



Bylaws/Code of Ethics Violation Complaint Before the
AMERICAN NUMISMATIC ASSOCIATION

In the Matter of

DWIGHT N. MANLEY,

Complainant

and

DONALD H. KAGIN

Respondent.

FINDINGS, CONCLUSION AND DETERMINATION OF THE AMERICAN NUMISMATIC
ASSOCIATION BOARD OF GOVERNORS

This matter involves a complaint by Dwight N. Manley (AManley@), an ANA life member, against Donald H. Kagin (AKagin@), an ANA life member and member of the American Numismatic Association (“ANA”) Board of Governors, alleging that Kagin violated the ANA’s Bylaws and Codes of Ethics, most particularly the Board Member Code of Ethics. A hearing was held on May 29, 2007 in Long Beach, California at which time both parties were provided the opportunity to present witnesses and evidence supporting the positions taken in the complaint to the ANA Board of Governors¹. The parties were given a full and fair opportunity to present all evidence that they

¹ Since this complaint involved Governor Donald H. Kagin, Kagin was recused from participating and voting in this matter as a member of the Board. Governor M. Remy Bourne had been scheduled to be out of the country before

desired, whether testimonial or documentary, at the time of the hearing with issues being resolved in such a way that the Board had an opportunity to fully understand the facts underlying the parties' claims and positions.

As a result of the evidence presented to the ANA Board at the hearing, the Board makes the following Findings, Conclusions and Determination:

FINDINGS

In 2000, Manley, using three bidder numbers, purchased the vast majority of Blake & Company Bars available for sale at an SS Central America auction conducted by Sotheby's in New York, NY. Kagin was also present at the time and bid on many of the items in the auction. Manley bid on items from a "skybox" as a phone bidder so that his identity (and his proprietary knowledge about many of the items being auctioned) could not be used by others. Kagin knew that Manley was at the auction as a phone bidder. Manley was the successful bidder on Lot #109, a 63 ounce Blake & Company Bar #5183, a rare mold 3 type bar, one of only three known, (the "Bar") using bidder #106.

In July 2005 at the ANA's World's Fair of Money held in San Francisco, CA, Manley had a display of some of his SS Central America collection, including display of the Bar. At that time, Kagin came to the table where the display was presented and spoke with Manley. The display clearly presented the Bar as owned by Manley. Kagin admits having seen Manley's display but does not recall the details of the display nor does he recall that the Bar was on display in San Francisco.

this hearing was scheduled and, therefore, was not able to participate and therefore abstains from voting. Brian E. Fanton had tendered his resignation from the Board of Governors prior to the hearing being scheduled. Fanton's resignation was accepted immediately before the hearing commenced and his replacement, Governor Michael S. Turrini, was not able to attend due to prior work related commitments.

Manley was the victim of a theft that occurred in late 2005 where the Bar was stolen from his home. Manley discovered the theft and reported it to the police in mid to late January 2006. The thief sold the Bar to a dealer in Southern California, Mark Striley, who paid \$9,500 by check and 30 - \$20 gold pieces. Striley paid below melt for the Bar and, when he purchased it, believed it to be a replica. Doing some investigation into the Bar, Striley contacted Joe McCarron, a dealer who does not have a store front or a permanent office, who in turn contacted Kagin. Kagin was at the 2006 FUN show when McCarron reached him. McCarron told Kagin that the Bar had been purchased at a Sotheby's auction of SS Central America material. He told Kagin that the son of the original purchaser of the Bar, identified as an older man who had since died, had sold the Bar to a dealer and that he may have more bars to sell. Kagin told McCarron that he had been at the Sotheby's sale and that the bidder on the Bar could have been an older man with a son in his mid-forties.

McCarron gave Kagin a description of the Bar with enough particularity so that Kagin could locate it in his Sotheby's auction catalogue. He did not advise Kagin that Striley had purchased the Bar nor did he advise Kagin that it had been purchased for less than melt. Kagin did not ask questions of McCarron about the Bar or its provenance – rather, Kagin was focused on determining the value of the Bar and locating a purchaser for the Bar. Kagin had done several deals with McCarron previously without any problems associated with those transactions. Kagin was aware from his conversation with McCarron that there were other bars that might come for sale from this same seller. Kagin and McCarron had agreed to split profits on the Bar 50/50. Nothing in his conversations with McCarron indicated to Kagin that there was or would be a problem with the Bar.

