

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-292

IN THE MATTER OF :
 :
ARTHUR L. CHIANESE :
 :
AN ATTORNEY AT LAW :

 :

Decision

Argued: September 17, 1998

Decided: December 8, 1998

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

John P. Lacey 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 on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's conviction of third degree perjury, in violation of *N.J.S.A. 2C:28-1*, third degree attempted theft by deception, in violation of *N.J.S.A. 2C:5-1* and *N.J.S.A. 2C:20-4*, fourth degree forgery, in violation of *N.J.S.A. 2C:21-1a(1)* and (2) and fourth degree forgery by uttering, in violation of *N.J.S.A. 2C:21-1a(3)*.

On April 25, 1997, respondent was sentenced to a two-year probationary term, ordered to perform 200 hours of community service and fined \$3,000. On January 28, 1998, the Appellate Division affirmed respondent's conviction.

This matter arose from a civil dispute between respondent and a former client with whom he had a brokerage contract whereby he was to be compensated for his efforts to find a buyer for the client's tile and marble business. A serious dispute arose between the parties as to the conditions under which respondent was to be paid. In light of this dispute, respondent instituted a civil suit in which he claimed \$42,125 for time spent under the brokerage contract. In connection with that suit he filed an affidavit to which he attached a written brokerage agreement, purportedly signed by the former client, which contained the hourly rate provision.

At trial, it was the State's contention that the signatures on that brokerage agreement had been taken from another document and placed on the brokerage agreement by a photocopy process. The State contended that, when respondent filed the false document together with the affidavit, he knew the signatures were false, he lied and he committed perjury. Specifically, the State charged that, by submitting the forged contract to the court, respondent had taken a substantial step in an effort to obtain money by false pretenses; by altering the agreement to add the signatures without permission, he had committed forgery; and by uttering the false document to the court in the civil litigation, he had uttered a forged document.

Following his conviction, the New Jersey Supreme Court temporarily suspended respondent, pursuant to R. 1:20-13(b). In re Chianese, 148 N.J. 560 (1997). Respondent remains suspended to date.

The OAE urged the Board to suspend respondent for three years, retroactively to the date of his temporary suspension, April 3, 1997.

* * *

Upon a de novo review of the full record, the Board determined to grant the OAE's motion for final discipline.

The existence of a conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75,77 (1986). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2)(ii); In re Lunetta, 118 N.J. 443, 445 (1989). The primary purpose of discipline is not to punish the attorney, but to preserve the confidence of the public in the bar. In re Barbour, 109 N.J. 143, 161 (1988).

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.

Respondent urged the Board to consider that the crimes for which he was convicted were not committed in his capacity as an attorney, but as a broker. It is irrelevant, however,

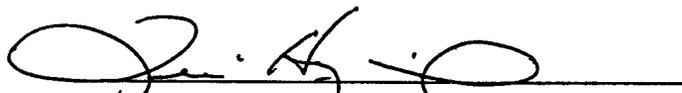
that respondent's conduct did not arise from a lawyer/client relationship, did not relate to the practice of law and was not committed in his capacity as an attorney. In re Hasbrouck, 140 N.J. 162, 167 (1995), citing In re Kinnear, 105 N.J. 391, 395 (1987) and In re Suchanoff, 93 N.J. 226, 230 (1983). "An attorney is obligated to adhere to the high standard of conduct required by a member of the bar, even though [his] activities do not involve the practice of law and do not directly affect [his] clients." Hasbrouck, supra, 140 N.J. at 167.

For misconduct similar to respondent's, the Court has imposed long-term suspensions. See In re Kushner, 101 N.J. 397 (1986) (three-year suspension for an attorney who made a false statement to a court by denying that he had signed a promissory note that he was the subject of civil litigation. Respondent pleaded guilty to one count of false swearing); In re Lunn, 118 N.J. 163 (1990) (three-year suspension for an attorney who presented, during the course of litigation in which he was the plaintiff, a statement purported to be signed by his wife. In fact, his wife was deceased at the time. The attorney had forged his wife's signature on the document).

Here, too, a three-year suspension is warranted for respondent's criminal conviction. Because, however, respondent's criminal activity was limited to one incident — as opposed to a course of conduct, as in Kushner and Lunn — the Board unanimously determined that the three-year suspension should be retroactive to the date of respondent's temporary suspension on April 3, 1997.

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

Dated: 12/8/08



LEE M. HYMERLING
Chair
Disciplinary Review Board