SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-242

IN THE MATTER OF :
MARC C. BATEMAN, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: July 15, 1992

Decided: October 21, 1992

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

Marc C. Bateman appeared pro se.

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

This matter is before the Board on a Motion for Final Discipline based upon a criminal conviction filed by the Office of Attorney Ethics ("OAE"). R.1:20-6(c)(2)(i).

Respondent, Marc C. Bateman, was admitted to the bar of New Jersey in 1975. On April 5, 1990, respondent was convicted of mail fraud conspiracy, in violation of 18 U.S.C.A. §§ 371 and 3623, and making a false statement on a loan application, in violation of 18 U.S.C.A. §§ 1014 and 2.

On November 14, 1990, respondent was sentenced to a suspended five-year prison term, fined $15,000, ordered to perform 300 hours

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On November 14, 1990, respondent was sentenced to a suspended five-year prison term, fined $15,000, ordered to perform 300 hours

of community service and placed on probation for three years. On December 5, 1991, the United States Court of Appeals for the Second Circuit affirmed respondent's conviction.

Respondent's criminal offenses resulted from a bank fraud scheme arising from two different conspiracies, involving a total of fifteen individuals and Flushing Federal Savings and Loan Association (Flushing Federal), of Queens, New York. Respondent was directly involved in one of the two conspiracies.

In 1982, respondent arranged for a joint venture between World Wide Ventures, Inc. (World Wide), a holding company of various enterprises, and two owners of undeveloped property in the Poconos region of Pennsylvania. The purpose of the venture was to develop a resort complex in the Poconos. Respondent provided representation to and served as a member of the Board of Directors of World Wide.

In order to secure five million dollars in financing from Flushing Federal to develop the Poconos property, which had an estimated value of only $300,000, substantial collateral was required. An inflated appraisal value of the property was, thus, needed both for collateral and for "window dressing" purposes, in the event of a possible governmental audit. Respondent was instrumental in procuring the escalated six and one-half million dollars property appraisal value, having arranged the services of a licensed real estate broker for a $1,000 fee. World Wide and its principals received approximately $1,250,000 in advances on the loan on the property.

The closing on the five million dollar-line of credit occurred in March 1984. Although respondent received $25,000 in loan proceeds, he claims the check was merely a repayment for $40,000 in financing he had initially made available to World Wide and not a fee or other form of remuneration.

In furtherance of the above mentioned scheme to defraud Flushing Federal to secure financing and to acquire property under false pretenses, respondent and his co-conspirators also used the United States mail.

Following respondent's conviction, the Court temporarily suspended him from the practice of law, pursuant to R.1:20-6(a)(1). That suspension remains in effect to date. The OAE recommends that respondent's temporary suspension since April 12, 1990 be deemed sufficient discipline for his conduct in this matter.

CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of respondent's guilt in disciplinary proceedings. In re Goldberg, 105 N.J. 278, 280 (1987) ; In re Tuso, 104 N.J. 59, 61 (1981) ; In re Rosen, 88 N.J. 1, 3 (1981). R.1:20-6(c)(1). Therefore, no independent examination of the underlying facts is necessary to ascertain guilt. In re Bricker, 90 N.J. 6, 10 (1982). The only issue to be determined is the quantum of discipline to be imposed. In re Goldberg, supra, 105 N.J. at 280; In re Kaufman, 104 N.J. 509, 510 (1986); In re Kushner, 101 N.J. 397, 400 (1986); In re Addonizio, 95 N.J. 121, 123-124 (1984); In re Infinito, 94 N.J, 50 56 (1983);

In re Rosen, supra, 88 N.J. at 3; In re Mirabelli, 79 N.J. 597, 602 (1979); In re Mischlich, 60 N.J. 590, 593, (1977).

Respondent's criminal conviction clearly and convincingly demonstrates that he has engaged in activity that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer, and that he has engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. RPC 8.4(b) and (c) ; DR 1-102(A)(3) and (4).

A calculus for discipline, however, even in cases of criminal conviction, must include the nature and severity of the crime, whether the crime was related to the practice of law, and nay mitigating factors, such as evidence of the attorney's good reputation on character. In re Kushner, supra, 101 N.J. at 400 (1986).

In this case, respondent's conspiratorial activities to defraud Flushing Federal, for which he was convicted, were directly related to the practice of law and are of a serious nature. Respondent represented World Wide at the closing of the five million dollar-loan, with full knowledge that a fraudulent and inflated appraisal value of the Poconos property had been submitted to Flushing Federal. Respondent's actions evinced a disregard for the high standards of ethics and in particular, for the truth and candor that membership in the bar requires. "A lawyer's word must be his bond." In re Weston, 118 N.J. 477 (1990).

Although there exists a question about whether respondent's conduct was motivated by his own personal financial gain, the Court

has, in the past, ordered terms of suspension as discipline regardless of personal benefit by the offender. Indeed, in In re Gassaro, 124 N.J. 395 (1991), although the attorney derived no pecuniary gain, he received a suspension of two years. The attorney was convicted of submitting, on behalf of his client, documents that twice represented the reduction of a bad debt, as part of a conspiracy to defraud the Internal Revenue Service. Similarly, in In re Gillespie, 124 N.J. 81 (1991), an attorney received a three-year suspension for aiding and assisting a construction company in preparing a false tax return. In In re Giordano, 123 N.J. 362 (1991), an attorney received a three-year suspension for tampering with public records. Lastly, in In re Soloman, 110 N.J 56 (1988), an attorney was given a two-year retroactive suspension for insider securities trading violations. In that case, the attorney did not act as an attorney, did not trade for his own benefit, and had no prior record.

Here, it is clear that respondent was guilty of serious misconduct when he participated in a conspiracy to defraud Flushing Federal, thereby demonstrating dishonesty and disrespect for the legal system. While the Board does not deem this case identical to Solomon, the Board believes that similar discipline is appropriate.

In view of the foregoing, the requisite majority of the Board recommends that respondent be suspended for a period of two years,

retroactive to April 12, 1990, the date of his temporary suspension in New Jersey. One member voted for disbarment. One member would have imposed an active six-month suspension. Three members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 10/21/92 By: Elizabeth L. Buff

Elizabeth L. Buff
Vice-Chair
Disciplinary Review Board