Kagin contacted his office about the Bar after the conversation with McCarron and asked Meredith Hilton, one of his employees, to look at his catalogues to see if he could determine more information about the Bar. Hilton located the Bar in Kagin's Sotheby's catalogue from the 2000 sale of SS Central America material and advised Kagin that the Bar, Lot #109 in the sale, had been purchased by bidder #106. Hilton provided Kagin with information that Kagin had written on the inside cover of the catalogue "106 – Manly?" and that bidder #106 had purchased several other lots at the auction.

At the 2006 FUN show, Kagin also spoke with both Lee Minshull and John Albanese about the Bar. In speaking with Albanese, Kagin asked what Albanese thought the value of a 100 ounce bar might be. The conversation was very brief (10-15 seconds) with Albanese indicating that it was likely worth between \$200,000 and \$300,000. Albanese was not provided specifics about the Bar nor did he believe himself to be an expert in Blake bars so was only providing information based on his general knowledge about gold bars.

Kagin also provided Minshull with limited information about the Bar at the 2006 FUN show. At some point after their original conversation about the Bar, Minshull indicated that he would be interested in purchasing the Bar for his personal collection. Kagin advised that the purchase needed to be confidential; Minshull did not object since the Bar was to go into his personal collection. Kagin did no more follow up on the provenance and/or value of the Bar.

After Minshull offered to purchase the Bar for his collection, he and Kagin discussed the purchase price and agreed on \$275,000. Kagin and McCarron each stood to make \$25,000 on the transaction. The transaction was to be completed at the Long Beach show in February 2006.

Kagin advised Minshull that the seller wanted the transaction to be in \$20 gold pieces and asked if that was possible. Minshull said that he could do part of the payment in \$20 gold pieces.

Kagin intentionally did not contact Manley, even though he recognized that Manley was an expert on Blake bars, he considered Manley a friend, and Manley was someone with whom Kagin had previously done transactions. Kagin explained that had Manley been at the 2006 FUN show, he might have spoken with him at that time. He did not call Manley about the Bar because Kagin considered Manley to be a competitor who could have undermined the transaction that Kagin was attempting to broker.

Minshull felt the need to do some investigation into the value of the Bar and as a result, he contacted Adam Crum who Minshull knew to be one of the two most prominent experts in Blake bars, Manley being the other expert. Minshull was surprised that Kagin had not contacted Manley or Crum about the Bar (although Kagin indicated that he was not aware that Crum was an expert at the time). Minshull asked Crum about a 63 ounce Blake bar's value. Crum advised that the Bar would be worth between \$300,000 and \$350,000 and when Minshull advised that he was getting it for under \$300,000, Crum said it would be a very good buy. According to Crum, Minshull told him that the seller (Kagin but not identified by name to Crum) told Minshull that the Bar needed to "go to sleep." While Minshull does not recall using this term with Crum, he does not deny that the term could have been used. Crum interpreted the term to mean that the seller did not want anyone to know about it being sold.

At around this same time, Manley discovered that the Bar, which he owned and had not sold, was missing. Manley had sold many of his Blake bars but did not recall having sold the Bar. Coincidentally, the day after Crum's conversation with Minshull, Manley contacted Crum

(who had records of all of Manley's Blake bar sales) to see if perhaps he had sold the Bar and could not find his records on it. Crum advised Manley that he had not sold the Bar. Shortly after that conversation with Manley, Crum contacted Minshull to find out whether Manley was selling the Bar to him. When Crum discovered that Manley was not the Bar's seller, he advised Minshull that he needed to contact Manley as there was a potential problem with the Bar since Manley still owned it. Minshull immediately contacted Manley, told him about the transaction and told him that Kagin was brokering the deal. Manley recalls Minshull telling him that Kagin said that the Bar needed to "go to sleep." While Minshull does not recall using this term with Manley, he does not deny that the term could have been used. Manley interpreted the term to mean that Kagin knew the Bar was stolen and wanted it to go underground so that it could not be recovered.

Kagin denies using the term "go to sleep" with anyone but does admit that he told Minshull that the transaction needed to be confidential. Kagin asserts that he did the best he could and did everything he could have done to investigate the Bar; he asserts that he did everything anyone in his position would have done to investigate the provenance of the Bar.

