SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-250
District Docket No. XIV-2009-0258E

IN THE MATTER OF	
NEIL HOWARD BRAUNSTEIN	
AN ATTORNEY AT LAW	

Decision

Argued: October 20, 2011

Decided: December 22, 2011

Janice L. Richter 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), based on respondent's guilty plea and criminal conviction in New Jersey of attempted criminal coercion by an official, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:13-5(a)(4), a third-degree crime. The OAE recommended a censure. We determine that a one-

year suspension is the appropriate discipline for respondent's serious criminal offense.

Respondent was admitted to the New Jersey bar in 1995. He has no prior discipline.[1]

In 2009, the Corruption Unit, Essex County Prosecutor's Office, investigated a complaint from Julien Neals, Director, Corporation Counsel, City of Newark. Neals alleged that respondent, an Assistant Corporation Counsel, threatened to file a lawsuit against him, unless he agreed to promote respondent and to pay him $750,000. Respondent threatened to claim that Neals had improperly awarded a city contract to Chasan, Leyner, and Lamparello, P.C., Neals' former employer, and that Neals had engaged in workplace discrimination.

The vehicles for respondent's criminal offense were a memorandum and an email from him to Neals. In addition, the Newark Police Department outfitted Neals with a recording device

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[1] Although respondent's brief indicates that he was temporarily suspended from the practice of law in New Jersey as a result of his conviction, the OAE has confirmed that it made no motion for his temporary suspension and that no temporary suspension order exists.

and meetings were held between Neals and respondent. One such meeting resulted in a tape-recorded conversation in which respondent demanded the $750,000 and the promotion, in exchange for his silence about alleged grievances against Neals. At that point in the investigation, respondent was arrested.

On May 26, 2009, a criminal complaint was issued. The Essex County Prosecutor filed a one-count accusation, charging respondent with attempted theft by extortion, a second-degree crime, in violation of N.J.S.A. 2C:20-5(b) and N.J.S.A. 2C:5-1.

On October 13, 2009, respondent pleaded guilty to an amended accusation, charging him with attempted criminal coercion, official action, in violation of N.J.S.A. 2C:5-1, and N.J.S.A. 2C:13-5(a)(4), a third-degree crime.[2]

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[2] Section 2C:13-5(a)(4) provides: "A person is guilty of criminal coercion if, with purpose unlawfully to restrict another's freedom of action to engage or refrain from engaging in conduct, he threatens to... [t]ake or withhold action as an official, or cause an official to take or withhold action." N.J.S.A. 2C:13-5(a)(4).

At the plea hearing, respondent's counsel, Anna G. Cominsky, elicited from respondent the factual basis for the plea:

> Cominsky: In May of 2009, were you working as an attorney for the Office of Corporation Counsel, City of Newark?
>
> Defendant: Yes.
>
> Cominsky: And was Julien Neals your supervisor . . . ?
>
> Defendant: Yes.
>
> Cominsky: Did you have three meetings with Julien Neals on or about May 19th, May 20th and May 21st?
>
> Defendant: Yes.
>
> Cominsky: During at least one of these meetings, did you threaten to go public with information you possessed that you believed to be damaging to Mr. Neals if he did not take certain actions?
>
> Defendant: Yes.
>
> The Court: And did those actions include promoting you, giving you a raise, and paying you $750,000?
>
> Defendant: Yes.
>
> Cominsky: And your purpose in making the threat was to restrict Mr. Neals' freedom of action, meaning your purpose was to cause him to take or withhold certain actions; correct?
>
> Defendant: That's correct.

Cominsky: And you knew this was illegal?

Defendant: Yes.

