SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-362

IN THE MATTER OF	:
JEFFREY R. POCARO	:
AN ATTORNEY AT LAW	:

Decision of the
Disciplinary Review Board

Argued: December 21, 1994

Decided: May 23, 1995

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

H. Curtis Meanor appeared on behalf of respondent.

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

Respondent was admitted to the New Jersey bar in 1982. He maintains an office in Summit, Union County. He has no prior ethics history.

This matter was before the Board based on a disciplinary stipulation executed by respondent and the Office of Attorney Ethics ("OAE"). According to the stipulation, in 1989 respondent represented a client, Nicholas Mazzioto, in his efforts to obtain a $50,000 loan through a "sale lease back" transaction. Mazzioto agreed to sell three horses allegedly owned by him to Marvin Manheimer.

In a letter from respondent to Manheimer, dated June 15, 1989, respondent outlined the terms of the agreement. Pursuant to the agreement, Mazzioto retained the right to repurchase the three

horses for the sum of $55,000 within thirty days from the date of the sale. Respondent was to hold the registrations for the horses in escrow until the transaction was completed. The loan monies were to be transferred to respondent. Upon respondent's receipt of the funds, he would "fax" to Manheimer copies of the current registration for each horse. These documents included space for the entry of existing liens that had been recorded against the horses with the U.S. Trotting Association.

The current registration of one of the horses was encumbered by a bank lien, but apparently the registration was not available. Respondent admitted that he was aware of the lien. Nevertheless, he "faxed" to Manheimer an old copy of the horse's registration that did not reflect the existing lien. By "faxing" the old registration, respondent intended to represent to Manheimer that there were no encumbrances against the horse so that Manheimer would rely on the misrepresentation.

Manheimer, in fact, relied on the misrepresentation and transferred the $50,000 to respondent for the encumbered security — the horse. Manheimer suffered financial damage when Mazzioto repaid only $22,000 of the loan. Mazzioto was unable to repay the balance of $28,000. Moreover, when the horse "was claimed in a $20,000 claiming race, the entire sales proceeds were collected by the bank that held the lien."

Thereafter, respondent personally undertook to repay the $28,000 balance to Manheimer. He had repaid $6,850 at the time a federal criminal complaint was filed against him, based on his

misconduct in this transaction. The complaint charged him with a violation of 18 U.S.C. 1343 (scheme to defraud another person by use of interstate wire). On September 29, 1993, respondent agreed to enter into a deferred prosecution program with the United States Attorney for the Southern District of New York.

The deferred prosecution agreement required, among other things, that respondent repay Manheimer $21,150; report his involvement in the matter to the OAE (the agreement originally required that he report it to the New Jersey Bar Association); and continue participation in Gamblers' Anonymous ("GA"), if so directed by the U.S. Pretrial Services Office.

Respondent complied with the requirements of the agreement and no further prosecution occurred. Respondent repaid the remaining balance of $21,150 to Manheimer in December 1993.

From the $50,000 loan proceeds, respondent had retained $4,000 as payment of a prior fee due from Mazzioto.

Respondent admitted that his conduct was a violation of RPC 8.4(b) and (c). The OAE recommended that respondent receive public discipline (a period of suspension).

Respondent claimed that the disease of compulsive gambling caused him to send a false document to Manheimer in order to induce an extension of credit to Mazzioto. His motive was to earn the fee promised by Mazzioto to reduce the "crushing debt burden that the disease had brought about."

Respondent advanced, as mitigating factors, his disease and the fact that he made restitution to Manheimer. In respondent's

certification, dated November 11, 1994, he stated that he has four children from his first marriage and three from his second marriage. Respondent paid alimony and child support to his first wife and also supported his wife and children from his second marriage. By 1985 he was experiencing severe financial problems. At about that time, he became a compulsive gambler and, by August 1990, had accumulated gambling debts exceeding $60,000.

In 1989, respondent became involved in the loan transaction, believing he would earn a $25,000 fee. The fee never materialized. By August 1990, respondent realized that he had a compulsive gambling problem and in September 1990 began attending GA.

Respondent further asserted in his brief that he has successfully combatted his problem. According to respondent, he has overcome it, he has made restitution and he is currently engaged in the full-time practice of law. RB7[1]. Respondent has also provided the Board with letters confirming his involvement in weekly individual therapy for his gambling addiction. Respondent claimed that he attended those therapy sessions from November 6, 1992 until at least January 22, 1993 (RB - Exhibit D); that he attended a twenty-four week "outpatient pathological gambling program" from September 13, 1990 to January 18, 1991 and also attended GA (RB - Exhibit E);and that he regularly attended GA meetings from September 1990 to May 1992 and resumed attendance in October 1992 to January 12, 1992 (RB - Exhibit F). It is unclear from the record whether respondent currently attends GA meetings,

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[1] RB denotes respondent's brief and appendix dated November 14, 1994.

but he has indicated that he intends to continue his association with the GA program and to continue helping others.

As a result of the foregoing mitigating factors, respondent has requested that the discipline be limited to a reprimand.

* * *

Following a de novo review of the record, the Board is satisfied that the evidence clearly and convincingly establishes that respondent's conduct was unethical.

In cases involving similar fraudulent conduct, the Court has generally imposed a term of suspension. See In re Poling, 121 N.J. 392 (1990) (fourteen-month suspension for fraudulently concealing secondary financing from first mortgage lender and notarizing a false affidavit); In re DiBiasi, 102 N.J. 152 (1986) (three-month suspension where the attorney participated in a fraud by yielding to a client's request not to reveal to the mortgage lender that the lease of the building's third floor was false; the attorney entered a guilty plea to a federal accusation for a misdemeanor — misapplication of bank funds); In re Labendz, 95 N.J. 273, 279 (1984) (one-year suspension where the attorney knowingly participated in an attempt to perpetrate a fraud upon a federally insured savings and loan association to obtain a mortgage for his client); and In re Silverman, 80 N.J. 489 (1979) (eighteen-month suspension where attorney, who pled guilty to one count of obstruction of justice, by filing a false answer with the

bankruptcy court to aid his client to retain custody of certain assets of the firm in bankruptcy).

This respondent's actions are at least as serious as secondary financing cases, such as Poling, where the arrangement generally benefits the client, rather than the attorney. Here, respondent's conduct was motivated by self-benefit: the fee he stood to collect from Mazziotto. In addition, Manheimer's funds were directly jeopardized; more than $20,000 was lost as a result of respondent's knowingly fraudulent action.

Respondent has claimed compulsive gambling as a mitigating factor. Compulsive gambling has been unsuccessfully advanced as a defense to charges of knowing misappropriation in at least three earlier ethics cases, where the attorneys were disbarred. See In re Goldberg, 109 N.J. 163 (1988); In re Lobbe, 110 N.J. 59 (1988); and In re Nitti, 110 N.J. 321 (1988). In light of the dictates of In re Wilson, 81 N.J. 451 (1979), that mitigating factors are irrelevant once a finding of knowing misappropriation has been made, the Court did not address whether compulsive gambling could be considered in mitigation of the penalty imposed. That issue has not been addressed in matters not governed by Wilson. The Board considered, however, that respondent has redressed his wrong by compensating Manheimer for his economic loss. Nevertheless, respondent's misconduct was grievous, for which a period of suspension is warranted. Accordingly, a six-member majority of the

Board determined to suspend respondent for one year. One member voted for disbarment. Two members did not participate.

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

Dated: 5/23/95

By: Raymond R. Trombadore
Chair
Disciplinary Review Board