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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-283

IN THE MATTER OF :
JAMES R. LISA :
AN ATTORNEY AT LAW :

Decision

Argued: September 17, 1998

Decided: December 8, 1998

John McGill III appeared on behalf of the Office of Attorney Ethics.

Angelo Bianchi appeared on behalf of respondent.

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

This matter was before the Board based on a stipulation signed by the Office of Attorney Ethics ("OAE") and respondent. In the stipulation, respondent admitted that he violated RPC 5.5(a) (unauthorized practice of law), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the

administration of justice).

Respondent was admitted to the New Jersey bar in 1984. In 1995 he received an admonition for using his trust account as a business account and for failing to correct recordkeeping deficiencies. Respondent was suspended from the practice of law for three months, effective March 24, 1998, for violating RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's fitness to practice law). In re Lisa, 152 N.J. 455 (1998). In that matter, respondent stipulated that he was guilty of being under the influence of cocaine, having unlawful constructive possession of cocaine and having unlawful possession of drug paraphernalia.

* * *

As previously stated, respondent was suspended from the practice of law effective March 24, 1998. Despite the fact that he was suspended, he appeared before the Honorable Robert McGann in the Supreme Court of New York on April 20, 1998 and requested permission to appear as co-counsel for a criminal defendant. Respondent represented to Judge McGann that he had filed the necessary paperwork for his application to appear pro hac vice in the New York matter. In order to be admitted pro hac vice, respondent had to file an affidavit representing that he was an attorney in good standing in New Jersey. In fact, respondent had not filed any papers at all. Respondent did not advise Judge McGann that

he was suspended in New Jersey, which he was required to do by R. 1:20-20. Rather, he told Judge McGann that he was "an attorney licensed in New Jersey." Based upon respondent's misrepresentations, Judge McGann permitted respondent to appear as co-counsel in the criminal matter.

On April 21, 1998, Judge McGann again asked respondent for the pro hac vice admission papers. Respondent stated that he had sent the papers to the court clerk when, in fact, he had not done so. In response to further questions from Judge McGann, respondent represented to the judge that he was not the James R. Lisa that had been suspended from the practice of law in New Jersey.

On April 22, 1998, respondent moved to withdraw as co-counsel. From the excerpt of the trial transcript that was provided with the stipulation, it appears that respondent did not state a basis for his withdrawal. However, Judge McGann immediately asked respondent if he was in "good standing" in New Jersey and respondent replied, "Your Honor, technically, no." Judge McGann then asked respondent when he had learned that he had been suspended in New Jersey. Respondent replied that he had just found out the day before when the court had made him aware of it. In fact, that was not true. In the stipulation, respondent admitted that he knew, prior to April 20, 1998, that he had been suspended from the practice of law in New Jersey.

In addition, on April 22, 1998, respondent again told Judge McGann that he had filed the pro hac vice admission paperwork with the clerk's office, which was not true.

Respondent submitted a report from a psychologist who diagnosed respondent as having an "anxiety disorder" and a "bi-polar disorder." According to the report, respondent understood, at the time, that he should not appear in the criminal case. Nonetheless, he undertook the representation because he "could not say 'no' to the criminal defendant and her husband because they were close friends." He agreed to represent them without charge. The psychologist opined that respondent's anxiety, depression and fear of offending others was a result of a childhood incident of sexual abuse by an adult neighbor.

* * *

Upon a de novo review of the record, the Board is satisfied that the stipulation clearly and convincingly establishes that respondent was guilty of unethical conduct. In addition to the violations of RPC 5.5(a), RPC 8.4(c) and RPC 8.4(d), the facts also support a violation of RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal). Indeed, the basis for the violations of RPC 8.4(c) and RPC 8.4(d) are respondent's misrepresentations to Judge McGann. However, the stipulation does not allege that respondent violated RPC 3.3(a)(1). Because respondent stipulated that he made misrepresentations to Judge McGann concerning his status as an attorney and concerning his filing of an affidavit of good standing with the court, the Board deemed the stipulation amended to conform to the proofs, in this case the stipulated facts. In re Logan, 70 N.J. 222,

232 (1976).

The level of discipline for practicing law while suspended has generally ranged from a two-year suspension to disbarment, depending on a number of factors, including the attorney's level of cooperation with the disciplinary proceedings, the presence of other misconduct and the attorney's prior disciplinary history. See, e.g., In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven different matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with the Board that he limit his practice to criminal matters), In re Beltre, 130 N.J. 437 (1992) (attorney suspended for three years for appearing in court after having been suspended and misrepresenting his status to the judge, failing to carry out his responsibilities as an escrow agent, lying to the Board about maintaining a bona fide office and failing to cooperate with an ethics investigation) and In re Wheeler, 140 N.J. 321 (1995) (attorney suspended for two years for practicing law while suspended, making multiple misrepresentations to clients and displaying gross neglect, pattern of neglect, negligent misappropriation, conflict of interest and failure to cooperate with the disciplinary authorities).

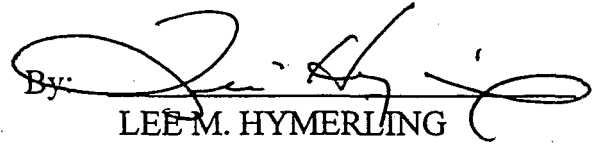
Here, a majority of the Board was convinced that disbarment was not required and that a one-year suspension was sufficient discipline for this respondent. The evidence indicates that a childhood incidence of sexual abuse by a neighbor has caused respondent to be highly anxious about offending other people or refusing their requests. Out of fear of offending close friends, respondent agreed to assist as "second chair" in a New York criminal

proceeding. There was no venality or personal gain from his actions; in fact, he did not charge his friends for the representation. Furthermore, respondent not only cooperated with the ethics authorities, but he entered into a disciplinary stipulation. Finally, a majority of the Board was persuaded that the public would be adequately protected by requiring respondent, prior to reinstatement, to complete psychological treatment and submit proof of his fitness to practice law. Based upon the foregoing, a five-member majority of the Board recommended that respondent receive a prospective one-year suspension. Three members would have suspended respondent for two years and one member voted for a three-year suspension.

As stated above, the Board also determined that, prior to reinstatement, respondent is to submit proof from his treating psychologist that he has successfully completed treatment and has been discharged by the psychologist. In addition, respondent is to submit proof of his fitness to practice law from an independent psychiatrist, approved by the OAE.

Finally, the Board determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 12/8/98

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: One-Year Suspension

Members	Disbar	One-Year Suspension	Two-Year Suspension	Three-Year Suspension	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali		x					
Brody		x					
Cole				x			
Lolla			x				
Maudsley		x					
Peterson		x					
Schwartz			x				
Thompson		x					
Total:		5	3	1			

Robyn M. Hill 12/21/98
Robyn M. Hill
Chief Counsel