[OAEbEx.F14-4 to 15-10.] [3]

At respondent's January 15, 2010 sentencing hearing, the sentencing judge stated as follows:

> There is, I have considered the nature of the offense, and I've also considered in deciding that there are not aggravating factors. The fact that this was involved in public employment and there is some degree of a trust in that form not only, not only because he's an attorney, but also because it was a matter of public trust and the conduct could not be described as anything, you know, but very, very serious, and a, and I guess the entire circumstances are very tragic.
>
> Nonetheless, I do find that there are mitigating factors. That the defendant will participate in a program of community service. The defendant is particularly likely to respond affirmatively to probationary treatment. I also considered whether the defendant's conduct neither caused or [sic] threatened serious harm. I cannot find that as a mitigating factor on the basis of the position that he held and the conduct and the level of conduct that we expect from all attorneys.
>
> I find that the mitigating factors preponderate over the aggravating factors.

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[3] "OAEb" refers to the July 7, 2011 OAE's brief in support of its motion for final discipline.

> His preponderance of mitigating factor would weigh in favor of any custodial term at the lower end of the range, however, the amenability of [respondent] to probation, the degree of the offense make a prison sentence inappropriate unless, of course, there would be a violation of probation which I would have to say I'm quite sure there will not be.
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> [OAEbEx.G8-13 to G9-16.]

Although respondent was facing a maximum custodial term of five years and a $15,000 fine, the sentencing judge imposed a term of two years' probation, one hundred hours of community service, participation in therapy [the type of which is undisclosed], and the forfeiture of his public office, pursuant to N.J.S.A. 2C:51-2.

In aggravation, the OAE cited two factors: respondent's position while in public office and his failure to notify the OAE of his conviction, as required by to R. 1:20-13(a)(1).

Although advocating for a censure, the OAE noted, in its brief:

> First, [r]espondent was employed in a public office when he committed the misconduct. "The Court has consistently subjected attorneys who commit acts of serious misconduct while serving in public office to stringent discipline, normally disbarment." In re Boylan, 162 N.J. 289, 293 (2000); see In re Maqid, 139 N.J. 449, 455 (1995) ("Attorneys who hold public office are

> invested with a public trust and are thereby.., held to the highest of standards"). This factor was noted at [r]espondent's sentencing hearing; Judge Furnari recognized that [r]espondent's "conduct could not be described as anything.., but very, very serious," not only because of [r]espondent's position as a member of the Bar but also because [r]espondent's crime occurred in the context of public employment.
>
> [OAEb7.]

In urging the imposition of a censure, the OAE cited RPC 3.4(g) cases, in which attorneys have threatened to file criminal charges in order to gain an unfair advantage in civil litigation.

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

Respondent was convicted of one count of attempted criminal coercion, official action, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:13-5(a)(4), a third degree criminal offense. For his crime, respondent was sentenced to two years' probation, one hundred hours of public service, and forfeiture of his public office position.

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). Respondent's criminal conviction

constitutes a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). 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. Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

The OAE likened respondent's misconduct to that of attorneys who violate RPC 3.4(g) by threatening to file criminal charges in order to gain an improper advantage in a civil matter. Those cases, however, are inapposite. Respondent's conduct was a criminal act and far more serious. In essence, it constituted attempted theft by extortion.

Cases involving successful extortions have resulted in disbarment. See, e.g., In re Ross, 194 N.J. 513 (2008)

(reciprocal discipline matter, based upon attorney's disbarment in Pennsylvania; attorney pleaded guilty in federal court to wire fraud, mail fraud, and conspiracy to commit extortion; the crimes related the attorney's activity as a member of the Penn's Landing Corporation, a non-profit organization of the City of Philadelphia); In re Yim, 188 N.J. 257 (2006) (reciprocal discipline matter, based on attorney's revocation in Virginia of attorney's license to practice law; attorney pleaded guilty in federal court to a charge of collection of extensions of credit by extortionate means; the attorney discussed with an individual whether or not he could arrange for a debtor to be either seriously injured or killed in an apparent accident); and In re Krakauer, 99 N.J. 476 (1985) (attorney convicted in Superior Court of extortion (N.J.S.A. 2A:105-3(b)) in connection with a scheme to extort $12,500 from a municipal contractor relating to a senior citizen high rise project).

