

Book

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. 94-305

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IN THE MATTER OF :  
: :  
PHILIP J. BATTAGLIA, :  
: :  
AN ATTORNEY AT LAW :  
:

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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: October 19, 1994

Decided: January 5, 1995

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

Kalman Harris Geist 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 upon a recommendation for public discipline filed by the District IIB Ethics Committee (DEC), arising out of respondent's arrest for possession of cocaine. The complaint charged respondent with a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), mistakenly cited as RPC 8.4(d). Respondent admitted the allegations set forth in the complaint.

Respondent was admitted to the New Jersey bar in 1981. He maintains an office in Clifton, Passaic County. He has no history of discipline.

On November 12, 1992, as a result of an ongoing investigation into the illegal distribution of narcotics in the Clifton, New

Jersey area, the police executed a search warrant at respondent's residence. Respondent's involvement in the illegal activity had been detected through the use of electronic surveillance equipment at another location. Upon arrival at respondent's residence, the police seized an unspecified amount of cocaine and drug paraphernalia.

Subsequently, on March 3, 1993, respondent was charged with the third degree crime of conspiracy to possess a controlled dangerous substance, a violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:35-10a(1).

On June 10, 1993, respondent was admitted into the Pre-Trial Intervention Program ("PTI"), pursuant to a consent order. As a result of respondent's successful completion of the PTI program, the indictment was dismissed on February 4, 1994.

On November 23, 1992, respondent began outpatient treatment for substance abuse at Mountainside Hospital. (Respondent testified that that had been the first available date for treatment.) According to a report from that institution, dated April 20, 1994, respondent had urine tests from November 1992 through the date of the report. All results were negative. The report went on to explain that respondent was cooperative with his treatment and was working on his personal problems. As of the date of the DEC hearing, respondent was attending the Mountainside Hospital program approximately once a week.

Respondent testified before the DEC that his arrest received widespread publication in the local newspapers. He explained the

facts of his arrest to his clients, some of whom elected to find new counsel. Exhibit R-2 is a letter from Anthony J. Giampapa, Esq., who had employed respondent from 1981 to 1983. Mr. Giampapa explained that respondent currently supplements his own practice by doing per diem work for Mr. Giampapa. In his letter, Mr. Giampapa stated that, should respondent be suspended from practice, he would be willing to offer respondent a position with his office at the expiration of the period of suspension.

#### CONCLUSION AND RECOMMENDATION

Respondent was arrested for conspiracy to possess cocaine and subsequently successfully completed the PTI program. He admitted his misconduct. His commission of a criminal act is a clear violation of RPC 8.4(b), in that it reflects adversely on his fitness to practice law. Thus, the sole issue to be determined is the extent of the final discipline to be imposed. In re Goldberg, 105 N.J. 278, 280 (1987); In re Kaufman, 104 N.J. 509, 510 (1986); In re Kushner, 101 N.J. 397, 400 (1986).

The illegal activity underlying respondent's misconduct is not related to the practice of law. See In re Kinnear, 105 N.J. 391, 395 (1987). Nevertheless, good moral character is a basic condition for membership in the bar. In re Gavel 22 N.J. 248, 266 (1956). Any misbehavior, private or professional, that reveals lack of good character and integrity essential for an attorney constitutes a basis for discipline. In re LaDuca, 62 N.J. 133, 140 (1973). That respondent's activity did not arise from a lawyer-

client relationship, that his behavior was not related to the practice of law, or that this offense was not committed in his professional capacity are immaterial. In re Suchanoff, 93 N.J. 226 (1983); In re Franklin, 71 N.J. 425, 429 (1976).

The Board noted that respondent has not been previously disciplined. Also, there is no suggestion in the record that the drugs were intended for other than personal use. In addition, the Board has taken into account that respondent has apparently done well in his treatment and appears to have overcome his drug problem.

Nevertheless, in a number of recent decisions, the Court has ordered a three-month suspension for violations similar to respondent's. See, e.g., In re Silberfein, 138 N.J. 51 (1994); In re Benjamin, 135 N.J. 461 (1994); In re Karwell, 131 N.J. 396 (1993); In re Constantine, 131 N.J. 452 (1993); In re Sheppard, 126 N.J. 210 (1991) and In re Nixon, 122 N.J. 290 (1991).

In light of the foregoing, the Board unanimously recommends a three-month suspension. Three members did not participate.

The Board further recommends that respondent be required to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 1/5/1995

By: 

Raymond R. Trombadore  
Chair  
Disciplinary Review Board