

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-104

IN THE MATTER OF :
BRETT K. LURIE :
AN ATTORNEY AT LAW :

Decision

Argued: April 15, 1999

Decided: November 17, 1999

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

Respondent did not appear for oral argument despite proper notice of the hearing.

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

This matter was before us on a Motion for Final Discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's criminal conviction, after a jury trial in the Supreme Court, New York County, on eight counts of scheming to defraud in the first

degree, nine counts of intentional real estate securities fraud, three counts of grand larceny in the second degree, three counts of grand larceny in the third degree and one count of offering a false statement for filing in the first degree.

Respondent was admitted to the New Jersey and New York bars in 1983.¹ On April 3, 1995, the Court temporarily suspended him, pending the final resolution of this matter. In re Lurie, 137 N.J. 464 (1995). Respondent has no prior disciplinary history.

The criminal conviction arose from respondent's participation in the sale of shares in cooperative housing corporations. Respondent and his wholly owned corporation, B.K.L. Management, Inc., were found to have engaged in a deliberate scheme to defraud the minority shareholders of five residential cooperative buildings ("co-ops"), which were sponsored and managed by respondent and his corporation.

Between April 1989 and October 1990, respondent collected the residents' monthly maintenance payments but failed to pay the mortgage loans secured by the buildings, failed to make the maintenance payments to the co-ops for his unsold shares and failed to pay bills for water, oil and taxes. By October 1990, respondent owed \$1,800,000 in mortgage, maintenance and other costs. During that same time period, respondent paid himself a \$15,000 monthly management fee from the co-ops' bank accounts, resulting in income to him and his company of more than \$435,000.

Respondent, as majority shareholder and manager, controlled each of the five co-op

¹ Respondent was disbarred in New York on January 3, 1995.

boards. He did not disclose the defaults to the minority shareholders in financial reports or at board meetings.² He also failed to disclose the massive debt and perilous financial situation of each co-op to potential purchasers of co-op shares. At respondent's trial, several purchasers and minority shareholders testified that they had relied on respondent's or his agents' misrepresentations of the co-ops' financial strength in purchasing their shares or in making their monthly maintenance payments.

Ultimately, foreclosure actions were started because of the mortgage defaults.

Respondent was sentenced to an aggregate term of two to six years imprisonment. The Supreme Court of New York, Appellate Division, First Department, affirmed respondent's conviction on April 21, 1998 and the New York Court of Appeals denied respondent's application for leave to appeal.

The OAE urged that respondent be disbarred for his criminal conduct.

* * *

² Although amendments disclosing the default had been submitted to the Department of Law prior to most of the sales and maintenance payments, the purchasers and shareholders were unaware of the defaults because the amendments had not yet been accepted for filing. The New York Martin Act expressly forbids the offer or sale of real estate securities until the Department of Law accepts the offering plan for filing. The New York Attorney General's regulations require that, when the offering statement no longer provides accurate and complete information due to a change in circumstances, it must be amended promptly.

Upon a review of the full record, we determined to grant the OAE's Motion for Final Discipline.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R.1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction on twenty-four counts of fraud and grand larceny established a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). The sole issue to be determined is the quantum of discipline to be imposed. 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.

It is true that respondent's criminal conduct did not involve the practice of law. However, the Court has not hesitated to disbar attorneys involved in serious criminal activity, even when that activity has not involved their law practice. *See, e.g., In re Goldberg*, 142 N.J. 557 (1995) (attorney disbarred following two separate convictions for mail fraud and conspiracy to defraud the United States); In re Dade, 134 N.J. 597 (1994) (attorney disbarred following a guilty plea to the charge of theft by deception for stealing almost \$458,000 from

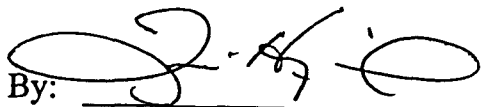
her employer insurance company by submitting false claim drafts); In re Spina, 121 N.J. 378 (1990) (attorney disbarred following guilty plea to a misdemeanor offense of "taking property without right" for taking more than \$40,000 in checks intended as contributions to the attorney's employer, depositing them in his personal checking account and concealing his actions by various means, including the submission of false expense vouchers).

Respondent was involved in a protracted scheme to defraud. His misconduct evidenced a lack of the "honesty, integrity and dignity that are the hallmarks of the legal profession." In re Mintz, 101 N.J. 527, 536 (1986). See In re Lunetta, 118 N.J. 443, 445 (1989) (attorney disbarred following a guilty plea to a criminal information charging him with conspiring to receive, sell and dispose of stolen securities).

Therefore, we unanimously determined to recommend respondent's disbarment. One member did not participate.

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

Dated: 11/17/99

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

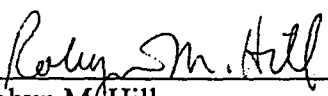
**In the Matter of Brett K. Lurie
Docket No. DRB 99-104**

Argued: April 15, 1999

Decided: November 17, 1999

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling	x						
Cole	x						
Boylan	x						
Brody	x						
Lolla	x						
Maudsley	x						
Peterson	x						
Schwartz	x						
Thompson*	On temporary leave of absence						x
Total:	8						1


Robyn M. Hill
Chief Counsel