SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-178
District Docket No. XIV-06-570E

IN THE MATTER OF :
:
JORDAN B. LUBER :
:
AN ATTORNEY AT LAW :

Decision

Decided: August 30, 2010

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent, through counsel, waived appearance for oral argument.

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"). The matter arose from respondent's guilty plea to mail fraud and health care fraud, violations of 18 U.S.C.A. 1341 and 18 U.S.C.A. 1347, respectively.

The OAE urged us to impose a three-year suspension, despite respondent's 2007 resignation from the New Jersey bar.[1] We agree that a three-year prospective suspension is the appropriate measure of discipline.

Respondent was admitted to the New Jersey bar in 1992. He was admitted to the bar of the Commonwealth of Pennsylvania in 1991. During the time in question, he worked at the firm of Sacks Weston Smolinsky Albert & Luber. He was not a partner in the firm.

In October 2006, respondent was indicted in the United States District Court for the Eastern District of Pennsylvania on thirteen counts of fraud, eight counts of mail fraud, and five counts of health care fraud. On June 29, 2007, he appeared before the Honorable Cynthia M. Rufe, U.S.D.J., and pleaded guilty to one count each of mail fraud and health care fraud, violations of 18 U.S.C. 1341 and 18 U.S.C. 1347, respectively.[2]

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[1] R. 1:20-22(c) states, in relevant part: "A resignation shall not affect the jurisdiction of the disciplinary system with regard to any unethical conduct that occurred prior to resignation."

[2] 18 U.S.C. 1341 states:

> [w]hoever, having devised or intending to

(footnote cont'd on next page)

According to a letter from the Office of Disciplinary Counsel ("ODC") from the Pennsylvania Disciplinary Board, on June 26, 2007, respondent's counsel notified the ODC that respondent was self-reporting that he would be entering a guilty plea in the United States District Supreme Court for the Eastern district of Pennsylvania to various federal charges – *i.e.*, mail fraud and health care fraud. As the result of this notice, an

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(footnote cont'd)

> devise any scheme or artifice to defraud . . . by means of false or fraudulent pretenses, representations, or promises . . . for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service . . . knowingly causes to be delivered by mail or such carrier according to the direction thereon . . . any such matter or thing, shall be fined under this title or imprisoned not more than 20 years, or both.

18 U.S.C. 1347 states:

> [w]hoever knowingly and willfully executes . . . a scheme or artifice: . . . (2) to obtain, by means of false or fraudulent pretenses, representations, or promises . . . any of the money . . . owned by, . . . any health care benefit program, in connection with the delivery of or payment for health care benefits . . . shall be fined under this title or imprisoned not more than ten years, or both . . .

'ODC' file was opened against Respondent." On March 23, 2009, respondent and his counsel signed a Consent Discipline Agreement for a three-year suspension in Pennsylvania. The Pennsylvania Court entered a final order on July 13, 2009. The suspension was made retroactive to October 7, 2007, the date of respondent's temporary suspension in Pennsylvania.

In May 2007, almost two years before his Consent Discipline Agreement, respondent submitted to the New Jersey Supreme Court his resignation from the New Jersey bar, without prejudice. Paragraph (a) of R. 1:20-22 (Resignation Without Prejudice) states that the Court may accept a resignation without prejudice from a member in good standing, "provided that at the time of its submission, the member presents satisfactory proof that no disciplinary or criminal proceedings are pending in any jurisdiction . . . ."

On May 15, 2007, respondent signed an affidavit for the New Jersey Supreme Court, asserting that, at that time, there were no disciplinary proceedings pending against him in either New Jersey or Pennsylvania. Notwithstanding the clear language of R. 1:20- 22(a), the affidavit form does not include a provision for the disclosure of criminal proceedings against the applicant, only disciplinary proceedings. Respondent did not disclose to the New Jersey Supreme Court that he had been indicted on twenty-six

counts, in October 2006.[3] Similarly, respondent did not inform the Court that, between the date of his affidavit, May 15, 2007, and the date of the Court's acceptance of his resignation, June 29, 2007, he had agreed to plead guilty to one count of mail fraud and one count of health care fraud. As indicated previously, respondent pleaded guilty to those two counts on June 29, 2007, coincidentally, the same day that the New Jersey Supreme Court signed the order for his resignation without prejudice.

Respondent denied any intent to conceal his indictment and subsequent conviction from the New Jersey Supreme Court, "as suggested by the [OAE]." In his brief, counsel stated:

> [I]n May 2007, [respondent] resigned voluntarily from the practice of law in New Jersey *during the annual renewal process for his New Jersey license* because (1) he had been handling very few cases in New Jersey over those last few years; (2) he no longer wanted to go through the expense of practicing law in New Jersey; and (3) he did not want to go through the time and expense

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[3] Admittedly, respondent did not report his indictment to the OAE, as required by the rules. R. 1:20-13(a)(1) states that "[a]n attorney who has been charged with an indictable offense in this state or with any equivalent offense in any other state . . . commonwealth . . . or in any federal court of the United States . . . shall promptly inform the Director of the Office of attorney Ethics in writing of the charge."

