SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 09-364
District Docket No. XIV-2005-0205E

IN THE MATTER OF

LARRY A. BRONSON

AN ATTORNEY AT LAW

Decision

Argued: June 17, 2010

Decided: August 13, 2010

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Lawrence Lustberg appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter came before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), seeking respondent's disbarment. The motion is based on respondent's guilty plea to a one-count superseding information, charging him with structuring monetary transactions to avoid reporting requirements, in violation of 31 U.S.C. §5324(a)(3) and (d)(1)

and 18 U.S.C. §2 and 3551 et seq. We determine to impose a five-year suspension.

Respondent was admitted to the New Jersey bar in 1970. On November 21, 2008, he was reprimanded for practicing law in the State of New York, although he was not a member of the New York bar; failing to prepare a writing setting forth the basis or rate of his fee; and failing to disclose to the New York court that he was not admitted in that state. In re Bronson, 197 N.J. 17 (2008).

On June 25, 2009, we determined to impose another reprimand, after respondent admitted that he maintained a trust account in a New York bank, although he was not admitted to practice law in New York; that he deposited personal funds, but no client funds, in that trust account; and that he failed to cooperate with disciplinary authorities by ignoring the OAE's attempts to obtain information and by not complying with the OAE's efforts to schedule a demand audit. In the Matter of Larry Bronson, DRB 08-435 (June 25, 2009). That matter remains pending with the Court.

Respondent was temporarily suspended, on January 22, 2008, in connection with the criminal charges that are the subject of this motion for final discipline. In re Bronson, 193 N.J. 349 (2008). He remains suspended to date. In addition, he has been ineligible to practice law in this state, since September 25,

2006, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

On January 10, 2008, respondent appeared before the Honorable Nicholas G. Garaufis in the United States District Court, Eastern District of New York, and entered a guilty plea, pursuant to a plea agreement, to the superseding information described above. That information provided that

> between July 2001 and January 2003, within the Eastern District of New York and elsewhere, the defendant LARRY BRONSON, together with others, for the purpose of evading the reporting requirements of Section 5313 of Title 31, United States Code, and the regulations prescribed thereunder, did knowingly and intentionally structure and assist in structuring transactions with domestic financial institutions by: (a) breaking amounts of currency in excess of $10,000 into amounts of less than $10,000 and (b) depositing the smaller amounts of currency into an account in a financial institution.
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> [OAEaEx.2.][1]

Pursuant to an undated plea agreement, respondent pleaded guilty to the superseding information and acknowledged that his sentence "should be calculated based on funds structured in excess of $30,000 that were the proceeds of unlawful activity."

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[1] OAEa denotes the appendix of the OAE's December 7, 2009 brief in support of its motion.

At the January 10, 2008 plea hearing, respondent asserted the following, in reply to Judge Garaufis' query about the factual basis for the plea:

> From July 1, 2001 through January 2003, I assisted another person to structure a financial transaction. In particular, I assisted that person to break down amounts of currency in excess of $10,000 by giving that person several checks and a wire transfer in amounts of less than $10,000 instead of one payment in the greater amount of more than $10,000. Those smaller amounts were intended to either be wire transferred to a financial institution or to be deposited in a financial institution in this country.
>
> The purpose of doing so was so the other person would evade his reporting responsibilities under the Currency Transaction Act and as I indicated before, I believe it only totaled approximately $31,000, if that.
>
> [OAEaEx.3 at 26-10 to 23.]