This case is distinguished from the disbarment cases, given that respondent's crime involved attempted coercion, while the disbarred attorneys all completed the acts of extortion before they were caught. One of the matters (Ross) involved additional crimes beyond extortion. While respondent's actions were extremely serious, they do not warrant disbarment. Respondent

was in the initial phase of his extortion attempt, having just made known the terms of the deal, when he was arrested. So, too, he ultimately pleaded guilty to a third-degree crime, attempted criminal coercion, official action, rather than the second-degree crime (attempted theft by extortion) with which he was originally charged.

Although no cases are directly on point, respondent's conduct may be analogized to that of an attorney/public official who was convicted of a third-degree crime. In In re Korpita, 197 N.J. 496 (2009) ((motion for final discipline) the attorney received a three-month suspension, based upon a guilty plea in Superior Court to the third-degree crime of threat to a public servant (N.J.S.A. 2C:27-3(a)(3)) as well as to a charge of driving while intoxicated (N.J.S.A. 39:4-50).

The attorney was found "passed out" in his car by the police. After being arrested for DWI, the attorney, who was a municipal judge in three municipalities, including the one in which he was arrested, made statements to police that he had always found in their favor in his court, but that he would no longer do so, if he received a DWI summons. He bartered for a less serious summons, such as careless or reckless driving. Thereafter, the attorney agreed to plead guilty to the DWI

charge and to the crime of making a threat to a public servant. That statute provides, "[a] person commits an offense if he directly or indirectly threatens harm to any public servant . . . with purpose to influence him to violate his official duty." Compelling mitigation included the attorney's alcohol addiction and depression, for which he was being treated; his high level of intoxication at the time (alcohol mixed with Zoloft) and a resulting lack of inhibition (the officers saw respondent's threats only as the "ranting of a drunk"); the attorney's fear that he would lose his judgeships (his main source of income), if convicted of DWI; the forfeiture of future public employment, possible loss of his pension, and the stigma of "going through life as a convicted felon;" the attorney's understanding of the seriousness of his conduct, for which he accepted full responsibility; and the devastation that his actions would have on his children. The attorney received three years' probation, 100 days of community service, and a one-year revocation of his driver's license. He was also ordered to submit to drug and alcohol evaluations, agreed not to seek expungement of his conviction, and was required to forfeit his public offices. In re Korpita, DRB 08-221 (December 4, 2008) (slip op. at 5).

Like Korpita, respondent violated his duty as an attorney and public official. His misconduct was, however, significantly more serious than Korpita's, inasmuch as he never retracted or withdrew his threat. It was "dumb luck" that respondent's plan was thwarted at an early stage. He never had the chance to "seal the deal" – to exchange his silence for money and a promotion – because his arrest intervened. For that reason alone, his conviction was for an attempt offense less serious than extortion. We find that respondent's mens rea was such that a more severe sanction than Korpita's three-month suspension is required.

In aggravation, respondent did not comply with R. 1:20-13(a)(1), which obligated him to alert the OAE that he had been charged with an indictable offense. In mitigation, respondent has no prior discipline in sixteen years at the bar.

We conclude that the severity of respondent's misconduct here warrants a significant term of suspension, one year in duration.

Chair Pashman, Vice-Chair Frost, and member Clark voted to impose a six-month suspension. Members Stanton and Yamner 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 Neil H. Braunstein
Docket No. DRB 11-250

Argued: October 20, 2011

Decided: December 22, 2011

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Six-month Suspension	Disqualified	Did not participate
Pashman			X		
Frost			X		
Baugh		X			
Clark			X		
Doremus		X			
Stanton					X
Wissinger		X			
Yamner					X
Zmirich		X			
Total:		4	3		2

Julianne K. DeCore
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Chief Counsel