SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-166
District Docket No. XIV-2011-0306E

IN THE MATTER OF	
AHMAD L. DESOKY	
AN ATTORNEY AT LAW	

Decision

Argued: September 15, 2015

Decided: December 29, 2015

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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), pursuant to R. 1:20-13(c), following respondent's guilty plea, in the United States District Court, District of New Jersey (District Court) to four counts of criminal contempt or the aiding and abetting

of such criminal contempt, in violation of 18 U.S.C. §401.3 We determine to impose a one-year prospective suspension.

Respondent was admitted to the New Jersey bar in 2007. He has no prior discipline. On March 1, 2012, respondent was temporarily suspended, as a result of the within criminal conviction. In re Desoky, 209 N.J. 395 (2012). He remains suspended to date.

This matter stems from respondent's activities as an employee of a sports supplement manufacturing company, Quality Formulation Laboratories, Inc., and its related entities, American Sports Nutrition, Inc., and Sports Nutrition International, LLC (collectively QFL), which were owned and operated by respondent's father, Mohamed Desoky, respondent's brother. On July 12, 2010, the United States Attorney's Office filed a petition in the District Court for an order to show cause why defendants QFL and Mohamed Desoky, and contemnor defendants Omar Desoky and respondent, should not be held in criminal contempt. On April 26, 2011, the United States Attorney filed an amended petition.

According to the amended petition, on July 1, 2009, the United States had filed a complaint under the Federal Food, Drug, and Cosmetic Act (Act) and 21 U.S.C. §332(a) to enjoin the defendants from violating 21 U.S.C. §331(a) and (k) by

selling articles of food in interstate commerce that were adulterated and misbranded. The food product had allegedly been prepared, packed, or held under unsanitary conditions and may have become "contaminated with filth or . . . rendered injurious to health." The complaint further alleged that the defendants misbranded articles of food containing a major food allergen not disclosed on the product labels.

Under the terms of a March 16, 2010 consent decree in the District Court, the defendants agreed to be permanently restrained from "receiving, manufacturing, preparing, packing, labeling, and distributing any article of food, including dietary supplements," at their Paterson, New Jersey manufacturing plant and any other location, unless they met certain specified conditions and unless the FDA gave its written authorization for QFL to resume operations. The consent decree also required the defendants to notify the FDA at least thirty days before making any changes in the character of their business, including the relocation of facilities.

The defendants did not satisfy the conditions of the consent decree and QFL never ceased operations. Instead, the defendants surreptitiously moved many operations to another location in Congers, New York, transporting employees in vans from the Paterson facility to the Congers facility on a daily

basis, so that the employees could "receive, pack, process, and ship" QFL product from that facility.

On May 13, 2010, a search warrant was issued for the Congers facility and that operation was found in flagrante delicto, with employees in the process of packaging retail product. Special agents from the FDA's Office of Criminal Investigations discovered tens of thousands of retail packages on over fifty pallets, ready for shipping. The defendants also continued to conduct extensive clerical operations at the Paterson facility, after the entry of the consent decree.

On January 18, 2011, FDA agents learned that Mohamed Desoky had sold QFL products out of the Paterson facility to one Pennsylvania customer, from October through December 2010. The Pennsylvania firm was scheduled to pick up an order of dietary supplements from Paterson on January 19, 2011. An undercover FDA agent posed as the Pennsylvania firm's truck driver that day. Respondent was observed personally loading dietary supplements onto the delivery truck.

After a jury trial before the Honorable Garrett E. Brown, Jr., U.S.D.J., on June 1, 2011, respondent was convicted of four counts of criminal contempt or the aiding and abetting such criminal contempt (18 U.S.C. §401(3)). On November 30,

2011, Judge Brown held a sentencing hearing at which respondent testified as follows:

> I would even go so far as to say that I wasn't an attorney for the company, you know, other than the fact that I was family and I had a law degree. I was asked for my opinion. I gave my opinion. To the extent that things happened, it's my fault. My father relied on my judgment and took action based on my judgments, and now we're here.
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> [OAEbEx.E55-12 to 17.][1]

Respondent maintained that he was trying to save his father's company, which had taken thirty years to build. He also sought to help QFL's employees, some of whom he had known from the time he was about sixteen years old. Respondent apologized for his actions:

> Nothing that I did was about money. It was about trying to save all these people's hard work. I didn't intend to hold Your Honor's order in contempt. I was trying to find a way that I could follow the spirit of the consent decree. And I'm sorry that my actions resulted in this.
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> [OAEbEx.E55-6 to 11.]

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[1] "OAEb" refers to the OAE's brief in support of its motion for final discipline.

Respondent also remarked that he never had a financial stake in QFL, and had been employed there for only "about a year" when these events took place.

