

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-083

IN THE MATTER OF :
: :
ARTHUR B. COOPER, :
: :
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: May 18, 1994

Decided: October 4, 1994

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 plea of guilty to one count of bank fraud, in violation of 18 U.S.C.A. 1344, one count of conspiracy to defraud the United States and the Internal Revenue Service, in violation of 18 U.S.C.A. 371, and one count of aiding and abetting income tax evasion, in violation of 26 U.S.C.A. 7201 and 18 U.S.C.A. 2.

Respondent was admitted to the New Jersey bar in 1977. In October 1988, the Criminal Investigative Division of the Internal Revenue Service began an investigation of respondent and other members of his family. The investigation culminated in a plea agreement, dated April 24, 1992, whereby respondent agreed to plead guilty to a three-count felony information charging him with bank

fraud [18 U.S.C.A. 1344], conspiracy to defraud the United States and the Internal Revenue Service [18 U.S.C.A. 371], and aiding and abetting income tax evasion [26 U.S.C.A. 7201 and 18 U.S.C.A. 2] (Exhibit A to the OAE's brief).

In accordance with the plea agreement, an information was prepared by the United States District Court of New Jersey (Exhibit B to the OAE's brief). On July 28, 1992, respondent admitted to the essential facts contained in the information and entered his guilty plea before Harold A. Ackerman, U.S.D.J. (Exhibit C to OAE's brief).

The facts underlying respondent's plea are undisputed. Respondent was a principal and employee of the Artmall Corporation ("Artmall"), which sold art supplies and other related materials. The business received a substantial portion of its receipts in the form of cash. Howard Cooper (also named as a co-conspirator), respondent's brother, was also a principal and employee of the Artmall. Susan Cooper (also named as a co-conspirator) is the wife of Howard Cooper.

The Coopers set up a family pension plan under the name Malabar Defined Benefit Pension Plan ("Malabar"), purportedly for the benefit of respondent, Howard Cooper, and their mother, Gertrude. Respondent acted as trustee of the pension plan and also managed/invested the plan's assets. Applicable federal law determined the amount of monies that could be deposited into the pension plan, based in part on the age of Gertrude Cooper. From 1981 to 1984, respondent and his brother funded the pension plan

through legitimate deposits from Artmall receipts, with corresponding deductions on the corporation's federal income tax returns. As a result, Artmall's returns showed no taxable income between 1981 and 1984 and actually reported substantial losses. By the end of 1984, when the plan had assets in excess of \$1,300,000, the Cooper brothers had funded the pension plan to the limits of the law. Thereafter, the Coopers could not avoid payment of corporate taxes via the large pension deduction, as they had done previously.

From 1985 to 1988, when the Coopers could no longer deposit Artmall receipts into Malabar, respondent conspired with Howard and Susan Cooper to skim and divert cash receipts from Artmall and to conceal the skimming and diversion from the Internal Revenue Service through a variety of means. As a first step, respondent and his brother schemed to eliminate corporate income for disclosure to the IRS, which consequently reduced personal income taxes. As part of their tax evasion scheme, respondent created pension plan accounts in the names of fictitious individuals; diverted receipts into personal bank accounts; converted cash into traveler's checks; purchased and improved real property; and prepared and filed false income tax returns. The monies were used for the benefit of Howard and Susan Cooper.

Additionally, between 1986 and 1988, respondent and Howard Cooper prepared and filed false and fraudulent forms 1120, U.S. Corporate Income Tax Returns, on behalf of Artmall, which failed to report substantial income in the form of gross receipts. During

that same time period, respondent, Howard, and Susan Cooper prepared and filed false and fraudulent forms 1040, U.S. Individual Income Tax Returns, in the names of Howard and Susan Cooper, which failed to report significant income from their diversion of Artmall receipts. Specifically, respondent admitted that, on or about June 29, 1987, he aided and abetted Howard Cooper in the preparation and filing of a U.S. income tax return form 1040 for the year 1986 and that it substantially and materially understated taxes due to the United States from Howard and Susan Cooper (Exhibit C to the OAE's brief at 29).