Until Manley contacted Crum about the Bar, Crum had no suspicion based on his conversations with Minshull that the Bar was stolen. Until Crum contacted Minshull and advised that he needed to contact Manley, Minshull had no suspicion based on his conversations with Kagin that the Bar was stolen. After his conversations with Minshull, Manley contacted his local police department and, in conjunction with Detective Moon, called Kagin to question him about his involvement with the Bar. Kagin advised that he was brokering a transaction that Joe McCarron brought to him. Kagin advised that he had not seen the Bar and did not know who the

owner was. Kagin provided McCarron's contact information and then contacted McCarron and told him that he needed to cooperate with Manley and the police investigation. Ultimately, the Bar was recovered and returned to Manley.

During the telephone conversation with Manley and Det. Moon, Kagin asked Manley if he was bidder #106 at the Sotheby's auction. When Manley advised that he was, Kagin scratched out the question mark behind Manley's name in his catalogue on the inside front cover. Manley asserts that Kagin knew in June 2000 that he was bidder #106 at the Sotheby's auction since he had a conversation with Kagin on the floor immediately after the auction telling him about the bidder numbers that Manley had used and since he and Kagin did a transaction at that time on an item that Manley purchased using bidder #109. Kagin does not recall the conversation but does not deny that it could have happened. Kagin did suspect that Manley could have been using multiple bidder numbers at the Sotheby's auction and had circled three numbers (including #106) which he speculated to be Manley's numbers and which ultimately turned out to be Manley's numbers.

As a result of Kagin's involvement with this transaction, Manley contends that Kagin has violated the ANA Bylaws and Codes of Ethics, specifically the Board Member Code of Ethics. Manley is requesting that Kagin be removed from the ANA Board of Governors and prohibited from serving on the Board in the future (while the complaint filed requests expulsion from membership in the ANA, at the hearing Manley requested Kagin's removal from the Board but did not pursue expulsion from the ANA). Kagin has requested that he be completely exonerated asserting that the complaint is unfounded.

CONCLUSIONS

It is important to first point out that both parties to this complaint have been strong supporters of the numismatic hobby, community and industry as well as strong supporters of the ANA. The ANA appreciates all that both parties have done to promote numismatics and to support the ANA. The Board also recognizes the difficulty that this situation has caused for both parties and the fact that in circumstances such as those presented in this complaint, there are no easy conclusions and the facts can lend themselves to multiple interpretations. The Board wishes to thank both parties for all that they have done to support numismatics and all that they will do in the future to provide support and encouragement for future generations of collectors. The Board must, however, render a decision based on the facts presented to it at the hearing in this matter.

In determining whether a violation of the ANA's Bylaws and/or Codes of Ethics has occurred, the Board looks most specifically to the provisions of the Board Member Code of Ethics emphasized by Manley during the hearing. Section 13 of the Board Member Code of Ethics provides, "A Board member shall maintain the highest standard of personal conduct; promote and encourage the highest level of ethics within the numismatic profession; and maintain loyalty to the Association." This is the standard by which Kagin is to be judged based upon the evidence presented to the Board at the hearing.

Initially, the Board found the testimony of the witnesses who testified at the hearing to be credible. While there were inconsistencies in some of the testimony, the inconsistencies the Board noted were easily attributable to the fact that a substantial amount of time had passed since some of the events being described had occurred. The Board also notes that it must reach its

conclusions based upon the information known at the time of the events giving rise to the complaint and not based upon information learned with hindsight.

The parties argued, and the Board recognizes, that ANA Board members are to be held to a high standard; but this standard does not require perfection. Board members may make mistakes but they may not engage in conduct they know or should know violates legal or ethical standards. The evidence in this case leads us to conclude that while Kagin may have been careless at times in his efforts to close the deal related to the Bar, he did not know nor should he have had reason to know that he was dealing with a stolen numismatic item.

