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LAW OFFICES OF TIA LUCCI

TO: Tia Lucci

From: Applicant

Subject: In the Matter of Abigail Watkins

Date: July 24, 2018

Tia,

Please find attached the requested persuasive brief you asked me to draft regarding Ms. Watkin's pending charges. The facts have been omitted as you requested.

I. FACTUAL BACKGROUND:

Omitted.

ARGUMENT:

I. INTRODUCTION

Ms. Watkins recently accepted a plea to a single count of inside trading that occurred two years ago. However, despite Ms. Watkins' plea regarding potential insider trading, the facts and circumstances regarding the the trading do not support a finding of moral turpitude. The burden to support a determination of moral turpitude has not been met. Without such clear and convincing evidence, the Ms. Watkins' conduct and testimony may not sufficiently justify any determination of moral turpitude. Her actions were neither intentional, nor willful for purposes of the meaning of "moral turpitude."

II. ARGUMENT

1) The Conduct Underlying the Plea Does Not Justify a Finding of Moral Turpitude.

Any determination of moral turpitude must be found by clear and convincing evidence. (In the Matter of Harold Salas, Review Dept. of State Bar Court, 2001). This burden rests upon the State Bar seeking to disbar the accused. Here, the State Bar has failed to meet this burden to establish a finding of moral turpitude sufficient to disbar Ms. Abigail Watkins.

A) Because the Information Considered by Watkins When Purchasing the Stock was Public Information At the Time of Purchase, Watkins Lacks "Insider" Statuts Sufficient to Constitute Insider Trading

While there is no precise definition available to define what constitutes conduct that involves moral turpitude, the Rules of Professional Responsibility have previously defined moral turpitude to be "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 a man and a man." (Chadwick v. State Bar, Col. Supreme Court, 1989). Moral turpitude has previously been defined as any crime or misconduct without excuse. As stated in Chadwick, the "meaning and test is the same whether the dishonest or immoral act is a felony, misdemeanor, or no crime at all."

Pursuant to the definition provided under *Chadwick*, Ms. Watkins lacked the sufficient intent to commit an act involving moral turpitude. Specifically, her actions do not sufficiently constitute the "willfulness" required to commit an act of moral turpitude within the meaning of Business Professions Code section 6101. Ms. Watkins' purchase of stock was incidental to any insider information she learned. Rather, her intent to purchase stock existed before the purchase and subsequent information she acquired. In *Chadwick*, Plaintiff was convicted for insider trading under United States Code Section 78(j). Chadwick acquired material, nonpublic information regarding a tender offer involving the Brunswick Corp. from Martin Cooper, a banker at Whittaker. He then purchased stock options for himself. The public announcement occurred after the purchase. Chadwick admitted that he had

relied upon information that was material and nonpublic before making the purchase (Chadwick).

Here, Ms. Watkins is an intellectual property attorney who has been a member of the state bar since 1991. She is also admitted to the state bars of Virginia and the District of Columbia. Previously, Ms. Watkins worked at Wakefield & Lester. As an attorney at W&L, Ms. Watkins represented Fort Software with its general start-up formalities, as well as the subsequent public status it acquired. As such, Ms. Watkins had been following Fort and its ventures. As an IP attorney, Ms. Watkins was not only familiar with the practice of selling and purchasing stock, but her knowledge and interest of stocks induced her desire to purchase stock. Though Ms. Watkins personally supervised and represented Fort, she had always intended to purchase its stock (Hearing, July 20, 2018). Specifically, "everything [i] had read online about Fort, the stock recommendations from rating agencies, were very positive on Fort. At that point, the patents were public information." (Id.) Unlike Chadwick, Ms. Watkins did not possess material information that was nonpublic, nor did she use this to base the decision to purchase the stock. Though she was contacted by Samatha Darmond, general counsel for Fort, the conversation was limited to general matters related to Ms. Watkins' previous representation of Fort. Darmond indicated that a large company had been planning to acquire Fort and that Darmond was coordinating the requests to proceed with Fort's merger and patents. She wanted to share patent files with the large companies' counsel, and therefore requested documents from Ms. Watkins' previous representation. Watkins' communication with Darmond was limited only to the request for documents, as all attorneys generally experience. While it is undoubtedly questionable timing, due to the short span within which Ms. Watkins purchased stock and received a profit, Ms. Watkins did so incidentally.

