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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-464

IN THE MATTER OF :
 : :
JOHN E. BENSTOCK : :
 : :
AN ATTORNEY AT LAW :

Decision

Argued: January 23, 1997

Decided: April 8, 1997

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance before the Board.

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

This matter was before the Board based on a disciplinary stipulation executed by respondent and the Office of Attorney Ethics ("OAE"). R. 1:20-15(f). The stipulation concerns respondent's failure to disclose certain information on his application for admission to the bar in the State of New Jersey. No rules of professional conduct were cited in the stipulation.

Respondent was admitted to the New Jersey bar in 1992. He does not maintain a law office in New Jersey and does not currently practice in this state. Respondent has no history of discipline.

* * *

The stipulation sets forth the following facts:

The OAE docketed this matter on March 5, 1996, upon receipt of a grievance from the Committee for the Tenth Judicial District, State of New York. The grievance indicated that respondent had failed to disclose on his application for admission to New York Law School that he had previously attended Touro College Law School and had been dismissed from that school for academic insufficiency. Respondent also failed to disclose this information on his application for admission to the bar of the State of New Jersey. The stipulation did not address whether respondent applied for or was admitted to the New York bar.

Respondent attended the Jacob D. Fuchsberg Law Center, the law school at Touro College, during the 1987-1988 academic year. On July 13, 1988, respondent wrote to the registrar of the law school informing him that he was withdrawing as of that date. By letter dated July 19, 1988, the assistant dean of the law school had written to respondent advising him that he was being dismissed for failure to maintain a cumulative grade point average of at least 1.7.

Before that, respondent had attended Hofstra University Law School. He withdrew from that school in January 1987 because he

failed to maintain passing grades. This information was not included in the initial grievance.

Thereafter, in November 1988, respondent applied to New York Law School. The application form requested, under the heading "Academic Background," a list of all high schools, colleges, universities, graduate and professional schools attended. Respondent failed to list on the application his attendance at Touro College Law School and Hofstra University Law School.

Respondent was accepted into New York Law School for the spring 1989 term. He attended the law school from January 1989 to May 1991 and received a juris doctor degree on June 9, 1991.

In connection with his application to the New Jersey bar, respondent completed a Certified Statement of Candidate on June 4, 1991. In the "education section," respondent was requested to disclose each school attended and any related information. Under the section for law school, respondent listed only New York Law School, his years in attendance and the program and degree received. He failed to list the names of Touro College Law School or Hofstra University Law School or any information with regard to his attendance at either school.

The Certified Statement of Candidate contains the following certification at the end of the statement:

I hereby certify that I have read all of the questions in this Statement of Candidate and that all my answers are true and complete. I am aware that if any answers are wilfully omitted or false, I may prejudice my admission to the Bar of the State of New Jersey, my subsequent good standing as a member of the

Bar, and may subject me to such penalties as are provided by law.

Respondent signed his name and the date immediately below this language.

Respondent stipulated that, at the time he completed the Certified Statement of Candidate, he knowingly and wilfully failed to include the information regarding his attendance at Touro College Law School. The OAE only learned of respondent's unsuccessful attendance at Hofstra during the course of its investigation.

Respondent failed the July 19, 1991 bar examination. Thereafter, he completed another Candidate's Supplemental Certified Statement on June 1, 1992, apparently again withholding the information about his attendance at the other two law schools. Respondent then took and passed the July 1992 bar examination.

The stipulation did not cite any aggravating facts in this matter. In mitigation, it noted that respondent cooperated with the investigation and voluntarily disclosed his failure to inform the New Jersey Supreme Court or the Board of Bar Examiners about his attendance at Hofstra University Law School on his New Jersey bar application. The OAE also noted that respondent has no history of discipline and that he submitted additional mitigating circumstances in his response to the grievance.

In respondent's reply to the grievance, he regretfully admitted that he failed to disclose the information on his Certified Statement of Candidate for admission to the New Jersey bar. Respondent claimed that, when he applied for admission to

practice in New Jersey, even though he was twenty-seven years old, he was neither emotionally nor psychologically independent. He blamed this on the fact that he was nearing the "end of a long period of emotional and psychological trauma resulting from a peculiar and deleterious home and family life and relationship to [his] parents."

