SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-049

IN THE MATTER OF	
DOMINICK GIORDANO,	
AN ATTORNEY AT LAW	

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 21, 1990

Decided: August 10, 1990

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

Adolph J. Galluccio appeared on behalf of respondent, who was also present.

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).

On October 16, 1989, respondent pleaded guilty to the third degree crime of attempted tampering with public records or information, in violation of N.J.S.A. 2C:28-7, N.J.S.A. 2C:2-6, and N.J.S.A. 2C:5-1. At the sentencing proceeding on December 19, 1989, the judge found that the mitigating factors outweighed the aggravating factors and that respondent's conduct was an aberration. Respondent was ordered to perform 200 hours of

community service under the supervision of the Passaic County Probation Department. The underlying facts are as follows:

In early 1986, the police began an undercover investigation of bribery, official misconduct, and tampering with records at the Eatontown Motor Vehicles Agency. In the course of that investigation, one of the individuals ("B.") involved in a scam to obtain drivers' licenses illegally became a police informant. On February 21, 1986, B. received a telephone call from a woman, M.K., asking B. to arrange for a driver's license for R.P., whose license had been previously suspended for two years. R.P. had been placed in touch with M.K. by respondent, who was R.P.'s attorney. Respondent had also represented M.K. two years before on prostitution charges. Respondent, who had shared a sexual relationship with M.K. in the past, was aware that M.K. could obtain phony licenses. In this particular case, R.P. needed a valid license in order to submit an insurance claim for the theft of his car.

It appears that, for a period of one year following the suspension of his license, R.P. had been driving while on the revoked list. Prompted by the theft of his automobile, however, R.P. consulted with respondent about the filing of an insurance claim, for which he, R.P., believed that a drivers' license was required. Respondent then telephoned M.K. asking her if she was still able to obtain drivers' licenses. She replied that she was. Thereafter, M.K. contacted B. who, unbeknownst to her, had turned into a police informant.

To carry out the scheme designed to obtain the licenses, a chain of individual contacts had to be activated, beginning with M.K. After receiving requests for licenses from her customers and others, M.K. would contact B.; he, in turn, would approach another individual who would then get in touch with yet another individual who cohabited with a woman who worked at the motor vehicles agency. For her part in the scam, M.K. would be paid $200 in each instance.

On February 25, 1986, the police seized evidence of prostitution from M.K.'s home, pursuant to a search warrant. Thereafter, M.K. agreed to cooperate with the ongoing undercover investigation.

She disclosed to the police that respondent had called her four days before, on February 21, 1986, inquiring whether she could still get drivers' licenses. When she replied in the affirmative, respondent told her that his client, R.P., would be contacting her. Indeed, later that day, R.P. telephoned M.K. M.K. informed R.P. that the license would cost $1,800.

At a meeting with M.K. on February 27, 1986, which was under police surveillance, R.P. paid her the $1,800 sum, whereupon M.K. supplied R.P. with a fictitious drivers' license. Upon leaving the meeting, R.P. was arrested. Thereafter, he too agreed to cooperate with the police investigation.

On March 3, 1986, a telephone conversation between respondent and R.P. was recorded. During that conversation, R.P. thanked respondent for putting him in touch with M.K. Respondent replied "(a)h, I'm glad everything worked out for you."

Another telephone call was intercepted on March 4, 1986, this time from M.K. to respondent. Respondent told M.K. that R.P. "was very pleased and ah, you know so, ah, I, I think, ah, you know, in that field word, word travels, and there may be a lot more."

The next day, March 5, 1986, R.P. recorded a conversation with respondent during a meeting at the latter's office. R.P. told respondent that he, R.P., knew other individuals who were interested in obtaining licenses. Respondent inquired "who are they? These good people? I mean -- ah --." Respondent then told R.P. to wait and not have anyone contact him at that time.

On March 25, 1986, respondent was arrested at his law office.

On October 31, 1989, following respondent's conviction, the Court temporarily suspended respondent from the practice of law. Said suspension remains in effect to date. The OAE requested that the Board recommend to the Court that respondent be disbarred.

CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of respondent's guilt in disciplinary proceedings. Matter of Goldberg, 105 N.J. 278, 280 (1987); Matter of Tuso, 104 N.J. 59, 61 (1986); In re Rosen, 88 N.J. 1, 3 (1981); R. 1:20-6(c)(1). No independent examination of the underlying facts is, therefore, 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. Matter of Goldberg, supra, 105 N.J. at 280; Matter of Kaufman, 104

N.J. 509, 510 (1986); Matter of 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 guilty plea established that he engaged in criminal conduct that was prejudicial to the administration of justice, in violation of R.P.C. 8.4(b) and (d). "When a crime of dishonesty touches upon the administration of justice, the offense is deserving of severe sanctions and would ordinarily require disbarment." In re Verdiramo, 96 N.J. 183, 186 (1984).

Although the Board is mindful that respondent's conduct post-dated the warning contained in Verdiramo, the Board is also cognizant of the fact that Verdiramo did not establish a per se rule of disbarment. Before the Court orders disbarment for conduct that is prejudicial to the administration of justice, it must be proven by clear and convincing evidence that the attorney's conduct "reveals a flaw running so deep that he can never again be permitted to practice law." See Matter of Rigolosi, 107 N.J. 192, 210 (1987). The totality of the circumstances must demonstrate that "the ethical deficiencies are intractable and irremediable . . . Disbarment is reserved for the case in which the misconduct of an attorney is so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession." Matter of Templeton, 99 N.J. 365, 376 (1985).