> of handling multiple disciplinary proceedings relating to the incident which was the subject of his indictment and ultimate plea.
>
> [Rb2.][4]

Respondent denied any intent to "circumvent the disciplinary process or to avoid responsibility for his actions."

The factual basis for respondent's guilty plea was elicited at his plea hearing.

Injury Associates was a fake physical therapy and rehabilitation center run by the Federal Bureau of Investigation ("FBI") as part of a sting operation. Injury Associates did not actually provide any treatment but, rather, generated false medical records and reports to make it appear that patients had received treatment for false or exaggerated injuries. Patients used these records and reports to pursue fraudulent claims against insurance companies.

In January 2004, two undercover FBI agents, posing as victims of an automobile accident, consulted with respondent for representation. Respondent represented them in a personal injury

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[4] "Rb" refers to respondent's counsel's brief to us.

suit against St. Paul Travelers ("Travelers"). During the course of the representation, the undercover agents conveyed to respondent that they had not received any treatment at Injury Associates and that the paperwork, medical records, and treatment records that he was submitting to Travelers were fraudulent. Respondent negotiated a settlement with Travelers, knowing that the claim was based on fake medical records. He received a total settlement of $15,000 for his clients, of which he retained $6,000 as his fee.

On June 9, 2008, respondent was sentenced to sixty days in prison, followed by one year of supervised release. Three months of his release were under house arrest with electronic monitoring. Respondent was ordered to pay a special assessment of $200, a $10,000 fine, and $6,000 in restitution.

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

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's guilty plea to mail fraud and health care fraud evidences his violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(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 sanction 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. In his brief to us, respondent's counsel did not oppose the length of the proposed suspension, but argued that it should be retroactive to June 29, 2007, the date that the New Jersey Supreme Court accepted respondent's voluntary resignation. Counsel contended that the OAE did not seek respondent's temporary suspension only because he had already resigned from the New Jersey bar. Therefore, counsel argued, "the practical effect of Mr. Luber's voluntary resignation is no different than a temporary suspension." Counsel added that, because the OAE "waited until three (3) years later" to file this motion for final discipline and because the OAE did not recommend that the suspension be applied retroactively, the OAE is essentially asking for a six-year suspension.

In New Jersey, attorneys who have been found guilty of insurance fraud have been either suspended or disbarred. See, e.g., In re Jaffe, 170 N.J. 187 (2001) (three-month suspension for attorney who submitted false insurance claims for prescription formula for his baby); In re Wiss, 181 N.J. 298 (2004) (in a motion for reciprocal discipline, an attorney who pleaded guilty to the fifth-degree crime of insurance fraud received a six-month suspension, the same form of discipline imposed in New York; the attorney had directed a member of his staff to falsely notarize a client's signature on forms that were submitted to an insurance company, made misrepresentations on a court form about the source of the client referral, and failed to supervise his staff, resulting in misrepresentations designed to improperly obtain insurance payments); In re Eskin, 158 N.J. 259 (1999) (six-month suspension imposed following a motion for reciprocal discipline; the attorney had received a six-month suspension in New York for forgery and false notarization of a client's signature on a notice of claim that was served after the expiration of a deadline; the attorney also served a second notice of claim misrepresenting the date of the injury to give the appearance that the notice had been timely filed); In re Fisher, 185 N.J. 238 (2005) (one-year suspension in a reciprocal discipline matter from Pennsylvania, where the attorney

submitted a phony receipt to an insurance company for the purpose of obtaining insurance proceeds for his girlfriend, whose computer had been stolen; the attorney then filed a complaint against the insurance company, based on the same claim; the attorney was convicted of insurance fraud, forgery, and conspiracy; prior three-month suspension considered in aggravation; passage of time, attorney's inexperience at time of violation, and lack of personal financial motivation considered in mitigation); In re Berger, 151 N.J. 476 (1997) (two-year suspension imposed on an attorney who submitted false information to his insurance agent, including an improper jurat, with the intent to defraud the law firm's insurance carrier in connection with a fire loss) and In re DeSantis, 147 N.J. 589 (1997) (two-year suspension for attorney who pleaded guilty to one count of mail fraud relating to the submission of a false medical report of injuries sustained in an automobile accident); In re Selghson, 200 N.J. 441 (2009) (attorney disbarred for participating in a scheme to stage and report fraudulent auto accidents for the purpose of pursuing false insurance claims; the attorney also used runners and filed false tax returns by improperly deducting payments to the runners as business expenses on the firm's tax returns); and In re Seltzer, 169 N.J. 590 (2001) (disbarment for attorney guilty of two counts of mail

fraud, one count of conspiracy to commit mail fraud, and one count of conspiracy to defraud the IRS; the attorney participated in a scheme to defraud insurance companies by submitting falsely inflated claims; in return, the attorney received bribes; the attorney was a licensed public adjuster for a firm in which he and his father were principals).

