SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-284
District Docket No. XIV-04-467E

IN THE MATTER OF

FRANK COZZARELLI

AN ATTORNEY AT LAW

Decision

Argued: November 17, 2005

Decided: December 27, 2005

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

Franklin Sachs appeared on behalf of respondent.

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") following respondent's guilty plea to one count of income tax evasion, in violation of 26 U.S.C.A. § 7201.

Respondent was admitted to the New Jersey bar in 1977. He maintained a law office in Belleville, New Jersey. He was temporarily suspended on January 21, 2005, in connection with the above charges.

Pursuant to a January 7, 2005 plea agreement, respondent entered a guilty plea to the first count of a four-count indictment charging him with tax evasion for tax year 1996.

At respondent's sentencing, the Honorable Dickinson R. Debevoise, Senior U.S.D.C.J., summarized the underlying facts in the matter:

> For many years the defendant Mr. Cozzarelli had engaged, without blemish, in a solid and productive legal practice, representing clients in business transactions, estate and guardianship matters, representing municipalities and appearing in the state courts. His practice was local in nature, and not involved with corporate and commercial clients operating on the national or international scene.
>
> In 1996, there commenced a series of events that lead [sic] to the income tax evasion charges to which the defendant pleads guilty. Many aspects of these events remain a mystery, involving persons in the United States, England, or a Russian company, Don Mining Company. In light of his professional and personal background and lack of international sophistications [sic], it is likely the defendant was being used by overseas persons and projects by which he had no comprehension and in which the Government itself does not appear to have unraveled. During the extensive pretrial motions in this case, the Court

became familiar with the transactions in which defendant was personally involved.

Apparently, defendant was introduced to an investment venturer by Edward Mallet. Frank Clark in London proposed that defendant participate in a joint venture with him pursuant to which Clark would transmit seven million dollars to defendant to invest in the United States with income to be divided among joint venturers. And at the end of five years, the entire principle [sic] would be divided among them. Approximately seven million dollars was transferred to a bank account in the United States under defendant's control.

He commenced investing it, spending some of it for his own benefit. A Russian company, Don Mining, entered the scene, suing the defendant in New Jersey Superior Court, claiming that the seven million dollars belonged to him [sic].

He claimed he provided the seven million to invest in the United States for a two-week period to obtain approximately 35 million dollars to be used as finance capital of Don Mining in Russia. If the 35 million dollars could not be obtained in two weeks, the seven million dollars was to be returned to Don Mining.

After a period of litigation, defendant transferred the assets and funds he still had in his possession to Don Mining. The funds didn't apply to his own use, and in which he did not declare the 1996 and 1997 income tax returns are [sic] the basis of the tax evasion charges in this case.

These events are bizarre in their nature. The overall scheme defies rational explanation. And perhaps it will never be known what the parties in Russia or England are up to. There is of course no doubt that back in New Jersey, defendant attempted to

> evade and evade [sic] a substantial part of the income tax he owes to the United States. Approximately four hundred, eighty-eight thousand, three hundred and seventy-five dollars for the year 1996, and approximately a hundred and thirty-eight thousand, nine hundred and fifty-six dollars for the year 1997. It is estimated that he will owe the Government between six hundred and fifty thousand to one million dollars in payment of taxes owed and fraud penalties.
>
> [Ex.D24-Ex.D26.]

At the plea hearing, Judge Debevoise elicited the factual basis for the plea:

> THE COURT: Now, on or about July 19th, 1996, did you receive approximately a 6.9 million dollar deposit into a bank account held in your name of what was then Princeton Bank and Trust, [sic] is now Chase Bank?
>
> THE DEFENDANT: Yes, your Honor.
>
> THE COURT: And was this 6.9 million dollar deposit made in connection with an investment venture, [from] which you intended to receive a substantial amount of income?
>
> THE DEFENDANT: Yes, your Honor.
>
> THE COURT: And between on or about, July 19th, 1996, and December 31, 1996, did you transfer a substantial sum of this money from the Chase account to several personal accounts that you controlled?
>
> THE DEFENDANT: Yes, I did.
>
> THE COURT: And did these accounts include the following: A, a bank account that you held in the name of Frank J. Cozzarelli, Special Administrative Account, at First

Union National Bank, now Wachovia National Bank?