Finally, in approximately February 1987, Howard Cooper obtained a residential mortgage loan of \$500,000 from the First Savings & Loan Association of Perth Amboy, a federally insured financial institution. The loan was fraudulently obtained, in that the submitted loan application misrepresented Howard Cooper's income from Artmall, misrepresented the income of Susan Cooper and misrepresented the purchase price of the property. Respondent either prepared or assisted in the preparation of false documentation that was submitted in support of the application, including a false federal income tax return for Howard Cooper. The bank did not sustain a loss because the Coopers repaid the mortgage loan.

On January 28, 1993, Judge Ackerman sentenced respondent to an aggregate term of eight months' imprisonment and imposed a \$20,000 fine. Judge Ackerman also directed that, upon respondent's release from prison, he be placed on supervised release for a period of

three years (Exhibits D and E to the OAE's brief). In imposing that sentence, Judge Ackerman departed downward from the applicable federal sentencing guideline range due to the fact that he found that respondent "suffers from a significant reduced mental state that contributed to his offenses" (Exhibit E to the OAE's brief at 43). Judge Ackerman considered a series of four psychiatric reports, dated March 10, 1989, June 14, 1989, October 27, 1992, and December 18, 1992, in making his decision.

Respondent reported his conviction to the OAE, thereby complying with the requirements of R. 1:20-6(a). In accordance with R. 1:20-6(b), respondent was placed on temporary suspension on August 27, 1992. In re Cooper, 129 N.J. 674 (1992). The suspension currently remains in effect.

The OAE requested that the Board recommend a three-year suspension.

CONCLUSION AND RECOMMENDATION

A conviction in a criminal matter, including a conviction based on a plea, is conclusive evidence of a respondent's guilt in a disciplinary proceeding. In re Goldberg, 105 N.J. 278, 280 (1987); In re Tusso, 104 N.J. 59, 61 (1986); In re Rosen, 88 N.J. 1, 3 (1981); R.1:20-6(c)(1). No independent examination of the underlying facts is, therefore, necessary to ascertain guilt. In re Bricker, 90 N.J. 6, 10 (1982). The only issue to be determined is the quantum of discipline to be imposed. In re Goldberg, supra,

105 N.J. at 280; In re Kaufman, 104 N.J. 509, 510 (1986); In re Kushner, 101 N.J. 397, 400 (1986).

The illegal activity underlying respondent's convictions is not related to the practice of law. See In re Kinnear, 105 N.J. 391, 395 (1987). Nonetheless, 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 La Ducca, 62 N.J. 133, 140 (1973).

Respondent pleaded guilty to a federal information charging him with bank fraud, conspiracy to defraud the United States and the Internal Revenue Service, and aiding and abetting income tax evasion. Respondent's conviction is clear and convincing evidence that he has committed "a criminal act that reflects adversely on (his) honesty, trustworthiness or fitness as a lawyer in other respects" and that he has "engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation." RPC 8.4(b) and (c).

In In re Hughes, 90 N.J. 32, 36 (1982), the Court noted that the public must be protected from attorneys who are likely to commit dishonest acts. Respondent's criminal acts seriously detract from the "honesty, integrity and dignity that are the hallmarks of the legal profession." In re Mintz, 101 N.J. 527, 536 (1986). Moreover, respondent violated a number of federal tax laws. Any violation of the tax laws committed by a member of the bar is viewed as a serious breach of ethics. As stated by the

Court, "[a] lawyer's word must be his bond." In re Weston, 118 N.J. 477, 483 (1990). Respondent violated this covenant when he used his word as an attorney to help his brother and sister-in-law evade their tax obligations.