In his brief submitted to us, respondent offered the following account of the facts surrounding his criminal conduct:

> Mr. Bronson received $100,000 from the wife of Benjamin Salmonese, a client, to be invested in a publicly established, venture capital supported start-up technology company of which his son Edward was the CEO. Unfortunately, the company was not successful and lost all of its assets, and, because he felt responsible for the Salmoneses' failed investment, Mr. Bronson — although he otherwise had nothing to do with the company — took it upon himself to repay Mr. Salmonese's wife out of his own personal funds. In the course of doing so, Mr. Bronson assisted Mr. Salmonese's wife to evade the

> currency reporting requirements by providing her with several checks in amounts less than $10,000 (though other checks were greater than that amount) with the knowledge that she would negotiate the checks and deposit the cash in amounts less than $10,000. Hence, while the offense is not excusable, Mr. Bronson's involvement in it stemmed from an initial, lawful and goodhearted effort to help his son with his new company, and to hold his clients harmless when their investment did not work out.
>
> [Rb13-14.][2]

During the sentencing hearing, respondent's counsel admitted that, for six years, respondent had failed to file income tax returns. After respondent's counsel advanced arguments for a downward sentencing modification, listing respondent's various charitable acts, Judge Garaufis reacted as follows:

> I want to help a lot of people. I want to give them help. There are a lot of very sympathetic causes, but I still pay my taxes. And <u>you have admitted that for six years he didn't even file tax returns</u>, much less deposit quarterly tax payments against which his taxes would be assessed.
>
> You know, I really take issue with the whole idea that you can be Robin Hood with somebody else's money. Isn't that what he was doing? He lived in a fancy upper eastside residence for all of those years. I don't even know what his rent was, but he lived there for all of those years. He was

[2] Rb refers to respondent's June 1, 2010 brief to us.

> giving away money to people who he thought needed help and he wasn't paying taxes.
>
> How can you stand in front of me, counselor, and tell me about all of the good things he has done, when he hasn't met his most fundamental obligation as a citizen of this country to file your tax returns and pay your taxes timely, because that's your job. And he was an attorney doing that. . . . [S]houldn't I be taking that into account? [Emphasis added].
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> [OAEaEx.4 at 23-10 to 24-3.]

Respondent's counsel replied to the judge: "You should take into account what happened with his taxes."

Judge Garaufis asserted that respondent owed $220,000 in back taxes, interest, and penalties, which respondent's counsel acknowledged. The judge noted that respondent did not file his income tax returns for the years 2005 through 2008 until July 21, 2008, although he had been subject to home confinement for three years (and, presumably, had the opportunity to do so).[3]

On November 12, 2008, Judge Garaufis sentenced respondent to incarceration for sixteen months, followed by three years of supervised release.[4] He denied respondent's request for a downward departure from the sentencing guidelines, finding that

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[3] According to respondent, he has now filed all outstanding tax returns and reached an agreement with the Internal Revenue Service for repayment of past-due amounts owed to that agency.

[4] The sentencing guidelines for respondent's offense level called for incarceration for ten to sixteen months.

> a downward variance is not appropriate in Mr. Bronson's case. The history and characteristics of the defendant reflect that he was a seasoned attorney at the time of the offense, practicing for over 30 years. The object of Mr. Bronson's crime, structuring a financial transaction, was to evade the very laws that he, as an officer of the court, was charged with upholding throughout his career.
>
> Mr. Bronson's concession that he has neglected to timely file numerous tax returns between 2002 and 2006 reinforces the Court's sense that Mr. Bronson has shown a flagrant disrespect for the law. . . .[5]
>
> The Court cannot turn a blind eye to Mr. Bronson's unabashed knowing and intelligent circumvention of the law. Put simply, unlike persons of lesser education or more limited circumstances, Mr. Bronson knew better.
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> [OAEaEx.4 at 57-11 to 58-7.]

The OAE asserted that, based on respondent's guilty plea, he violated RPC 8.4(b) (criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). As indicated previously, the OAE urged us to recommend respondent's disbarment.