THE DEFENDANT: Yes.

THE COURT: And B, a personal checking and personal savings account, both of which you held in the name of Frank J. Cozzarelli, asset management, at Sovereign Bank?

THE DEFENDANT: Yes, sir.

THE COURT: And did you use a portion of the funds transferred to the First Union and Sovereign Bank accounts in 1996 to make payments to other participants in the investment venture?

THE DEFENDANT: Yes, sir.

THE COURT: Were part of the remaining funds that you transferred to, and received in the First Union and Sovereign Bank accounts during 1996, intended for your personal use and therefore income to you?

THE DEFENDANT: Yes, sir.

THE COURT: Did you also earn approximately eleven thousand, five hundred and seventy-one dollars in interest during 1996 from the funds in the First Union and Sovereign Bank accounts?

THE DEFENDANT: Yes, sir.

THE COURT: And did you intentionally cause your accountant to prepare a false 1996 U.S. individual income tax return that did not disclose that you had received a substantial amount of ordinary income of eleven thousand, five hundred and seventy-one dollars in interest income from your investment venture during 1996?

THE DEFENDANT: Yes sir.

> THE COURT: And is it correct that you then filed this false 1996 U.S. individual income tax return with the IRS on or about October 14th, 1997?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: As a result of your filing this false 1996 tax return, and a false 1997 federal individual tax return, did you cause a net loss to the United States in the amount of between approximately two hundred thousand dollars and three hundred and twenty-five thousand dollars?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: And did you do all of these things knowingly and willingly, and with the intent to evade and defeat a substantial portion of tax due and owing to the United States?
>
> THE DEFENDANT: Yes, your Honor.
>
> THE COURT: All right. I've asked you these various questions, and you've answered them. Is it still your wish to plead guilty to count one of the indictment?
>
> THE DEFENDANT: Yes I do, your Honor.
>
> [Ex.C10-Ex.C12.]

At the sentencing hearing, Judge Debevoise recognized that respondent's behavior was aberrant, and that there were mitigating circumstances:

> It is evident that this episode was totally out of character for defendant, and completely aberrational whether one considers the defendant's personal, family, and professional life. Defense counsel has provided the Court

with more than 92 letters that portray his life in great detail. Significantly these letters to [sic] not come from Titans of finance, business or industry, or influential political leaders. A few come from professional people with whom defendant worked over the years, but most come from members of his large extended family, friends of all ages with whom he has associated, and whom he has assisted in numerous ways, and many clients for whom he has provided services at minimal or no cost.

In the past, there was [sic] highly respected judges of the New Jersey Superior Court, each well known to me, sent letters to the defendant for appreciation for his benefit to the court's pro bono program. He is engaged -- he has served on the board of education, local high school and little league soccer. He has particular empathy for handicapped children, incapacitated aging, and generally down on his luck [sic]. He has during his entire adult life attended to the personal needs and crises of not only his immediate family, but also his large extended family, and numerous friends and clients. The full flavor of his life can be fully appreciated only by reading the 92 letters written by simple folk on his behalf.

[Ex.D26-Ex.D27.]

The judge determined that balancing the substantial tax loss against the aberrational and bizarre nature of respondent's offenses, and his outstanding personal, professional, and community service, permitted a departure from the sentencing guidelines. The judge found a "modest term" of confinement necessary to serve the needs of general deterrence. He also found that "rehabilitation

needs" were better served by a shorter sentence, so that respondent could return to his family and community.

At sentencing, respondent apologized for any "black mark" he caused the legal profession, and apologized to his wife, sons, family and friends for the shame that he caused them, and the disgrace he brought on himself and his family name. Respondent admitted that he had no excuse for his conduct, and that he chose to commit a crime, rather than acknowledge a tax liability that he could not afford to pay at that point in time.

Judge Debevoise sentenced respondent to four months imprisonment, followed by a two-year period of supervised release.

The OAE recommended a two-year suspension, retroactive to the date of respondent's temporary suspension, January 21, 2005. The OAE stressed that, although respondent presented substantial mitigating factors, he owed the government $650,000 to $1,000,000 in taxes and penalties. The OAE argued that a two-year suspension has been the standard discipline for tax evasion cases.