Respondent had a distinguished undergraduate career. He claimed, that, when he decided to enter law school instead of pursuing a career in music, however, "everything suddenly collapsed and literally fell apart" Respondent contended that his parents exercised ongoing and extreme control over him. He added that his mother, a longtime alcoholic, abused him physically and emotionally and exerted "extra-ordinary control" over him. Respondent explained that, even though he was an adult, he was living at home, and was unable to resist or ignore the added pressures from his parents. Respondent asserted that his parents disapproved of his decision to pursue a career in law and that, after he made that decision, they abused him even more. According to respondent, the physical and emotional abuse was more than he could bear. Respondent contended that, as a result of these pressures, his initial efforts at law school ended in failure. Respondent went on to say that, after two unsuccessful attempts at Hofstra and one at Touro College Law School, respondent persevered and ultimately was admitted to New York Law School where he eventually completed his studies.

Respondent explained that, when he applied for admission to practice in New Jersey, he was \$60,000 in debt in student loans. He then succumbed to a "momentary lamentable weakness" and, on his application for admission, omitted all references to "the embarrassing and humiliating facts" of his prior academic failures. Respondent maintained that the omissions were aberrational, that he is not a deceitful or dishonest person and that he will always deeply regret his mistake. Respondent apologized for his transgression and implored the Board to exercise compassion and forgiveness in meting out discipline. Respondent also volunteered to do pro bono legal work in either New Jersey or New York.

The OAE noted that this case involved one instance of non-disclosure to the New Jersey authorities and that the non-disclosure involved was not a criminal conviction, but an educational failure and a matter of personal embarrassment to respondent. The OAE remarked that, since the matter came under investigation, respondent has shown remorse and rehabilitation. In light of these factors and relying on In re Guilday, 134 N.J. 219(1993)(six-month suspension where attorney was involved in a pattern of deception by failing to disclose his arrests in his applications to the bar in three jurisdictions), the OAE recommended a three-month suspension. The OAE also requested that, if respondent ever practices in New Jersey, he notify the OAE and arrange for the appointment of a proctor for a period of two years.

* * *

Upon a de novo review of the record, the Board is satisfied that there is clear and convincing evidence in the record that respondent was guilty of unethical conduct. Respondent's failure to disclose his prior attendance and academic dismissal from two law schools on his bar admission application violated RPC 8.1(a) (making a false statement of material fact in connection with a bar admission application) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Lying on an application for admission to the bar or before the Committee on Character is not tolerated and has always resulted in serious consequences. In In re Gouiran, 130 N.J. 96(1992), the Court revoked an attorney's license to practice law when he knowingly failed to respond fully to questions on his application for admission to the New Jersey bar with respect to the revocation of his license as a realtor in New York. The Court considered, in mitigation, the passage of time and the attorney's recognition of his error. The Court allowed him the opportunity to reapply for admission to the bar. The Court ordered that the revocation of his license be "stayed until the further Order of this Court in order to permit respondent to apply to the Committee on Character to be certified for admission to the bar of this State, provided that respondent makes such application within forty-five days after the date of this Order." Because the attorney never filed the application, his license was revoked.

More recently, an attorney was suspended for six months for a pattern of deception by failing to disclose quasi-criminal arrest

records in his application for admission to the bar. In re Guilday, supra, 134 N.J. at 219. Specifically, between 1978 and 1987, the attorney was arrested five times, charged with reckless driving on one occasion and charged with disorderly conduct on another. The attorney failed to disclose his arrests when he applied for admission to law school in 1986, when he applied for admission to the bar of the Commonwealth of Pennsylvania in 1989 and when he submitted an application to the Committee on Character of the Supreme Court of New Jersey one month later. He was subsequently admitted to practice in New Jersey and Pennsylvania. When the attorney applied for admission to the bar of the State of Delaware in 1990, he again failed to reveal his prior arrests. When the Delaware Board of Bar Examiners learned of the omissions they denied his admission to the bar based on his failure to demonstrate the necessary moral character for admission to the bar.

Here, even though respondent's embarrassment over his academic failures is understandable, lying to bar authorities will never be tolerated. Respondent's conduct was not the product of an oversight or misunderstanding about the application. Respondent purposely failed to disclose his unsuccessful attempts to graduate from two law schools. While his conduct is not as serious as that in Guilday or Gouiran, it cannot be taken lightly.

The Board did not give great weight to respondent's claim of "emotional problems," as no independent proof was submitted to substantiate his statement. Moreover, even if respondent suffered from emotional problems, he overcame his difficulties by the time


he began his studies at New York Law School, sufficiently so to complete law school and pass the New Jersey bar examination. Afterwards, he chose to omit required information on his bar admission application.

The Board has considered, in mitigation, respondent's contrition and his offer to perform community service in the form of pro bono work.

Based on the foregoing, eight members of the Board voted to impose a three-month suspension. One member voted to revoke respondent's license and to require him to reapply for admission to the New Jersey bar.

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

Dated: 4/8/97



LEE M. HYMERLING
Chair
Disciplinary Review Board