

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

TIMOTHY J FITZGERALD,

Attorney-Respondent.

No. 6208418

)
)
)
)
)
)
)
)
)
)

Supreme Court No. M.R. 029189

Commission No. 2017PR00116

NOTICE OF FILING

PLEASE TAKE NOTICE that on January 8th, 2021, an Electronic copy of the

Respondent's AMENDED ANSWER TO THE COMPLAINT, was submitted to the Clerk of
the Attorney Registration and Disciplinary Commission in Chicago, Illinois for filing.

Respectfully ,

/s/Timothy J Fitzgerald
Timothy J Fitzgerald

Timothy J Fitzgerald
Pro Se
14368 Maple
New Buffalo, Illinois 49117
269.586.2341
tf@chcpslaw.com

FILED
1/8/2021 2:34 PM
ARDC Clerk

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:)	
)	
TIMOTHY J FITZGERALD,)	Supreme Court No. M.R. 029189
)	
Attorney-Respondent.)	Commission No. 2017PR00116
)	
No. 6208418)	
)	

AMENDED ANSWER TO THE COMMISSION COMPLAINT

NOW COMES, Timothy J Fitzgerald, Pro Se and Amends his answer to meet the request of the Attorney of the Commission to wit Fitzgerald answers each and every allegation (sic) or statement/paragraph which is contained within the Complaint with the specificity order. As to the original number paragraph

COUNT I

1. At all times alleged in this complaint, Section 333.7401(2)(d)(i) of the Michigan Compiled Laws made it a felony offense, punishable by up to 15 years imprisonment and a fine of up to \$10,000,000, to manufacture, create, deliver, or possess with intent to manufacture, create, or deliver marijuana, if the amount involved was 45 kilograms or more, or 200 or more plants.

FILED
1/8/2021 2:34 PM
ARDC Clerk

Answer: Admit that the above is a restatement of the Michigan Compiled Laws under which the Respondent was charged but offers no acts substantiating unprofessional conduct.

2. At all times alleged in this complaint, Section 333.7401(2)(d)(iii) of the Michigan Compiled Laws made it a felony offense, punishable by up to four years imprisonment and a fine of up to \$20,000, to manufacture, create, deliver, or possess with intent to manufacture, create or deliver marijuana if the amount of marijuana is less than 5 kilograms or fewer than 20 plants.

Answer: Admit that the above is a restatement of the Michigan Compiled Laws under which the Respondent was charged but offers no acts substantiating unprofessional conduct.

3. At all times alleged in this complaint, Sections 333.7405(1)(d) and 333.7406 of the Michigan Compiled Laws, in relevant part, made it a misdemeanor offense, punishable by up to two years imprisonment and a fine of up to \$25,000, to knowingly or intentionally keep or maintain a dwelling that is frequented by persons using controlled substances for the purpose of using controlled or keeping or selling controlled substances.

Answer: Admit that the above is a restatement of the Michigan Compiled Laws under which the Respondent was charged but offers no acts substantiating unprofessional conduct.

4. In or around October or November 2015, David Heyn, Jr. ("Heyn") owned property located at 13212 Red Arrow Highway, Sawyer, Chikaming Township, Berrien County, Michigan ("Sawyer property"). During that same time, Heyn rented the Sawyer property to Billy Crum ("Crum"). The Sawyer property included a residential, single-story house, as well as an unattached, garage-like structure. While renting the Sawyer property, Crum used the unattached structure to illegally cultivate and manufacture marijuana plants, in what is commonly referred to as an indoor marijuana grow operation.

Answer: The Respondent neither Admits nor Denied the facts/allegations contained within paragraph four (4) in that the Respondent neither had nor has he knowledge of ownership nor the description of the above property. Further the testimony offered by Mr. Crum at trial was that he was a licensed Caregiver under the Michigan Medical Marijuana Program at the 13212 Red Arrow, Sawyer, MI

5. In or around October or November 2015, Respondent learned of Crum's indoor marijuana grow operation, and contacted Crum to inquire about purchasing the operation at the Sawyer property.

Answer: Denied, contact for purchasing the facility was between Mr. Crum and Mr. Finnigan

6. Sometime between November and December 2015, Respondent, along with Thomas Fitzgerald, and a third individual known only as Eugene, agreed to

purchase the marijuana grow operation from Crum for \$100,000, which they paid through two separate cash payments of \$25,000, and \$75,000. The sale included Crum's entire marijuana grow operation, including equipment, marijuana plants, and related inventory.

Answer: Denied. The Respondent has never had finances to be able to contribute to any alleged purchase price. Thomas Fitzgerald (unrelated to the Respondent) while known to the Charging authorities was never investigated, interviewed nor charged with any violation of the above listed Michigan Compiled Laws (MCL) or any other MCLs. Mr. Thomas Fitzgerald never entered into an agreement with Crum for the purchase of any Marijuana facility anywhere. More to the point of this pending matter before this Hearing Board, “Eugene” was not an unknown, any reading of the trial transcripts demonstrates that Eugene Finnigan testified at trial that he and he alone acquired the Marijuana facility in Sawyer, MI. More importantly the above allegation is patently a misrepresentation of the Trial testimony and demonstrates that the former attorney for the Commission failed to review the record before filing this Complaint or the Interim Suspension which has left the Respondent without means to support his wife and himself.