Respondent, in turn, contended that caselaw supports the imposition of a suspension, rather than disbarment. At oral argument before us, counsel argued that a suspension of two or

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[5] As noted previously, respondent admitted failing to file tax returns for six years, including 2005 through 2008.

three years was the right form of discipline. Counsel urged us to give respondent credit for the time served on temporary suspension. Moreover, he advanced several mitigating factors, including respondent's motive to assist his son; his effort to reimburse his client; the lack of personal financial gain; his diagnosis of chronic depression, supported by a letter submitted to Judge Garaufis from Dr. Steven G. Wager, a psychiatrist; his nearly forty-year legal career, during which he "competently and compassionately" represented his clients; and his significant rehabilitative efforts, including treatment for alcoholism, assistance to other inmates while he was incarcerated, and volunteer work. Respondent submitted, as exhibits to his brief, supporting letters (most of which had been submitted to Judge Garaufis in connection with the criminal proceeding) from family members, former employees, clients, attorneys, friends, and fellow prisoners.

Following a review of the full record, we determine to grant the OAE's motion for final discipline.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction of illegally structuring monetary transactions constituted a violation of RPC 8.4(b) and (c). Only the quantum of discipline to be imposed

remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46 (1989).

Here, respondent pleaded guilty to illegally structuring monetary transactions to avoid reporting requirements and admitted knowing, at the time of the transactions, that the funds were the result of illegal activity.[6]

In recommending disbarment, the OAE cited In re Denker, 147 N.J. 570 (1997), In re Lunetta, supra, 118 N.J. 443 (1989), and In re Mallon, 118 N.J. 663 (1990). In all of these disbarment cases, the attorneys were guilty of criminal conduct not present in this case.

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[6] In its brief and at oral argument before us, the OAE asserted that the client's funds were produced by drug trafficking and that respondent was aware of the source of the funds. Respondent disputed the OAE's version of events on this point. We need not resolve this conflict. As seen below, the level of discipline that we deem appropriate is based on precedent in which the attorney illegally structured transactions knowing that the proceeds were the result of unspecified illegal activity.

The attorney in Denker pleaded guilty to a charge of money laundering, a violation of 18 U.S.C. §1956(a)(3). In the Matter of Aaron D. Denker, DRB 96-144 (November 18, 1996) (slip op. at 1). Denker admitted that, complying with a client's request that he launder money obtained from drug trafficking, he twice accepted $50,000 in cash from the client and issued money orders and checks to the client, in amounts less than $10,000, to evade reporting requirements. Id. at 2. Denker received $6,500 for his role in laundering these funds. Id. at 2. Denker further admitted that he had agreed to launder money in an effort to widen his client base and build his criminal practice. Id. at 3.

In Lunetta, the attorney pleaded guilty to conspiracy to receive and dispose of stolen securities, a violation of 18 U.S.C. §317 and 18 U.S.C. §2315. Id. at 448. Lunetta agreed to deposit the proceeds of stolen bonds into his trust account and issued checks to himself and his co-conspirators, receiving a fee of $20,000 to $25,000 for his role. Id. at 447. Although the Court acknowledged several mitigating factors — Lunetta's conduct was aberrational, he had an otherwise unblemished record, he cooperated fully with the government, he acknowledged the seriousness of his offenses, and he accepted full responsibility for his actions — the Court took into account the fact that he "laundered and shielded funds from known criminal activities" and

that he "was not an inexperienced attorney when he engaged in this conspiracy." Id. at 449-50.

The attorney in Mallon was convicted of one count of conspiracy to defraud the United States, a violation of 18 U.S.C. §371 and §3623, and two counts of aiding and abetting the submission of materially false tax returns, a violation of 26 U.S.C. §7206(1) and 18 U.S.C. §2 and §3623. In the Matter of Robert J. Mallon, DRB 89-174 (February 5, 1990) (slip op. at 1-2). Mallon conspired to conceal illegal income from federal tax authorities. Id. at 2. He laundered funds to fabricate two transactions reported on two tax returns. Ibid. As a result of Mallon's actions, the tax liability of the tax filers was substantially reduced. Id. at 3. Finding no mitigating factors, we noted that Mallon was an experienced attorney, that his crimes were directly related to his law practice, that he was motivated by personal financial gain, and that he engaged in a pattern of multiple offenses, not one isolated incident. Id. at 7.

