrant a finding of "irreparable damage" necessary for stay of payment of workmen's compensation award pending appeal. AS 23.30.125(c).

4. Action ⇨68

Statute providing that the order of the court allowing a stay shall contain specific findings, based upon evidence, that irreparable damage would result to employer unless stay was granted is applicable solely to injunction proceedings in the superior court.

5. Workmen's Compensation ⇨1029

The exclusive method of enforcing workmen's compensation orders is provided for by statute pertaining to collection of defaulted payments. AS 23.30.125(c, e), 23.30.170.

2. See Application of Lonergan, 23 Wash. 2d 767, 162 P.2d 289 (1945), where petitioner was reinstated in the Bar four

years after his sentence for mail fraud had expired.