

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 95-208

IN THE MATTER OF :
:
ANTHONY M. PALAZZO :
:
AN ATTORNEY AT LAW :
:
:

Decision of the
Disciplinary Review Board

Argued: July 19, 1995

Decided: October 2, 1995

John M. McGill, III appeared on behalf of the Office of Attorney Ethics.

Richard S. Haines appeared on behalf of respondent.

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

This matter was before the Board based on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE"). The ethics matter arose out of respondent's arrest for possession of a controlled dangerous substance ("CDS"), cocaine, on August 6, 1994.

According to the stipulation, on August 6, 1994, at approximately 12:19 a.m., Long Branch Police Officer Clinton Six stopped respondent's car on Ocean Boulevard, in the town of Long Branch. Officer Six knew that respondent's driver's license had been suspended. Once stopped, respondent exited his vehicle and Officer Six exited his. When Officer Six asked respondent for the vehicle's documents, respondent stated, "You know my license is

suspended." After Officer Six continued to request that respondent submit the vehicle's documents, respondent asked him, "Can't you do something here. I only drive once in a while." Officer Six advised respondent that he could not and led respondent to the patrol car. Respondent was informed that he was being placed under arrest for driving with a suspended license.

Following respondent's arrest, Officer Six observed that respondent appeared to be very nervous about his vehicle. Respondent told Officer Six that he wanted to get his keys from the car. Officer Six replied that he would get the keys for respondent, noticing that respondent had become slightly upset. At this time, Long Branch Police Officer Shamrock arrived to assist Officer Six in the arrest.

While Officer Shamrock guarded respondent, Officer Six went to respondent's car to retrieve its keys and to lock the vehicle. When he opened the car door, Officer Six observed, in plain view between the seats near the emergency brake lever, a small clear plastic bag, sealed with red tape. The bag contained a white substance. Based on his training and experience, Officer Six suspected that the white substance was a CDS.

Prior to removing the bag, Officer Six summoned Officer Shamrock to observe the evidence in the vehicle. Officer Six then advised respondent of the evidence found in the car. The officer conducted a further search of respondent's car, discovering a second small clear plastic bag sealed with red tape, also

containing a white substance that appeared to be CDS. The bag was located under the floor mat on the front passenger side.

Respondent's car was towed to police headquarters, where respondent was also taken and given his Miranda warnings by Long Branch Police Officer Dennis W. Smentkowski. While Officer Smentkowski was processing respondent, respondent volunteered the information that "the coke is not mine." When Patrolman Smentowski asked respondent if he had used any drugs that night, respondent replied, "Yeah, I did coke all night before going to Twin Peaks Go-Go Bar." Officer Smentowski reported that, when he asked respondent to remove his personal property incident to his arrest, respondent appeared to remove an unknown object from the currency within his wallet, placed his hand to his mouth and swallowed. As a result, respondent was taken to Monmouth Medical Center emergency room, where he was x-rayed, with negative results.

The police analysis of the evidence found in respondent's car confirmed that the substance in the bags was a CDS, cocaine. Thereafter, respondent was charged with unlawful possession of CDS (cocaine), in violation of N.J.S.A. 2C:35-10 a(1), a third-degree crime. Respondent was also issued a motor vehicle summons for driving with a suspended license, in violation of N.J.S.A. 39:3-40, possession of narcotics in a motor vehicle, in violation of N.J.S.A. 39:4-49.1, and driving without a valid driver's license, in violation of N.J.S.A. 39:3-10.

The Monmouth County grand jury indicted respondent on one count of possession of CDS. On January 16, 1995, he was placed on

supervisory treatment in the Pre-trial Intervention Program ("PTI") for one year. Respondent was also assessed a total of \$1,175 in penalties and fees.

Although the stipulation makes no mention of rehabilitation, a December 15, 1994 letter from the Monmouth County Prosecutor's Office, attached to the stipulation, states that respondent has attended a drug-treatment program at the Loma Linda Behavioral Medical Center.

Respondent admitted that his conduct violated RPC. 8.4(b). The OAE's position is that respondent's misconduct warrants a three-month suspension from the practice of law, relying on In re Nixon, 122 N.J. 290 (1991).

* * *

This is not respondent's first brush with the disciplinary system. On May 23, 1990, respondent was privately reprimanded for failure to advise the grievant of respondent's limited authorization to honor representations and commitments made while negotiating a lease with the grievant.

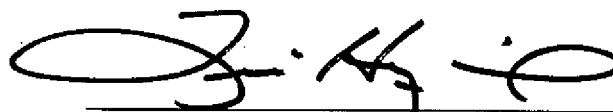
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Following a de novo review of the record, the Board is satisfied that the facts set forth in the stipulation clearly and convincingly establish that respondent's conduct was unethical.

The sole issue is, thus, the appropriate measure of discipline. Ordinarily, cases dealing with possession of cocaine result in a three-month suspension. See In re Schaffer, 140 N.J. 148 (1995); In re Karwell, 131 N.J. 396 (1993); In re Sheppard, 126 N.J. 210 (1991); In re Nixon, 122 N.J. 290 (1991). Accordingly, the Board unanimously voted to impose a three-month suspension. The Board also determined to require respondent to submit periodic urinalysis reports to the OAE for a period of one year. One member did not participate.

The Board further required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 10/2/95



LEE M. HYMERLING
Chair
Disciplinary Review Board