Here, although respondent admitted knowing that the funds were the proceeds of illegal activity of some sort, he was not convicted of, and did not plead guilty to, money laundering or any crime other than illegally structuring monetary transactions.

More on point is In re Hausman, 177 N.J. 602 (2003), where the attorney entered a guilty plea to four counts of a federal

information charging him with the structuring of monetary transactions to avoid reporting requirements. Hausman admitted lending money to clients and then receiving repayment in amounts less than $10,000, so that he would not be required to report those funds. In the Matter of Stanley J. Hausman, DRB 02-363 (May 2, 2003) (slip op. at 3-9). In addition, when fashioning the appropriate sentence, the judge determined that Hausman knew that the funds were the proceeds of unlawful activity. Id. at 9 n.2. Hausman was suspended for five years.[7]

Although shorter suspensions were imposed in two other cases involving similar criminal conduct, the attorneys in those cases were not aware that the funds were the product of unlawful activity. In In re Chung, 147 N.J. 559 (1997), the attorney received an eighteen-month suspension, after pleading guilty to a federal information charging him with receiving more than $10,000 in cash in a transaction and failing to file a report of the transaction. In determining to impose an eighteen-month suspension ("time-served"), we took into account the attorney's prior unblemished seventeen-year career, his legal services to the poor and to community organizations for little or no compensation, the absence of greed, and his son's very serious

[7] Part of the suspension was served prospectively. This was not, thus, a complete "time-served" case.

neurological problems. In the Matter of Frederick Chung, Jr. DRB 96-143 (November 20, 1996) (slip op. at 4).

A two-year suspension was imposed on the attorney in In re Khoudary, 167 N.J. 593 (2001). Khoudary was convicted of structuring financial transactions to evade IRS reporting requirements. He deposited stolen checks into his attorney trust account, used the proceeds to buy cashier's checks in amounts less than $10,000 to avoid the filing of a currency transaction report, and gave the checks to a client, receiving a fee for these services. In the Matter of Nicholas Khoudary, DRB 00-038 (January 21, 2001) (slip op. at 3-6). Khoudary was not aware that the checks had been stolen. Id. at 2.

Here, like the attorney in Hausman, respondent knew that the illegally-structured funds were the product of unlawful activity. As noted above, Hausman received a five-year suspension.

In addition to pleading guilty to illegally structuring transactions, respondent admitted that, for a period of six years, he failed to file federal income tax returns. We considered the above conduct as an aggravating factor. See In re Pena, In re Rocca, In re Ahl, 164 N.J. 222, 233 (2000) (Court agreed with our determination to consider, as an aggravating factor, Pena's and Rocca's perjury and subornation of perjury in

their representation of Ahl during a civil trial, although neither attorney had been charged with ethics violations as a result of that conduct).

The absence of a conviction for these offenses is of no moment. A violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. In In re McEnroe, 172 N.J. 324 (2002), we declined to find a violation of RPC 8.4(b) because the attorney had not been charged with the commission of a criminal offense — coincidentally, the failure to file income tax returns. In the Matter of Eugene F. McEnroe, DRB 01-154 (January 29, 2002) (slip op. at 14). The Court reinstated the RPC 8.4(b) charge and found the attorney guilty of violating that rule.

Moreover, in In re Garcia, 119 N.J. 86 (1990), the Court announced that, even in the absence of a criminal conviction, a finding of willful failure to file income tax returns warrants the same discipline (a suspension) imposed in cases where there were criminal convictions for that offense. Id. at 87. Because Garcia was a case of first impression, however, the Court imposed a reprimand in that case. Id. at 90.