Judge Brown sentenced respondent to a thirty-four month term of incarceration on each of the four counts, to be served concurrently; three years of supervised release; a $12,000 fine; and a $400 special assessment. A condition of supervised release required that respondent refrain from practicing law pending any action by the New Jersey Bar Association.

Respondent (and the other defendants) appealed their convictions. On January 25, 2013, the Third Circuit Court of Appeals upheld all of the convictions, but remanded the matter to the District Court for further factual findings, including the extent of respondent's supervisory authority over any criminally culpable participants of QFL, an apparent requirement for such a sentencing enhancement.

On October 2, 2013, on remand, the Honorable Joel A. Pisano, U.S.D.J., determined that respondent had not exercised supervisory authority sufficient to warrant the enhanced sanction and reduced his custodial sentence from thirty-four to twenty-four months, with credit for time served.

In an unrelated matter, on January 7, 2014, respondent was arrested by police in Woodland Park, New Jersey, and charged

with assaulting his wife, who was in the early stages of a pregnancy at the time. N.J.S.A. 2C:12-1A. Although the charges were dismissed a week later, with respondent's consent, on February 24, 2014, respondent's federal probation officer petitioned the District Court for an order modifying his conditions of probation to include mandatory treatment for domestic violence/anger management:

> According to police records, [respondent] and his wife had a verbal disagreement which quickly escalated into a physical altercation. The offender yelled at his wife and called her names. He then grabbed her, laid her over his knees, and slapped her buttocks repeatedly before dropping her on the living room floor. When the wife tried to call for help, the offender dragged her to the bedroom and covered her mouth to prevent her from yelling. [Respondent] was arrested and transported to police headquarters, where he admitted the conduct described above. On January 14, 2014, in the West Paterson Municipal Court, the charge was dismissed.
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> [OAEbEx.L.]

On February 24, 2014, Judge Pisano ordered the requested relief.

The OAE indicated that respondent self-reported "the charges," without specifying whether it meant those charges in the criminal matter, the domestic violence matter, or both.

Following a review of the full record, we determine to grant the OAE's motion for final discipline. The existence of a

criminal 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); In re Lunetta, 118 N.J. 443, 445 (1989).

Respondent was convicted of four counts of criminal contempt or the aiding and abetting of such criminal contempt, in violation of 18 U.S.C. §401.3. He was ultimately sentenced to twenty-four months in prison, three years of supervised release, a $12,000 fine and a $400 assessment for his role in QFL's defiance of the consent decree with the FDA.

Few discipline cases deal with attorneys found guilty of criminal contempt. However, in In re Rosen, 213 N.J. 36 (2013), the attorney received a one-year suspension for criminal contempt while representing a spendthrift heiress to several family trusts. In the Matter of Stephen H. Rosen, DRB 12-208 (December 11, 2012) (slip op. at 3). Rosen and another attorney created two new trusts for the client's benefit, moving assets in excess of one million dollars in value from the family trusts to the new ones, and naming Rosen as the trustee of both trusts. Id. at 4. He and the other attorney also formed a limited liability corporation (LLC), to be funded by the new trusts, in order to provide the client with a monthly stipend for living expenses. Rosen was named president of the LLC and

received a one-percent ownership interest in it. Id. at 5. Among other things, the LLC's operating agreement gave Rosen control over the purchase and sale of real estate.

The client's sister instituted litigation in New York State for a share of the family trusts and to stop the alleged wasting of trust assets by Rosen and the client. Id. at 7. The New York court issued two orders, restraining Rosen from taking any action as trustee of the two trusts, and from spending, transferring, or using any trust assets without court approval. Id. at 10-12. In violation of the orders, Rosen then sold an investment property in Irvington that he had purchased for the trust sometime earlier. He did so in a questionable, poorly documented cash transaction from which the client received nothing. Id. at 14. The New York court determined that by doing so, he was guilty of criminal contempt. The court also found Rosen's interests adverse to those of the client and that he had manipulated the client for his own benefit. Id. at 9.

In the disciplinary matter that followed, we found that Rosen's defiance of the two court orders constituted conduct prejudicial to the administration of justice, a violation of RPC 8.4(d). When determining to impose a one-year suspension, we cited Rosen's significant ethics history: a 1995 reprimand for misconduct in three matters, including lack of diligence,

failure to communicate with the client, and conflict of interest; a 1996 admonition for witnessing and notarizing a signature on closing documents that were signed outside of his presence, improperly affixing his jurat on the documents, and failing to timely reply to requests for information from disciplinary authorities; in mitigation in that matter, we considered that respondent had been under considerable stress at the time; and a 2002 three-month suspension for misconduct in three matters, including gross neglect, lack of diligence, charging an unreasonable fee, breaching an escrow agreement, and engaging in a pattern of neglect in all three matters; and in a fourth matter, gross neglect and lack of diligence in settling an estate, failing to communicate with the clients, and failing to protect their interests on termination of the representation; in aggravation, we considered that Rosen demonstrated a pattern of disregarding the Rules of Professional Conduct, displayed no remorse, refused to acknowledge any wrongdoing, and that his clients suffered significant economic harm as a result of his actions.