As such, no malicious intent was present.

The Burden to Establish By Clear and Convincing Evidence is Required to Justify A Finding of Moral Turpitude

B) Acceptance of the Plea Does Not Suffice to Show the Requisite Conduct to Justify a Determination of Moral Turpitude.

By entering a plea agreement, Watkins did not admit or concede to committing acts involving moral turpitude. Specifically, Watkins was advised by counsel to accept the deal. By doing so, she received probation instead of jail time. In Chadwick, the State Bar found his actions to be inexcusable since he possessed the intent while purchasing the stock. While he, like Watkins, accepted the plea to avoid jail time, his actions were assessed at the time he purchased the stock, rather than the violations to which he plead guilty. Furthermore, Chadwick's actions and the circumstances surrounding the charges brought against him supported the offense, and his related conduct to purchasing the act with insider information involved moral turpitude.

Conversely, Watkins cannot be compared to Chadwick on such a basis because she did not purchase stock with insider information. Bar has not met its burden to contradict this. Therefore, charges cannot be brought.

2) Watkins' testimony at the hearing does not justify a finding of moral turpitude.

In Salas, it was held that any determination of moral turp. must be found by clear and convincing evidence. An honest or mistaken belief does not signal a lack of candor, which should not be based on memory of events.

Here, Ms. Watkins' has been concluded as having possessed insider information on various meritless grounds. As stated in her testimony, she was highly medicated at the time in question. However, while her medication may have bearing on her present physical condition, her mental state was not at all impacted on grounds of incapacity. Furthermore, her failure to remember would not render her guilty for purposes of convicting her for any act involving moral turpitude.

In Salas, Plaintiff, like Watkins, entered into a plea agreement for conspiracy and other claims sufficiently involving moral turpitude. However, while the information presented indicated circumstances that may possibly have rendered grounds to indicate the existence of moral turpitude, the State failed to meet its required burden of proving moral turpitude with clear and convincing evidence of false testimony. Specifically, the state bears the burden to prove moral turpitude by clear and convincing evidence; this includes a showing that Respondent testified falsely and was guilty.

Here, like in Salas, there is no logical basis to conclude that such finding exist. While Ms. Watkins was undeniably in a condition that would render her capacity and mental ability or reasonableness questionable, the state has failed to meet its burden to show by clear and convincing evidence, that Ms. Watkins use of Percocet and other medications she received from a surgery, were sufficiently impairing her ability to act with due diligence or with competence and candor. Furthermore, the circumstances and facts are the basis for the pending actions took place over the course of 2+ years from the current date. It would be reasonable to lack memory regarding an event that took place 2 years ago for any individual, regardless of capacity. Furthermore, at the time of surgery, Watkins was not representing Fort and therefore had no access to confidential information. There are many logical explanations to justify why Ms Watkins cannot remember; as such, the action is doubtful.

The facts and circumstances surrounding the claims do not support any finding of moral turpitude. Rather, all evidence that has been used by the State in this action is based upon inferences, rather than the required clear and convincing standard the State bears the burden to show.

Conclusion:

A finding of moral turpitude is unjustified given the present circumstances. Furthermore, the burden to justify a finding of moral turpitude against Ms. Watkins has not been met. Ms. Watkins testimony and conduct are insufficient to justify any determination of moral turpitude and do not, without any additional evidence, support any finding as such. Accordingly, we ask that the claims against Ms. Watkins be dropped.

Respectfully Submitted,

Applicant.

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