XIV-93-220E

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-186

IN THE MATTER OF

BENJAMIN G. SPRECHER

AN ATTORNEY AT LAW

Decision of the
Disciplinary Review Board

Argued: July 20, 1994

Decided: May 17, 1995

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear.[1]

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

This matter was before the Board based on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-7(b) (now R. 1:20-(14(a)), following respondent's disbarment in the State of New York on July 30, 1992. The New York disciplinary action stemmed from respondent's federal

[1] Notice of the Board proceedings was published in the New York Law Journal and the New York Post. Thereafter, respondent contacted the Office of Board Counsel, in writing, requesting an adjournment. Following the denial of that request, respondent advised by telephone that he would not be appearing at the Board hearing.

conviction for conspiracy to defraud the United States, conspiracy to commit securities fraud, false statements, perjury, obstruction of proceedings, and obstruction of justice.

Respondent was admitted to the practice of law in New Jersey in 1978. Thereafter, in 1979, he was admitted to the practice of law in New York. Although respondent had an obligation, pursuant to R. 1:20-6(a) and R. 1:20-7(a) (now R. 1:20-13(a)(1) and R. 1:20-14(a)) to notify New Jersey disciplinary authorities of both his criminal conviction and his New York disbarment, he failed to do so.

In September 1991, respondent was the subject of a twelve-count federal indictment in the United States District Court for the Southern District of New York. Respondent was an attorney with a securities law practice in New York City at the time. He was charged with conspiring to defraud the United States and making false statements to a government agency in connection with two separate securities transactions, one of which involved Towers Financial Corporation and the other involved Worldwide Medical Technology. In addition, respondent was charged with perjury and obstruction of justice with regard to a Securities and Exchange Commission investigation, as well as with obstruction of justice in a lawsuit filed by him in a Utah Federal District Court matter.

Following a thirteen-day bench trial (respondent waived his right to a jury trial), respondent was convicted of two counts of criminal conspiracy, including conspiracy to defraud the United States and conspiracy to commit securities fraud, both pursuant to

violation of 18 U.S.C.A. 1001 and 2, one count of obstruction of proceedings, in violation of 18 U.S.C.A. 1505, one count of perjury, in contravention of 18 U.S.C.A. 1621, and one count of obstruction of justice, in violation of 18 U.S.C.A. 1503. Respondent was initially sentenced to forty-six months in prison, to be followed by two years of supervised release and a fine of $50,000. Thereafter, following a March 9, 1993 decision by the United States Court of Appeals for the Second Circuit, the case was remanded for resentencing, although the convictions themselves were affirmed. Following the remand, respondent was resentenced on April 8, 1993 to thirty-seven months' imprisonment. The remaining terms of the original sentence were unaltered. Based on this conviction, respondent was disbarred in New York on July 30, 1992. Following the OAE's discovery of respondent's New York disbarment, during a review of the annual report of the New York disciplinary authorities, respondent was temporarily suspended in New Jersey on January 14, 1994. His suspension remains in effect to date.

Respondent was provided with notice of the Board's proceedings by way of publication in the New York Post on July 6 and July 8, 1994. Notice was also provided by way of publication in the New York Law Journal on July 1, 1994. The return of materials forwarded to respondent, at various prison addresses, led to the notices. However, by an undated letter received by the DRB on July 15, 1994, respondent advised that he had received the file in this matter upon his release from Federal Prison Camp McKean to a halfway house in Brooklyn, New York. He contended that his

conviction was the subject of an appeal and that, therefore, the matter should not proceed before the Board. He requested a four-month adjournment in order to await the resolution of his appeal. Thereafter, the OAE advised that the matter then pending in New York was an appeal of a habeas corpus application, not a direct appeal of his criminal conviction. On that basis, the OAE requested that the Board proceed. The request for adjournment was, in fact, denied by the Board and respondent was so advised. In a subsequent communication by telephone, respondent advised the Office of Board Counsel that he would not be attending the Board's hearing.

* * *

Following a review of the full record, the Board has determined to grant the OAE's motion for reciprocal discipline. The Board is unanimous in its conclusion that the record supports the disbarment of respondent.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-7(d) (now R. 1:20-14) which directs that:

> the Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated, that it clearly appears that:
>
> 1) the disciplinary or disability order of the foreign jurisdiction was not entered;

(2) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(3) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(4) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(5) the misconduct established warrants substantially different discipline.

The Board's review of the record does not reveal any circumstances that would fall within the ambit of subparagraphs one through four. In addition, it is clear that a New Jersey attorney found guilty of conspiracy to defraud the United States, numerous counts of false statements, conspiracy to commit securities fraud, perjury, obstruction of proceedings and obstruction of justice, must be disbarred in New Jersey, rather than receive a seven-year suspension, which is the equivalent of disbarment in New York. See, e.g., In re Lunetta, 118 N.J. 443(1989) (where the attorney was disbarred for knowingly and willfully conspiring to receive and dispose of $200,000 worth of stolen bearer bonds; the attorney used his trust account to distribute the proceeds of the sale of the bonds, for which he received $20,000 to $25,000 in profit); In re Zauber, 122 N.J. 87(1991)(disbarment for continuing and sophisticated scheme with conviction of RICO conspiracy and kickbacks); In re Messinger, 133 N.J. 173(1993) (disbarment even when the attorney was not the "mastermind" behind conspiracy and fraudulent securities transactions).

In this case, respondent utilized his license to practice law in his criminal endeavors. In addition, the acts extended over a lengthy period of time and involved several fraudulent schemes, which were all intended for respondent's personal financial gain.

The conclusion that respondent must be disbarred is inescapable. The Board has unanimously so voted. Three members did not participate.

In addition, respondent is to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/17/95

Elizabeth L. Buff

ELIZABETH L. BUFF
Vice-Chair
Disciplinary Review Board