7. Between approximately December 2015 through June 9, 2016, Respondent operated the marijuana grow operation at the Sawyer property. Respondent also maintained contact with Crum, who visited the Sawyer property on several

occasions to assist Respondent with the operation.

Answer: Denied that Respondent operated the grow operation at Sawyer, MI. No record exist that suggest that when Crum “assisted” operations at the Sawyer property that there were more plants that are permitted under the Rules of the Michigan Medical Marijuana Program.

8. On June 9, 2016, in furtherance of its criminal investigation, the Berrien County Sheriffs Office Narcotics Unit executed a search warrant for illegal narcotics and other related items at the unattached, garage-like structure on the Sawyer property. During the execution of the search warrant, officers located and seized 241 potted marijuana plants, 3.6 pounds of dried marijuana, grow lights, fans, work tables, power tools, a scale, a pH meter, and other miscellaneous marijuana growing equipment, as well as marijuana growing instructions, and a calendar related to Respondent's indoor marijuana grow operation.

Answer: Have no knowledge of the conduct of Sheriff Office Narcotics Unit nor items seized June 9, 2016. Further, it was not Respondent’s calendar and it was not Respondent grow operation.

9. Following the execution of the search warrant, officers with the Berrien County Sheriffs Office Narcotics Unit contacted Heyn in furtherance of

their investigation into the marijuana grow operation. Heyn confirmed that he owned the Sawyer property, and rented the property out to tenants. Heyn also provided officers with the copy of a check he received as rent payment for the Sawyer property. The check copy Heyn provided to officers was payable to Heyn in the amount of \$1,200, and showed "March-April" in the memo line, "T. Fitzgerald" in the name section, and the signature of "Timothy Fitzgerald" on the signature line.

Answer :Admit

10. On February 2, 2017, Magistrate Steve Doak of the District Court of Berrien County, Michigan, issued an arrest warrant for Respondent based on the information gathered in the criminal investigation, and set an interim cash bond for Respondent at \$2,500. On or around March 28, 2017, Respondent was arrested, and posted the required interim cash bond.

Answer Admit in part /Denied in part. Admit that I was seized from my home on March 28, 2017 10 months after Respondent's refusal to give confidential/privileged information about a client, Eugene Finnigan. I have no knowledge as to an Arrest Warrant or the investigation leading to that Arrest Warrant.

11. On June 8, 2017, following a May 15, 2017 preliminary hearing, the Berrien County Prosecuting Attorney's Office charged Respondent with

criminal offenses in a three- count information in the Second Circuit Court of Berrien County, Michigan, in relation to the marijuana grow operation and items seized at the Sawyer property. The matter was captioned *The People of the State of Michigan v. Timothy J Fitzgerald*, docket number 2017-000374-FH, and assigned to the Hon. Charles T. LaSata ("Judge LaSata"). Count One of the information charged Respondent with the felony offense of manufacturing over 200 plants of marijuana on or about June 9, 2016, in violation of Section 333.7401(2)(d)(i) of the Michigan Compiled Laws. Count Two charged Respondent with the felony offense of possession with intent to deliver marijuana on or about June 9, 2016, in violation of Section 333.7401(2)(d)(iii) of the Michigan Compiled Laws. Count Three charged Respondent with the misdemeanor offense of maintaining a drug house on or about June 9, 2016, in violation of Sections 333.7405(1)(d) and 333.7406 of the Michigan Compiled Laws. Respondent pleaded not guilty to all counts.

Answer: Admit

12 On September 15, 2017, following a two-day jury trial, the jury found Respondent guilty on all counts of the information. On October 16, 2017, Judge LaSata sentenced Respondent to 365 days in the Berrien County jail on Count One, and 180 days in the Berrien County jail on Counts Two and Three, along with court fines, fees and costs of \$2,008.00, with all sentences to run concurrently.

Answer: Admit was found guilty/Denied 365 days in the Berrien County Jail was sentenced to 180 in BCJ and 180 days tethered at home.

13 By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. Committing a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in other respects, by conduct including committing and being convicted of the offenses of manufacturing over 200 plants of marijuana, possession with intent to deliver marijuana, and maintaining a drug house, in violation of MCL 333.7401(2)(d)(i), MCL 333.7401(2)(d)(iii), MCL 333.7405(1)(d), and MCL 333.7406, in violation of Rule 8.4(b) of the Illinois Rules of Professional Conduct (2010);

Answer: Denies he committed a Criminal act by writing a check for rent when directed to do so by a client who provided the funds and was out of the Jurisdiction for an activity, he believed was permitted under the Michigan Medical Marijuana Program. Further, the fiction or prosecution's theory at trial was that Respondent aided and abetted in the operation. Respondent appealed to the Michigan Supreme Court on this issue and other issues, but the Appeal application was denied by the Michigan Supreme Court because it was not persuaded that the question presented should be reviewed.

Respectfully Submitted,

/s/Timothy Fitzgerald

Timothy J Fitzgerald