In In re Dogan, 198 N.J. 479 (2009), on a motion for reciprocal discipline, the attorney received a six-month suspension for misconduct committed in the State of Georgia, where he was also licensed to practice law. In the Matter of

Walter Ryan Dogan, DRB 08-178 (October 29, 2008) (slip op. at 2). Dogan was employed as the food director at a Georgia long-term care facility when Georgia's Department of Human Resources (DHR) filed a "long-arm" petition against him for paternity and child support. In reply to a request for production of documents, Dogan produced paycheck stubs as evidence of his income. Id. at 2.

A Georgia trial court concluded that Dogan had fabricated the paystubs to mislead the court that his earnings were only $528 per week, instead of $1,000 per week. Id. at 3. The court found Dogan in direct criminal contempt of court and sentenced him to twenty days in jail. The Georgia Appeals Court affirmed the conviction. After the case was referred to Georgia ethics authorities, Dogan defaulted and was disbarred in that state. Id. at 3 to 5.

Here, respondent's misconduct was not complicated. He continued to work at his father's food supplement plant, knowing that the consent decree required its operations to cease. Respondent blamed himself for having advised his father in a manner that resulted in violations of the consent decree. Respondent ultimately received a twenty-four month prison term for his crimes.

Compared to Dogan (six-month suspension), respondent's criminal conduct was more serious, for Dogan received a twenty-day jail term after making a one-time misrepresentation about the extent of his earnings, using altered paystubs to deceive a court. In contrast, respondent violated a consent decree with the federal government, virtually the same day he executed it, acknowledging that he had been an influence in his father's business decision to violate the decree.[2]

QFL never ceased any of its operations. A May 2010 search warrant revealed tens of thousands of retail packages on pallets, ready for shipping. Even after that discovery, respondent continued to flagrantly violate the consent decree, day after day, for months thereafter. Only a January 2011 sting operation by federal investigators shut QFL down. Respondent was caught loading illegally processed food supplements onto a truck for delivery. By doing so after the court-ordered shutdown, he continued to expose the public to danger.

Similar to respondent, the attorney in Rosen, supra, was not deterred by two court orders restraining him from touching

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[2] At oral argument before us, respondent stated, somewhat inconsistently, that he had told his father not to defy the court decree.

any of his client's assets during litigation over who owned them. Not only did Rosen improperly sell the trust-owned real estate, but he did so flagrantly by a cash deal that was poorly documented and out of which the client received nothing.

Although respondent has no prior discipline, unlike Rosen, respondent's behavior was at least as brazen, and was more pervasive than Rosen's misconduct. In addition, there is an aggravating factor here that must be considered. Respondent admitted to Woodlawn police that he assaulted his pregnant wife during a January 7, 2014 argument and agreed to a modification of the terms of his supervision to include mental health treatment for anger management/domestic violence. Although the charges against respondent were later dismissed, such behavior by attorneys of this state is intolerable.

In mitigation, respondent was motivated by a desire to protect the family business and the jobs of QFL's longtime employees. That mitigation, however, is tempered by the undeniable fact that respondent's actions were inherently self-preserving. The family business would have been shuttered and he would have been unemployed if the consent decree had been obeyed.

Because of the similarities to Rosen and the aggravating factor of respondent's domestic violence matter, which post-

dated the within misconduct, we determine to impose a prospective, one-year suspension, the same sanction imposed in Rosen.

Members Rivera and Singer voted for a one-year suspension, retroactive to respondent's March 1, 2012 temporary suspension. Member Gallipoli voted for disbarment and filed a separate dissenting decision.

Vice-Chair Baugh and Member Clark 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
Bonnie C. Frost, Chair

By: Paula A. Franzese
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ahmad L. Desoky
Docket No. DRB 15-166

Argued: September 15, 2015

Decided: December 29, 2015

Disposition: One-year prospective suspension

Members	Disbar	One-year Prospective Suspension	One-year Retroactive Suspension	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh						X
Clark						X
Gallipoli	X					
Hoberman		X				
Rivera			X			
Singer			X			
Zmirich		X				
Total:	1	3	2			2

By: Paula Dow for
Ellen A. Brodsky
Chief Counsel