Attorneys convicted of willful failure to file one or two personal or corporate income tax returns generally receive a six-month suspension. See, e.g., In re Waldron, 193 N.J. 589 (2008)

(failure to file one income tax return); In re Touhey, 156 N.J. 547 (1999) (failure to file a federal corporate income tax return); In re Gaskins, 146 N.J. 572 (1996) (failure to file an income tax return); In re Silverman, 143 N.J. 134 (1996) (failure to file a personal income tax return); In re Doyle, 132 N.J. 98 (1993) (failure to file one income tax return); In re Leahy, 118 N.J. 578 (1990) (failure to file a tax return); In re Chester, 117 N.J. 360 (1990) (failure to file one income tax return); and In re Willis, 114 N.J. 42 (1989) (failure to file one federal income tax return).

Attorneys who fail to file multiple federal income tax returns generally receive a suspension of at least one year. In re Cattani, 186 N.J. 268 (2006) (one-year suspension for failure to file federal and state income tax returns for eight years) and In re Spritzer, 63 N.J. 532 (1973) (after concluding that proffered mitigating circumstances did not justify attorney's failure to file federal income tax returns for ten years, the Court imposed a one-year suspension).

A shorter term of suspension is imposed only when the attorney who fails to file multiple tax returns did not owe any taxes or presented compelling mitigation. In In re Williams, 172 N.J. 325 (2002), the attorney was reprimanded because, notwithstanding his willful failure to file income tax returns

for four years, he did not owe any tax and had incurred no penalties. In In re Vecchione, 159 N.J. 507 (1999), compelling, but unidentified, reasons justified a six-month suspension for the attorney's failure to file federal income tax returns for twelve years. In the Matter of Andrew P. Vecchione, DRB 98-386 (slip op. at 11-12). See also In re Stenhach, 177 N.J. 559 (2003) (on motion for reciprocal discipline from Pennsylvania, attorney received a nine-month suspension for his guilty plea to one count of willful failure to file one federal income tax return; the attorney actually had failed to file tax returns and to pay taxes from 1982 through 1989; a jury also found the attorney guilty of two counts of willful failure to file Pennsylvania income tax returns and willful failure to remit income tax for the years 1996 and 1997; we saw no reason to deviate from the discipline imposed in Pennsylvania, given that the willful failure to file income tax returns typically results in a suspension in this state).

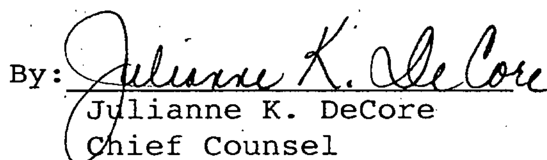
Here, in mitigation, we considered (1) a letter from a psychiatrist indicating that respondent suffers from chronic depression, along with bouts of major depression; (2) numerous supporting letters from family members, former employees, clients, attorneys, friends, and fellow prisoners; and (3) respondent's forty-year career as an attorney.

We considered, as aggravating factors, respondent's failure to pay income tax returns for multiple years and his disciplinary history.

On balance, we unanimously determine that a five-year suspension, retroactive to January 22, 2008, the date of respondent's temporary suspension, is the appropriate sanction for his conduct. Although R. 1:20-15A(3) specifies that, absent special circumstances, terms of suspension shall be for a period of no fewer than three months and no more than three years, in our view, the similarity between this case and Hausman, in which, presumably, the Court found the presence of "special circumstances," justifies a departure from the usual three-year ceiling. We note that Hausman was issued in 2003, after the 2002 adoption of R. 1:20-15A.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

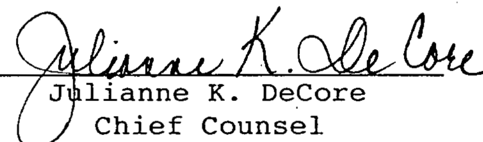
In the Matter of Larry Bronson
Docket No. DRB 09-364

Argued: June 17, 2010

Decided: August 13, 2010

Disposition: Five-year suspension

Members	Disbar	Five-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				



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