

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-314

IN THE MATTER OF :
MARK C. RUSHFIELD :
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: October 19, 1994

Decided: July 7, 1995

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

Justin P. Walder 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 on a Motion for Final Discipline filed by the Office of Attorney Ethics (OAE), based upon respondent's guilty plea to a three-count federal information charging him with violating the ERISA reporting provisions of 29 U.S.C. § 1023 and § 1024, misdemeanor offenses under 29 U.S.C. § 1131.

Respondent was admitted to the New York bar in 1977 and to the New Jersey bar in 1980. Beginning in 1985, respondent's law firm represented Warehousemen Local No. 867 and its Welfare Fund. In early 1986, respondent's neighbor's company, Liberty Repair Inc. (hereinafter Liberty) entered into a collective bargaining agreement with Local No. 867, to provide medical benefits for Liberty's employees through the Welfare Fund. In May 1986,

respondent's neighbor offered to have respondent's wife listed on Liberty's payroll, which would make her eligible for the Fund's medical benefits. After receiving approval for this arrangement from the Welfare Fund's Executive Director and the Union-designated trustee, respondent's wife was listed as an employee of Liberty during the period of June 1, 1986 through May, 1990, even though she was not, in fact, an employee of the company.

Respondent was charged with three counts of the same offense (one for each year), in violation of two ERISA sections, by knowingly and willingly causing the Tri-County Welfare Fund to file annual financial statements with the Secretary of Labor, for the years 1987-1989, which overstated the amount of its legitimate expenses incurred in providing a medical benefits plan for its eligible beneficiaries. Exhibit A to OAE brief and appendix at 1-4. Although respondent was not involved in the actual filing of the Welfare Fund's annual financial reports, he knew that the arrangement would result in the inaccurate filing of reports by the Fund with the Secretary of Labor. Respondent's brief and appendix at 3, note 3. The Assistant U.S. Attorney prosecuting the case stated in his letter of June 3, 1994 that

. . . because of the particular facts of Mr. Rushfield's offense, this Office did not consider it appropriate to prosecute Mr. Rushfield for mail fraud or any other false swearing, misrepresentation, fraud or deceit crime, and instead prosecuted him only for the misdemeanor offense of causing the filing of inaccurate welfare fund reports, pursuant to 29 U.S.C. § 1131. [Exhibit D to OAE brief and appendix]

At sentencing on June 2, 1994, the court considered, in mitigation, the extraordinary nature of respondent's cooperation in

assisting the government convict eight people in matters involving public and union corruption (in which respondent was not involved), including the mayor of Parsippany and the chair of the Woodbridge insurance commission. Exhibit C to OAE brief and appendix, at 5-10. In addition, the court pointed to respondent's forthright admission of wrongdoing, his offer to make restitution, and his genuine remorse. The court imposed the lightest possible sentence on respondent. The judge noted:

. . . this is nothing but a sad event not only for Mr. Rushfield, but frankly for the Court as well. There is nothing in Mr. Rushfield's background that in any way indicates that he was ever involved in anything even inappropriate, no less criminal. He has an excellent record. . . . [Exhibit C to OAE brief and appendix at 10]

Respondent received thirty days probation on each count (all three counts to run concurrently), a fine of \$500 on each count, and an order of restitution to the Fund in the amount of \$6,298.08. Id. at 10-12.

In addition, under 29 U.S.C.A. § 1111(a), respondent was barred for a period of three years from representing any ERISA plan or to serve in any ERISA function.

The OAE has requested that respondent receive a reprimand.

* * *

Upon review of the full record, the Board has determined to grant the OAE's motion for final discipline.

Respondent's criminal conviction adversely reflects on his

honesty, trustworthiness and fitness as a lawyer, in violation of RPC 8.4 (b). Though respondent's misconduct is not related to the practice of law, any misbehavior, whether private or professional, that reveals an absence of the good character and integrity essential for an attorney, constitutes a basis for discipline. In re LaDuca, 62 N.J. 133, 140 (1979).

The existence of a criminal conviction is conclusive proof of a respondent's guilt in disciplinary proceedings. R. 1:20-6(c)(1) (now R. 1:20-13(c)(1)); In re Goldberg, 105 N.J. 278, 280 (1987); In re Tuso, 104 N.J. 59, 61 (1986); In re Rosen, 88 N.J. 1, 3 (1981). Therefore, no independent examination of the underlying facts is necessary to ascertain respondent's guilt. In re Bricker, 90 N.J. 6, 10 (1982). The sole question that remains at issue is the quantum of discipline to be imposed. R. 1:20-6(c)(2)(ii) (now R. 1:20-13(c)(2)); In re Infinito, 94 N.J. 50, 56 (1983).

In matters involving federal misdemeanor charges, the Court has often imposed a suspension. For the willful failure to file income taxes, in violation of 26 U.S.C.A. § 7203, the Court has imposed suspensions ranging from six months to one year, depending on the individual mitigating circumstances. See, e.g., In re Leahey, 118 N.J. 578 (1990); In re Chester, 117 N.J. 360 (1990); In re Willis, 114 N.J. 42 (1989) (six-month suspensions). See also In re Hall, 117 N.J. 675 (1989); In re Moore, 103 N.J. 702 (1986); In re Fahy, 85 N.J. 698 (1981) (one-year suspensions). In cases with aggravating circumstances, the suspension may extend beyond one year. See In re Margolis, 55 N.J. 291 (1970) (three-year

suspension for failure to file for "some sixteen years"); In re Hynda, 40 N.J. 586 (1963) (two-year suspension for failure to file for eight years).

In a parallel situation, an attorney pleaded guilty to a federal accusation of misapplication of bank funds, in violation of 18 U.S.C.A. § 657, also a federal misdemeanor, and was suspended for three months. See In re DiBiasi, 102 N.J. 152 (1986).

"The principal reason for discipline is to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general." In re Kushner, 101 N.J. 397 (1986) (quoting In re Wilson, 81 N.J. 451, 456 (1979)). Respondent has been convicted of an offense of dishonesty. Such dishonesty reflects adversely on the credibility of the legal profession and must be discouraged. Nevertheless, "[d]isciplinary determinations are necessarily fact-sensitive." In re Kushner, supra, 101 N.J. at 400. Although consideration should be given to the nature and severity of the offense and its relationship to the practice of law, factors that mitigate the damage an attorney's conduct has caused must also be taken into account. Id. at 400-01; In re Pleva, 106 N.J. 637, 642 (1987); In re Infinito, 94 N.J. 50, 57 (1983).

The Court in In re Poreda, 139 N.J. 435 (1995), heavily weighed mitigating factors in the attorney's favor. In that instance, the attorney was charged with forgery and/or possession of a forged insurance identification card, a misdemeanor of the first degree. Although cases involving forgery of documents usually warrant at least a lengthy suspension, the Court

considered numerous compelling mitigating circumstances in imposing a three-month suspension, instead of harsher discipline.

Although the Court has not previously disciplined an attorney for the identical misconduct engaged in by respondent, this case is perhaps closest to the misconduct in Poreda. The misconduct by the other attorney there, however, although also a federal misdemeanor, involved more direct involvement in violating the law by the attorney.

In light of the compelling mitigating circumstances present in this case and noted by the sentencing court, the Board has, therefore, unanimously determined to impose a reprimand. Three members did not participate.

The Board also determined to require respondent to reimburse the Ethics Financial Committee for appropriate administrative costs.

Dated: 7/7/35

By: 

Raymond R. Trombadore
Chair
Disciplinary Review Board