The testimony established that Manley was the owner of most of the Blake bars, including the Bar; however, he had sold many of those bars. And while Kagin could have likely concluded that at some point Manley had owned the Bar (based upon the fact that he questioned whether Manley was bidder #106 at the Sotheby's auction and the fact that Manley had displayed the Bar at the San Francisco ANA where Kagin may have seen (but did not necessarily see) the Bar), the Bar could have easily been sold by Manley between the time of purchase and/or the time of the San Francisco ANA and the time it came to Kagin to broker a deal. This conclusion is bolstered by the fact that McCarron did not provide the information to Kagin that would have triggered obvious "red flags." Kagin was not privy to the fact that this transaction was being brokered through Striley nor was he privy to the fact that Striley paid below melt for the bar and paid in a \$9,500 check and 30 - \$20 gold pieces. Nothing Kagin told Minshull gave Minshull any concern about the Bar being stolen and nothing Minshull communicated to Crum gave Crum any concern about the Bar being stolen.

The fact that the transaction was to be confidential in and of itself does not create a concern. If Kagin had told Minshull (or anyone else) that the Bar needed to “go to sleep,” the Board’s decision would likely be different. However, based upon the testimony presented, no one was able to say that they heard Kagin use the term “go to sleep” and Kagin specifically denied using that term. While Manley and Crum heard Minshull use the term, it was interpreted differently by both of them.

Manley also argued that the partial payment for the Bar in \$20 gold pieces should have been a red flag to Kagin that there was a problem with the Bar. However, Minshull indicated that he did not have a problem with partial payment in \$20 gold pieces. The Board also recognizes that this is not an uncommon practice for a several reasons, including deferring taxes on the sale of a numismatic item that has appreciated. Thus, this fact does not, in and of itself, give rise to concern nor should it have put Kagin on notice of any problem.

Kagin could have, and likely should have, contacted Manley who he knew to be the expert in Blake bars. But in light of the facts presented in this case, the Board cannot find his failure to do so to be an ethical violation. This is true because Kagin discussed the Bar with both Albanese and Minshull and was brokering a deal to sell the Bar to Minshull. Had Kagin suspected that the Bar was stolen, the Board believes that he would not have made reference to it to either Minshull or Albanese; and most likely he would not have attempted to broker a sale of the Bar to Minshull who the Board has no doubt would not have put himself in a position to knowingly be dealing in stolen merchandise. Given the fact that Kagin discussed the Bar with both Minshull and Albanese, it was likely that word of the transaction could and would get to Manley.

The Board is mindful of the fact that Manley alleged that Kagin's story changed as this matter progressed. However, the Board did not hear testimony that supported that allegation. While Kagin was not thorough in his research efforts and investigation on the provenance of the Bar in his efforts to consummate the sale of the Bar, the Board did not hear a changing story. Certainly, one does not disclose all information such as proprietary information in an auction catalogue. And when allegations of misconduct are raised against a person (regardless of whether they are an ANA Governor), one can anticipate that they might be hesitant to share information for fear that the information might be used against them.

Could Kagin have done more to investigate the Bar before trying to broker a sale? Certainly. Should Kagin have done more to investigate the Bar before trying to broker a sale? Prior to his communication with Manley in January 2006, possibly; with hindsight as the Board heard testimony at the hearing, definitely. But actions that Kagin possibly could have taken do not give rise to the level of unethical conduct requiring action be taken against him under the ANA's Bylaws or Codes of Ethics.

There was no evidence to demonstrate that Kagin knew or should have known that the Bar was stolen; whether Kagin knew or should have known that Manley at one point owned the Bar does not require him to make inquiry of Manley as to whether he still owned or had sold the Bar; and Kagin's story, as presented to the Board at the hearing, did not demonstrate that he had changed or modified his version of what had occurred as the matter was investigated and the complaint process progressed.

DETERMINATION

Based on its findings and conclusions, the Board will take no action on this complaint; however, the Board strongly advises and directs Governor Kagin that in any situation such as that presented here, where there are issues and unanswered questions surrounding the information being provided or not provided with regard to the provenance and value of a numismatic item being offered for sale, that he (and any governor finding him/herself in such a situation) engage in further due diligence, including contacting those known to be experts in the field, to assure that there are no problems with such an item. Had Governor Kagin engaged in additional due diligence, such as contacting Manley who was known to him to be the expert on Blake bars, this entire unfortunate situation could have been avoided.

DATED this 30th day of May 2007

BY THE AMERICAN NUMISMATIC ASSOCIATION:

William H. Horton, Jr., President

Barry Stuppler, Vice President

Michael S. Fey, Governor

Prue Morgan Fitts, Governor

Patricia Finner, Governor

Alan Herbert, Governor