In a series of related cases, three attorneys pleaded guilty to mail fraud arising from a scheme to defraud insurance companies. In re Sloane, 147 N.J. 279 (1997), In re Takacs, 147 N.J. 277 (1997), and In re Kerrigan, 146 N.J. 557 (1996). The attorneys submitted false claims to insurance companies, alleging that either they or their clients had sustained personal injury. Sloane pleaded guilty to one count of mail fraud and received a two-year suspension; Takacs was suspended for three years, after pleading guilty to two counts of mail fraud; and Kerrigan was suspended for eighteen months because, at the time of his misconduct, he was not yet an attorney and because he promptly notified and cooperated with disciplinary authorities.

Respondent's conduct was not as egregious as that of Selighson and Seltzer, who were disbarred. Selighson, in addition to presenting false insurance claims, used runners and filed false tax returns. Seltzer received bribes for submitting

inflated claims through his own public adjusting firm. We find that respondent's conduct was more akin to that of attorneys who received long-term suspensions.

There are two aggravating factors to consider: respondent's failure to notify the OAE that he had been charged with indictable offenses and his failure to disclose to the New Jersey Supreme Court, when he submitted his resignation with prejudice, that there were criminal proceedings against him. As to the first, there is no dispute that respondent did not comply with R. 1:20-13(a)(1). As to the second, although it is true that the affidavit addressed the pendency of disciplinary, not criminal matters, R. 1:20-22(a) unambiguously obligated respondent to reveal his twenty-six count indictment. The relevant provisions of the Rules of Court are superior to the contents of any documents required by the rules. R. 1:20-22(a) is clear that the disclosure of criminal proceedings is obligatory, when an attorney submits an affidavit in support of a resignation without prejudice. Any position that a document

required by the rule is not meant to encompass the mandates of that very rule would be disingenuous at best.[5]

After consideration of the relevant circumstances, including that our sister jurisdiction, Pennsylvania, determined that respondent's conduct was deserving of a three-year suspension -- a level of discipline with which respondent has no quarrel -- we vote to suspend him for three years, prospectively. We do not agree that the suspension should be retroactive to the date of respondent's resignation from the New Jersey bar, June 29, 2007.

In support of his request for a retroactive suspension, respondent's counsel pointed to Sloane and Takacs, where both attorneys failed to advise the OAE of their criminal proceedings, were temporarily suspended, and had their suspensions made

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[5] As mentioned previously, after the submission of respondent's affidavit to the Court (May 15, 2007), but before the issuance of the resignation order (June 29, 2007), the Pennsylvania ODC opened a disciplinary file against respondent (June 26, 2007). We do not reach the question of whether respondent had a continuing obligation to update the contents of his affidavit, prior to the issuance of the Court order. R. 1:22-20 does not address that issue. It provides only that, at the time of the submission of the affidavit, the applicant must present proof that there are no pending disciplinary proceedings against him or her.

retroactive to the date of their temporary suspension. Respondent, however, was not temporarily suspended. Moreover, he should not be given credit for having chosen to resign from the bar. Albeit in another context, the Court has held that a respondent's voluntary suspension from the practice of law will not be credited toward a term of suspension. The Court stated:

> Respondent further argues that he has already been disciplined adequately for his admitted transgressions because of his voluntary withdrawal from the practice of law. We reject this argument. In [In re Farr, 115 N.J. 231, 238 (1989)], we expressly noted that a voluntary suspension would not be considered a mitigating factor unless imposed by order of this Court. [Citation omitted]. Respondent's voluntary suspension was not pursuant to an order by this Court. Therefore, the period of time that respondent voluntarily suspended himself cannot be considered as a form of discipline.
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> [In re Asbell, 135 N.J. 446, 459 (1994).]

In light of all of the foregoing, we determine that respondent should be prospectively suspended for a three-year period. At the expiration of the suspension, respondent will be able to apply for re-admission to the bar, if he so chooses. Under R. 1:20-22(c), he will have to comply with the provisions of R. 1:24 (Bar Examinations; Qualifications for Admission to

Examination). Pursuant to the Court order, he will also have to conform his application to the provisions of R. 1:27-1 (Plenary Admission [to Practice]).

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jordan Luber
Docket No. DRB 10-178

Decided: August 30, 2010

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark						X
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		8				1

Julianne K. DeCore
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Chief Counsel