The fact that respondent played a major role in a sophisticated criminal conspiracy, which extended over a period of at least three years, would normally result in the imposition of the most serious of disciplinary sanctions, see, e.g., In re Messinger, 133 N.J. 173 (1993); In re Mallon, 118 N.J. 663 (1990); In re Lunetta, 118 N.J. 443 (1989), or a lengthy term of suspension in instances where disbarment is unwarranted, see, e.g., In re Gassaro, 124 N.J. 395 (1991); In re Gillespie, 124 N.J. 81 (1991); In re Solomon, 110 N.J. 56 (1988). In In re Messinger, supra, 133 N.J. 173, an attorney was convicted of conspiracy to defraud the United States by engaging in fraudulent securities transactions for the purpose of generating tax losses, aiding in the filing of false tax returns for various partnerships, and filing a false personal income tax return. The conspiracy involved \$1.6 billion in fictitious transactions that were utilized to generate approximately \$225 million in false tax deductions. The Court found that Messinger was involved in the conspiracy for a period of three years, directly benefitted from the false tax deductions, and was motivated by personal gain. The Court found that there were no mitigating factors that would preclude disbarment.

Similarly, in In re Mallon, supra, 118 N.J. 663 (1990), the attorney was convicted of conspiracy to defraud the United States,

and aiding and abetting the submission of false tax returns. The attorney directly participated in the laundering of funds in order to fabricate two transactions reported on the tax returns of his clients. Those transactions concerned capital gains totalling \$541,000. The Court found a pattern of multiple offenses over a period of several years, with no mitigating factors, and ordered the attorney's disbarment.

In In re Gillespie, supra, 124 N.J. 81 (1991), an attorney was convicted of aiding and assisting in the presentation of false corporate tax returns. In limiting discipline to a three-year suspension, the Court considered numerous mitigating factors including impaired judgment due to alcohol abuse, absence of personal gain, prior unblemished record and cooperation with the criminal justice system.

Mitigating factors were also significant in In re Gassaro, supra, 124 N.J. 395 (1991), where an attorney was convicted of conspiracy to defraud the Internal Revenue Service and making false statements to the IRS. Gassaro wrote two letters to the IRS stating that his father-in-law had not collected any money on a bad debt, when in fact he had collected \$10,000. Gassaro did not receive any pecuniary gain from submitting the two letters to the IRS, but instead was motivated by his desire to assist his father-in-law. In imposing a suspension for two years, the Court took into account several mitigating factors including the aberrational nature of the attorney's misconduct, (2) his prior good reputation, (3) his prior public service, and (4) his candor, contrition, and

regret for his actions.

See also In re Solomon, supra, 110 N.J. 56 (1988), (where an attorney was suspended for two years following his conviction of insider securities' trading violations, but was not acting as an attorney, did not trade for his own benefit, and had no prior record.

The Board sees a clear distinction between the present case and Messinger and Mallon. Here, respondent's misconduct did not flow directly from the practice of law, but from his activities in a family business. Additionally, unlike the attorneys in Messinger and Mallon, it does not appear that personal financial gain was the prime motivation for the illegal conduct. Indeed, Judge Ackerman specifically pointed out at sentencing that respondent's actions did not appear to have been undertaken for his own personal benefit, but rather for the benefit of his brother and sister-in-law (Exhibit E to the OAE's brief at 40-41).

The Board views the present case as more akin to Gassaro and Solomon both as to the nature of the criminal activities and mitigating circumstances. Respondent's misconduct here did not arise from the practice of law. His wrongful actions were not undertaken to derive any personal gain therefrom. Prior to the within matter, he enjoyed a blameless record at the bar. Also, respondent fully cooperated with the criminal justice system and expressed his contrition and regret for his actions. Finally, and perhaps most significantly, the Board considered as substantial mitigating circumstances respondent's history of personal and

family mental problems, which included the suicide of a younger brother and the periodic institutionalization of a sister.

The Board agrees with the OAE's assessment that respondent "was more troubled than evil or greedy" and is not convinced that respondent's conduct was so "immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession." In re Templeton, 99 N.J. 365, 376 (1985). Therefore, a four-member majority of the Board recommends that respondent receive a three-year retroactive suspension. The Board also recommends that, prior to reinstatement, respondent submit a report by a psychiatrist approved by the OAE, attesting to his fitness to practice law. The Board further recommends that, upon reinstatement, respondent not be permitted to engage in the sole practice of law until further order of the Court. Three members dissented, voting to disbar respondent. Two members did not participate.

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

Dated: 10/4/94

By: Elizabeth L. Buff
Elizabeth L. Buff
Vice-Chair
Disciplinary Review Board