

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 97-479

IN THE MATTER OF :
HARRIS J. RAKOV, :
AN ATTORNEY AT LAW :

Decision

Argued: February 5, 1998

Decided: June 29, 1998

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

Respondent waived appearance for oral argument.

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

This matter was before the Board on a Motion for Final Discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's criminal conviction for attempted federal income tax evasion, in violation of 26 U.S.C.A. 7201.

Respondent was admitted to the bar of the State of New Jersey in 1969. He has been temporarily suspended in New Jersey since April 19, 1996, following his conviction in U.S. District Court for attempted federal income tax evasion.

The conviction stems from several loans made by respondent to three individuals, beginning in about 1984. (The conviction only addressed the years 1988 through 1992 because of the statute of limitations.) The largest of the loans (all personal and unsecured) was to one Richard Zalk, a longtime friend of respondent. Zalk repaid the interest on the loan by check on a monthly basis. He would pay down the principal when he had sufficient funds available. All of the interest payments were deposited by respondent into his personal accounts. The two other individuals to whom respondent made loans also testified that they made monthly payments of interest only.

Respondent failed to report the income from said interest on his federal income tax filings for the relevant time period. He claimed that, because of Zalk's purportedly weakened financial state, he was concerned that the loan might not be paid back in full and began to apply the monthly payments toward the principal of the loan, rather than interest. However, in three letters to financial institutions and two filings with the New York State Ethics Commission for the Unified Court System during this period, respondent specifically referred to the payments as interest. Nevertheless, respondent asserted that, because of Zalk's financial condition, respondent was entitled to treat the loan as "impaired" and to treat the payments as repayment of principal, rather than as interest income. By way of defense, respondent claimed that he lacked the requisite mental state for conviction of attempted tax evasion because he had a good faith belief that the money could be treated as payment of principal.

In 1995, respondent was indicted in the United States District Court for the District of New Jersey and charged with five counts of attempted income tax evasion for calendar years 1988 through 1992, in violation of 26 U.S.C.A. 7201. He pleaded not guilty. A jury subsequently convicted him on all five counts. On March 25, 1996, he was sentenced to six months' home confinement and three years probation and was fined \$20,000. Respondent appealed to the United States Court of Appeals for the Third Circuit, which affirmed the conviction on November 29, 1996. The United States Supreme Court denied his petition for certiorari on October 6, 1997.

Respondent notified the OAE of his conviction, and was placed on temporary suspension by the Supreme Court of New Jersey on April 19, 1996, pursuant to R. 1:20-13(b). 143 N.J. 556. The suspension remains in effect.

The OAE urged the Board to suspend respondent for a period of two years.

* * *

Following a de novo review of the record, the Board determined to grant the Motion for Final Discipline and to suspend respondent for two years, retroactive to the date of his temporary suspension in New Jersey, April 19, 1996.

The existence of a conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Rosen, 88 N.J. 1, 3 (1981). Ordinarily, a two-year suspension has been the result where an attorney has been convicted of tax evasion. See In re Gurnik, 45 N.J. 115, 117 (1965); In re Batalla, 142 N.J. 616 (1995). At times, however, less severe discipline has

been imposed for conduct less egregious than that of this respondent, particularly where mitigating factors exist. See, e.g., In re Kleinfeld, 58 N.J. 217 (1971) (six-month suspension following plea of nolo contendere to one count of tax evasion, for which fine was paid; unspecified mitigating circumstances considered); In re Landi, 65 N.J. 322 (1974) (one-year suspension for income tax evasion; mitigating factors including prior unblemished record considered). Here, however, there were no mitigating factors present sufficient to persuade the Board that a lesser measure of discipline than the two-year suspension ordinarily meted out in tax evasion cases was warranted. Therefore, the Board unanimously determined to suspend respondent for two years, retroactive to April 19, 1996, the date of his temporary suspension. One member did not participate.

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

Dated: _____

6/29/98

By: _____

LEE M. HYMERLING

Chair

Disciplinary Review Board