SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-074
District Docket No. XIV-07-0029E

IN THE MATTER OF	:
RICARDO A. CANTON	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 19, 2007

Decided: August 30, 2007

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

Respondent waived appearance.

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

This matter came before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a). The motion is based on respondent's disbarment in New York, following his conviction, in the United States District Court for the Southern District of New York, on

narcotics charges related to a plan to provide weapons to a Colombian paramilitary organization, in exchange for cocaine.

The OAE recommends respondent's disbarment. We agree with that recommendation.

Respondent was admitted to the New Jersey bar in 1981 and to the New York bar in 1980. The OAE-generated ethics history report shows that respondent resides in Metuchen, New Jersey, but does not engage in the private practice of law. In addition, the New Jersey Lawyers' Fund for Client Protection (the Fund) report lists respondent as retired since 2004. Since 2001, he has been ineligible to practice law for failure to pay the annual attorney assessment to the Fund.

Respondent has no history of final discipline in New Jersey. However, on February 26, 2007, the Court temporarily suspended him after he pleaded guilty to violating 21 U.S.C.A. §§ 812, 841(a)(1), and 841(b)(1)(A) (possession with intent to distribute controlled substances and penalties), as well as 21 U.S.C.A. §§ 952, 960(a)(1), and 960(b)(1)(B) (importing or exporting controlled substances and penalties).

On March 26, 2003, the New York Supreme Court, Appellate Division, Third Judicial Department, disbarred respondent based on his October 2002 guilty plea to felony narcotics charges. The disbarment order followed an order to show cause based on an

affidavit filed by the Committee on Professional Standards for the Third Judicial Department. According to the affidavit,

> 6. On October 2, 2002 respondent pleaded guilty to a superseding indictment in United States District Court for the Southern District of New York to narcotics charges related to a plan to provide weapons to a Colombian paramilitary organization in exchange for cocaine. Respondent pleaded guilty to Conspiracy to distribute five kilograms and more of mixtures and substances containing a detectable amount of cocaine, a class A felony in violation of Title 21, sections 812, 841(a)(1) and 841(b)(1)(A) of the United States Code and Conspiracy to import into the United States five kilograms and more of mixtures and substances containing a detectable amount of cocaine, a class A felony in violation of Title 21, sections 952, 960(a)(1) and 960(b)(1)(B) of the Unites States Code. One kilogram is approximately equivalent to 2.2 pounds.
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> 7. As part of his plea allocution, respondent admitted that in August 2001, he was involved in negotiations with one or more persons to purchase 200 kilograms of cocaine. He further admitted that, during the summer of 2001, he attempted, with one or more persons through telephone conversations and a meeting in Manhattan, to assist in the importation into the United States of cocaine in an amount exceeding 5 kilograms. Respondent faces a possible sentence ranging from a minimum of 135 months to a maximum of 210 months incarceration.
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> [OAEbEx.3-2.][1]

The transcript of the plea hearing provides some additional information about the extent of respondent's criminal activity:

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[1] OAE.Ex.3 refers to Exhibit 3 to the OAE's brief.

THE COURT: What would be a summary of the government's evidence against this defendant?

[ASSISTANT U.S. ATTORNEY]: Your Honor, with respect to Count one, if this case had gone to trial, the government would demonstrate that during the time period set forth in the indictment[,] [h]e agreed with others to distribute approximately 200 kilograms of cocaine.

. . . .

With respect to Count two, at trial, the government would demonstrate that during the period set forth in the indictment, in the Southern District of New York and elsewhere, the defendant agreed with others to import into the United States approximately one thousand kilograms of cocaine belonging to a Colombian paramilitary organization.

The evidence would further demonstrate that this agreement contemplated that part of the proceeds from the sale of this cocaine would be used to pay the defendant for weapons that he planned to provide to the Colombian paramilitary organization.

. . . .

THE COURT: Now, do you agree with the summary of the evidence, counsel?

MR. BONDY: Yes, your Honor.

THE COURT: Mr. Canton, how do you plead to each of the charges against you?

[RESPONDENT]: Guilty as to all counts.

[PT14-10 to PT15-16.][2]

[2] PT refers to the plea transcript, dated October 2, 2002.

In March 2003, respondent was sentenced to 168 months' imprisonment and five years of supervised release. He is currently incarcerated at the Fort Dix Federal Correctional Institution, with a projected release date of October 17, 2013.

Respondent did not inform the OAE of his criminal conviction or New York disbarment, as required by R. 1:20-13(a) and R. 1:20-14(a), respectively.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. We, therefore, adopt the findings of the Supreme Court of New York Appellate Division, Third Judicial Department. Respondent's guilty plea to conspiracy to import cocaine as part of a plan to provide weapons to a Colombian paramilitary organization conclusively establishes a violation of RPC 8.4(b) (commission of a criminal act that adversely reflects on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> 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:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that fall within the scope of subparagraphs (A) through (D). As the OAE noted, however, subparagraph (E) applies. In New York, a disbarred attorney may apply for reinstatement seven years after the effective date of his disbarment. In New Jersey, on the other hand, respondent's egregious criminal offenses warrant permanent disbarment.

Attorneys convicted of distribution of controlled dangerous substances will be disbarred if the distribution is for gain or profit. In re Kinnear, 105 N.J. 391, 396 (1987). See In re Valentin, 147 N.J. 499 (1997) (attorney disbarred in New Jersey, following disbarment in New York, for selling more than a pound of cocaine to a police informant for $11,500; the distribution was solely for financial gain); In re Goldberg, 105 N.J. 278

(1987) (attorney disbarred for playing a significant role in a three-year criminal conspiracy to distribute, and to possess with intent to distribute, large quantities of phenyl acetone, a Schedule II controlled substance, phenylacetone (P-2P), contrary to 21 U.S.C.A. § 846; the defendants purchased nine tons of P-2P, enough for $200,000,000 worth of speed, at a profit of at least $3.5 million; the attorney was moved by financial gain); and In re McCann, 110 N.J. 496 (1988) (attorney disbarred for a large scale and prolonged criminal narcotics conspiracy, as well as tax evasion; greed was his motivation). But see In re Musto, 152 N.J. 165 (1997) (guilty pleas in federal and state courts to conspiracy to distribute cocaine, possession of methyl ecgonine, conspiracy to possess heroin and cocaine, and possession of heroin and cocaine merited three-year suspension, instead of disbarment, because the attorney was primarily a drug user, rather than a participant in a prolonged enterprise for profit; his cocaine sale to a friend was intended to be for personal use, instead of public distribution; his criminal activity was episodic; and the circumstances leading to his conviction were unlikely to recur).

Here, respondent was involved in a large-scale conspiracy to distribute cocaine, a conspiracy that was part of a plan to provide weapons to Colombian paramilitary organization.

Respondent's personal gain is the only motive established by the record. Pursuant to the Court's pronouncement in Kinnear, disbarment is the only appropriate penalty for respondent's criminal offenses. We recommend that he be disbarred.

Vice-Chair Pashman and Members Boylan and Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ricardo A. Canton
Docket No. DRB 07-074

Argued: July 19, 2007

Decided: August 30, 2007

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X					
Pashman						X
Baugh						X
Boylan						X
Frost	X					
Lolla	X					
Neuwirth	X					
Stanton	X					
Wissinger	X					
Total:	6					3

Julianne K. DeCore
Chief Counsel