To support its recommendation, the OAE cited the following cases: In re McManus, 179 N.J. 415 (2004) (two-year suspension where the attorney entered a guilty plea to one count of income tax evasion and one count of willful failure to file an income tax return by underreporting income in 1998, and failing to file a tax return for 1993; the attorney failed to report $510,000 of

income received in 1998, resulting in a substantial tax deficiency to the government; the attorney had no ethics history); In re Mischel, 166 N.J. 219 (2001) (two-year suspension for attorney who pleaded guilty in New York to filing a state tax return that contained false and fraudulent business deductions; the attorney had no prior discipline); In re Rakov, 155 N.J. 593 (1998) (two-year suspension for conviction on five counts of attempted income tax evasion for calendar years 1988 through 1992; the attorney had no ethics history); In re Batalla, 142 N.J. 616 (1995) (two-year suspension where attorney entered a guilty plea to a one-count information charging him with income tax evasion for underreporting his earned income in 1990 and 1991, to the tune of $39,066; no ethics history); In re Tuman, 74 N.J. 143 (1977) (two-year suspension for filing a fraudulent joint tax return); In re Becker, 69 N.J. 118 (1976) (two-year suspension for attempting to evade the payment of federal income taxes by filing a false and fraudulent tax return); and In re Gurnik, 45 N.J. 115 (1965) (two-year suspension where attorney pleaded nolo contendere to a charge of tax evasion).

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

Respondent's guilty plea to one-count of income tax evasion, a violation of 26 U.S.C.A. §7201, is conclusive evidence of his guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 74, 77 (1986). Respondent's guilty plea to tax evasion constitutes violations of RPC 8.4(b) (committing a criminal act that that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) and (c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Only the quantum of discipline to be imposed remains at issue. 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.

The cases cited in the OAE's brief establish that a two-year suspension is the standard measure of discipline for tax evasion, even where the attorney has not been previously disciplined.

Here, although respondent's conduct was serious, his disciplinary record is unblemished. Moreover, we were persuaded by Judge Debevoise comments about respondent's selfless contributions

to the public, his pro bono work, and the respect he has garnered, not only from the judges before whom he has appeared, but also from those he has served or whose paths he has crossed. Judge Debevoise emphasized that the more than ninety-two letters written in respondent's behalf came from members of his large extended family, friends of all ages, clients, and others with whom he was associated or whom he assisted. Respondent had great empathy for those "down on their luck," and attended to the needs of his family, friends and clients. We have also found powerful Judge Debevoise's comment that respondent's "rehabilitation needs" would be better served by returning him to his community. Finally we considered that respondent's conduct was aberrational and the result of poor judgment, rather than a lack of good character.

In light of respondent's exemplary work in the community, balanced against his serious, though aberrational conduct, we determine that a one-year suspension, retroactive to respondent's January 21, 2005 temporary suspension, adequately addresses the extent of his misconduct.

Members Pashman, Lolla and Neuwirth determined that an eighteen-month suspension, retroactive to the date of respondent's temporary suspension, is the appropriate measure of discipline for his criminal offense. Member Stanton recused himself. Chair Maudsley did not participate.

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

Disciplinary Review Board
William J. O'Shaughnessy
Vice-Chair

By: _______________
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

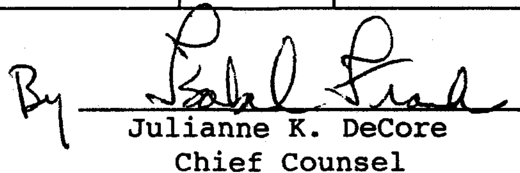
In the Matter of Frank J. Cozzarelli
Docket No. DRB 05-284

Argued: November 17, 2005

Decided: December 28, 2005

Disposition: Three-month suspension

Members	Disbar	One-year Suspension	Eighteen-month Suspension	Dismiss	Disqualified	Did not participate
Maudsley						X
O'Shaughnessy		X				
Boylan		X				
Holmes		X				
Lolla			X			
Neuwirth			X			
Pashman			X			
Stanton					X	
Wissinger		X				
Total:		4	3		1	1



Julianne K. DeCore
Chief Counsel