In this case, the Board is not convinced that respondent's conduct "mirror[s] an unsalvageable professional character . . . [and] that respondent's good character and fitness have been permanently or irretrievably lost." Matter of Templeton, supra, 99 N.J. at 376-377. To be sure, respondent's grave misconduct was inexcusable and diminished the confidence vested in him by the members of the public. But the Board is not persuaded that respondent should be disbarred.

Indeed, a number of mitigating factors militate against disbarment. (1) Prior to this ethical transgression, respondent enjoyed an unblemished reputation as an attorney, with thirty years of honorable practice; (2) his ethics record was impeccable; (3) respondent was -- and continues to be -- admired and respected by his clients, friends, relatives, colleagues, church officials and law enforcement officers, as demonstrated by the forty or so letters of support contained in the record; (4) his record as a charitable and civic-minded citizen is impressive: he was active in the Passaic Lions Club, Chamber of Commerce, the Passaic Boys' Club, of which he was the director for eighteen years, the Passaic Chapter of Unico National, which honored him as "Man of the Year", the P.T.A., the American Cancer Society, and Kiwanis Club; he was also a church trustee, and an usher at Saint Clare's Church; (5) he was not motivated by personal pecuniary gain; (6) he expressed candor, contrition, and regret for his actions; and (7) his conduct was an aberration, the product of "gross stupidity," as put perhaps inelegantly but accurately, by the sentencing judge.

The OAE argued, at the Board hearing, that respondent's statement to M.K. that there might be other individuals interested in obtaining driver's licenses tends to negate the inference that his conduct was aberrational. The Board disagrees. Respondent's comment to M.K. that there might be "a lot more" could have been motivated by a possible desire on his part to ingratiate himself with M.K. Indeed, M.K. testified before the grand jury that respondent's involvement in the illegal transaction was motivated by his wish to "get back on track with her again." BT20.[1] Similarly, his response to R.P.'s statement that there might be other interested individuals does not clearly and convincingly show that respondent was willing to repeat the transgression. In fact, respondent's reaction, i.e., that R.P. should wait and not have anyone contact him, is more reflective of respondent's disinclination to repeat his illegal conduct than of his predisposition to commit further offenses. More importantly, the transgression here involves only one client, and does not indicate a pattern of illegal conduct on respondent's part. There is, thus, no indication in this record that respondent's misconduct extended any further than the event for which he was convicted.

Neither does the Board agree with the OAE's seeming contention that this matter is distinguishable from other cases in which the attorney's conduct seriously affected the administration of justice, but did not involve a criminal conviction, and where the

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[1] BT denotes the transcript of the Board hearing on March 21, 1990.

Court ordered a lengthy suspension, instead of disbarment. Just as the absence of a criminal conviction is of no moment in matters where disbarment is warranted, See Matter of Edson, 108 N.J. 464 (1987), Matter of Rigolosi, 107 N.J. 192 (1987), so too a criminal conviction is clearly not the sole determinative factor in justifying disbarment. Rather, the Court looks at the totality of the circumstances and the gravity of the ethical offenses.

The only remaining question is the quantum of discipline appropriate for this respondent. "Each disciplinary case is fact-sensitive. Nonetheless, prior cases are helpful in suggesting the scope of appropriate discipline." Matter of Lunn, slip op. at 6.

In Matter of Kushner, 101 N.J. 397 (1986), the Court imposed a three-year suspension on an attorney who pleaded guilty to one count of false swearing. The attorney lied, in a sworn certification to the court, that the signature on a $40,000 promissory note was not his but, rather, the product of forgery. In mitigation, the Court considered the attorney's unblemished twenty-three year professional record, his reputation and good character, and the absence of harm to any client.

In In re Silverman, 80 N.J. 489 (1979), an attorney pleaded guilty to one count of obstruction of justice for having filed an answer in a bankruptcy matter, and falsely stating that his client had a lawful right to keep custody of twenty-six tractors and trailers belonging to the bankrupt firm. The Court took into account several mitigating factors in determining the extent of discipline to be meted out. The attorney had been a member of the

bar for fifty years; he had cooperated with the ethics proceedings, candidly admitting his guilt and showing contrition; and no litigant or other persons suffered any loss. The Court viewed the attorney's action as an aberration unlikely to be repeated and imposed an eighteen-month suspension.

More recently, in Matter of Power, 114 N.J. 540 (1989), the Court suspended for three years an attorney who pleaded guilty to one count of obstruction of justice. The attorney purposely advised a client not to disclose any information to law enforcement authorities regarding a stock fraud investigation, not to protect the client, but motivated by his own fear that he, too, was a target of the investigation. In addition, the attorney assisted a client in filing a false claim with an insurance company, despite harboring a reasonable suspension that the claim was false.

In Matter of Weston, _____ N.J. _____ (1990), the Court ordered that an attorney be suspended for two years for signing his clients' names on an affidavit of title and a deed, which he recorded, and lying to the buyer's attorney that the signatures were genuine. The attorney's conduct post-dated Verdiramo.

Here, respondent's conduct was indeed serious. It involved a deception against the government and undermined the administration of justice as well. The Board, however, is not convinced that respondent's conduct completely and forever stripped him of his good character. The Board agrees with the sentencing judge that respondent's conduct was "an isolated act, an aberration if you will, of an otherwise outstanding professional and personal

record." Transcript of Sentencing Proceedings 20-22 to 25.

In view of the foregoing, the requisite majority of the Board recommends that respondent be suspended for a period of three years. Three members voted for disbarment.

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

Dated: 6/10/2020

By: Raymond R. Trombadore
Chair
Disciplinary Review Board