

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-313

IN THE MATTER OF :
SUNAO T. YAMADA :
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.

Respondent did not appear for oral argument, despite proper notice of the hearing.

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 Reciprocal Discipline filed by the Office of Attorney Ethics (OAE), based upon respondent's three-year suspension from the practice of law in New York for assisting a client in evading federal income taxes and for representing clients with conflicting interests.

Respondent was admitted to the practice of law in New York in 1961 and in New Jersey in 1982. By order dated May 12, 1994, respondent was suspended for three years in New York, effective June 13, 1994. Respondent did not advise the OAE of that suspension, as required by R. 1:20-7 (now R. 1:20-14). The OAE did not learn of respondent's suspension until June 1994, when copies

of disciplinary orders and opinions forwarded by the Departmental Disciplinary Committee for New York's First Judicial Department were received. Respondent was thereafter temporarily suspended in New Jersey on July 13, 1994, pursuant to R. 1:20-5 (now R. 1:20-11).

Respondent's three-year suspension imposed in New York was based on findings that he had violated DR 7-102(A)(7) (assisting a client in conduct known to be illegal or fraudulent) and DR 5-105 (representing multiple clients with "differing interests"). Notice of Petition, at 3. The New York hearing panel found that, beginning in January 1983, respondent assisted his client in engaging in unlawful fraudulent conveyances by quickly transferring assets out of the United States to his client, who had fled the country, for the purpose of evading collection of taxes, in violation of 26 U.S.C. § 7201 (1988). In addition, rather than merely liquidating his client's assets, respondent conveyed certain properties to himself and later transferred the proceeds to his client in Japan, thereby making an unlawful fraudulent conveyance, pursuant to N.Y. Debtor & Creditor Law § 276 (McKinney 1990). The record is unclear as to the end date of respondent's actions, although the transactions continued through at least July 1983. Exhibit C to Notice of Petition, at 7. The hearing panel concluded that respondent had exceeded the bounds of zealous advocacy and actively assisted his client's illegal conduct in evading the payment of income taxes, in violation of DR 7-102(A)(7).

The hearing panel further determined that respondent had

violated DR 5-105 by representing clients with conflicting interests without making the requisite disclosure or obtaining the necessary consent to the representation. In this instance, respondent's client's apartment was sold to another client of respondent. Respondent represented, and collected fees from, both sides of the transaction without seeking or receiving the necessary consent to this multiple representation. Exhibit C to Notice of Petition, at 19.

In determining the appropriate sanction for respondent, the New York court considered, in mitigation, that respondent is sixty-nine years of age, that he has an otherwise unblemished record, and that he was apparently acting out of misguided loyalty to his client and friend. Nevertheless, the New York court agreed that the recommended sanction of suspension from the practice of law for a period of three years was appropriate under the circumstances. Exhibit A to August 1, 1994 Letter Brief of OAE, at 7.

The OAE has requested the imposition of a reciprocal suspension for three years, with the proviso that respondent not be permitted to apply for reinstatement to practice in New Jersey unless and until he has been readmitted to practice in New York.

* * *

Upon review of the full record, the Board has determined to grant the OAE's motion. The Board has adopted the findings of the New York Appellate Division of the Supreme Court that respondent

assisted his client in conduct that he knew to be illegal or fraudulent, in violation of DR 7-102(A) (7) (New Jersey RPC 1.2(d) and RPC 4.1) and that respondent represented multiple clients with differing interests, in violation of DR 5-105 (New Jersey RPC 1.7).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-7(d) (currently R. 1:20-14(a)(4)), which directs that:

- (d) . . . The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
- (1) the disciplinary order of the foreign jurisdiction was not entered;
 - (2) the disciplinary order of the foreign jurisdiction does not apply to the respondent;
 - (3) the disciplinary order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
 - (4) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
 - (5) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs one through five. In New Jersey, matters involving similar misconduct have resulted in lengthy suspensions from the practice. See, e.g., In re Konigsberg, 123 N.J. 263 (1993) (where an attorney who backdated a contract for his client in order to obtain insurance proceeds was

suspended for thirty-three months following a guilty plea to a charge of making false statements to an agency of the United States, in violation of 18 U.S.C.A. § 1001); In re Silverman, 80 N.J. 489 (1979) (where an attorney who backdated a lease addendum filed in a bankruptcy proceeding received an eighteen-month suspension for filing an answer that he knew to be false); In re Spitalnik, 63 N.J. 429 (1973) (where a municipal court judge received a two-year suspension for attempting to assist his client in fixing a traffic summons by marking the ticket "not guilty" and persuading the presiding judge to sign it). As in Konigsberg, respondent assisted his client in conduct that he knew to be illegal or fraudulent. Also, similar to Silverman, respondent unlawfully aided his client in placing assets beyond the reach of the taxing authority as a known creditor. However, this case is more reprehensible than Silverman because respondent actively eluded the IRS by disposing of numerous assets for his client and also engaged in additional misconduct concerning a conflict of interest. Further, like Spitalnik, respondent was acting out of a misguided loyalty to his client. While the Court in Spitalnik considered mitigating factors in imposing a two-year suspension rather than disbarment, respondent, unlike Spitalnik, did not fully cooperate and did not voluntarily admit his guilt. In addition, respondent's actions do not present an isolated incident but, rather, spanned a period of months.

In light of the foregoing, the Board has unanimously determined to grant the OAE's motion for reciprocal discipline and

to suspend respondent for a period of three years, retroactive to the date of his temporary suspension in New Jersey, July 13, 1994. Respondent shall not be eligible for reinstatement in New Jersey unless and until he is readmitted to practice law in New York. Three members did not participate.

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

Dated: 7/7/95

By: 
Raymond R. Trombadore
Chair
Disciplinary Review Board