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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-453

IN THE MATTER OF :
STEVEN M. SCHAFFER, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 9, 1994

Decided: July 1, 1994

John M. McGill, III appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before the Board based on a stipulation between respondent and the Office of Attorney Ethics ("OAE"). Respondent waived the filing of a formal ethics complaint and waived a formal hearing before the District Ethics Committee. Respondent agreed that the matter should proceed directly to the Board for its review, for the sole purpose of determining the extent of final discipline to be imposed. Respondent, however, reserved the right to present relevant and material evidence of mitigating factors. Similarly, the OAE reserved the right to produce relevant and material evidence of aggravating factors. The parties agreed that all such evidence would be produced in writing.

The essential facts contained in the stipulation are as follows:

Respondent was admitted to the New Jersey bar in 1986. At the time of his misconduct, he had an office in Fort Lee, Bergen County, New Jersey. On August 5, 1991, at approximately 11:50 p.m., Fort Lee police officers observed an automobile being operated at a speed lower than that of the surrounding traffic. The automobile was operated by respondent. After disregarding a stop sign and making a right turn without signaling, the automobile came to a stop. Respondent exited the automobile and entered the office of the Toll Gate Motel. One of the police officers parked his car next to respondent's and observed him in the motel office. Respondent did not register at the motel. When he came out, the police officers stopped him and identified themselves.

It was immediately apparent to the police officers that respondent was under the influence of a controlled dangerous substance ("CDS"). Respondent was advised that he was being placed under arrest for being unlawfully under the influence of a CDS and was also advised of his rights. Respondent then began to back up, at which time the officers grabbed his shirt to prevent him from fleeing. At this juncture, two small plastic vials fell to the floor. One of the police officers seized the two items. The officer suspected them to be CDS. Respondent told one of the officers to wait a minute, placed his right hand in the pocket of his pants and retrieved a glass crack (cocaine) pipe, which he handed to one of the officers. Respondent then stated to the police officers that, if they arrested him, they would be ruining his life. He assured them that, if they let him go, in the morning

he would admit himself into an in-patient program for his drug dependency. He further stated to the officers that he was an attorney and asked that the officers release him from custody. His requests were denied. At that point, respondent admitted that he had been using crack cocaine all night and had left his apartment to prevent a problem with his mother. He further stated that he was beginning to feel the full effects of the cocaine. His face became pale and he requested that he be permitted to sit down because he feared that he would pass out. The police Command Center was called and medical assistance was requested. Respondent was transported to Englewood Hospital for observation and for medical treatment for his admitted abuse of the CDS crack cocaine.

While at Englewood Hospital, one of the police officers located a plastic transparent vial on the hospital bed on which respondent was lying. The vial contained a whitish chalk substance, which the officer suspected to be a CDS. The officer had observed the item lying on top of the bed sheets, while in the process of escorting respondent to the bathroom. During the time that respondent was observed on the hospital bed, the officer saw him go into his pants several times, near his groin area. The officer also took a urine sample from respondent at the hospital.

The evidence seized was taken to the police headquarters. After a field test, a positive reaction for cocaine was received from one of the vials. All of the evidence was marked and dropped in the safe for further processing. Respondent was then transported back to police headquarters for the processing of his

arrest. He was charged with unlawful possession of cocaine, in violation of N.J.S. 2C:35-10a (1), a third degree crime. Respondent was also charged with unlawful possession of drug paraphernalia, in violation of N.J.S. 2C:36-2, and with being unlawfully under the influence of a CDS, in violation of N.J.S. 2C:35-10b, both disorderly persons offenses. In addition, respondent was charged with the motor vehicle offense of possession of CDS in a motor vehicle, in violation of N.J.S. 39:4-49.1.

On February 20, 1992, respondent appeared before the Honorable John R. DeSheplo, J.M.C., and applied for a conditional discharge under N.J.S. 2C:36A-1. Judge DeSheplo placed respondent on probation for a period of six months. On March 20, 1992, respondent was accepted into the Pre-Trial Intervention Program ("PTI"). On October 6, 1992, after respondent satisfied the terms and conditions of the PTI program, the complaints against respondent were dismissed, pursuant to N.J.S. 2C:36A-1.

Paragraph 14 of the stipulation provides as follows:

Without prejudice to his right to be heard as to sanction, respondent admits to knowing and unlawful possession of .02 grams of cocaine, a controlled dangerous substance, unlawful possession of drug paraphernalia and being unlawfully under the influence of a controlled dangerous substance, cocaine.

Respondent admitted that his knowing and intentional possession and use of illegal drugs were a criminal act that reflects adversely on his fitness to practice law, in violation of RPC 8.4(b).

The OAE requested that respondent be suspended for a period of

three months, relying on In re Nixon, 122 N.J. 290 (1991).

Respondent submitted to the Board a Certification and Medical Report of Arthur Greenberg, CSW, a certified psychiatric social worker. Mr. Greenberg is a clinician and supervisor at Metropolitan Medical Group, P.C., and the Director of Treatment for Adult and Adolescent Dual Diagnosis Units at Regent Hospital, in New York.

Mr. Greenberg certified that, on August 18, 1991, twelve days after his arrest, respondent had been admitted to the Metropolitan Medical Group Outpatient Treatment Center at Regent Hospital. According to the certification,

[a]t the time of admission to our treatment program, Mr. Schaffer understood that his conduct, substance abuse, and arrest, had brought him to a point where he was about to lose all that he had worked for his entire life, including but not limited to, his license to practice law and career. Mr. Schaffer expressed clearly that he desired to engage a [sic] program for treatment of alcohol and substance abuse to take the steps and action necessary to save his life and career [sic].

From August 18, 1991 through January 1, 1993, respondent attended regularly scheduled group treatment twice a week, as well as an individual treatment session in the hospital's substance abuse treatment program. As part of the treatment program, respondent provided urine specimens two to three times a week. During the treatment period, he tested free from alcohol and all mood-altering substances. In addition, the urinalysis test results from the hospital's treatment program were provided to the supervisor of the Bergen County PTI program before the entry of the March 20, 1992 order of dismissal, as well as on April 27, 1992 and

August 6, 1992.

According to Mr. Greenberg's certification, from August 18, 1991 through January 1, 1993, respondent also attended regular Alcoholics Anonymous ("AA") meetings.

Following the Board hearing, at the Board's request, respondent submitted a certification stating that he has been drug-free from August 18, 1991 to date.

CONCLUSION AND RECOMMENDATION

Respondent stipulated that his possession and use of illegal drugs constituted a criminal act that adversely reflects on his fitness to practice law, in violation of RPC 8.4(b).

The sole issue before the Board is, thus, the appropriate measure of 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 Court has ordered a three-month suspension for violations similar to this respondent's. See, e.g., In re Benjamin, ___ N.J. ___ (1994) (three-month suspension for unlawful possession of 0.26 grams of cocaine and under 50 grams of marijuana); In re Sheppard, 126 N.J. 210 (1991) (three-month suspension for possession of under 50 grams of marijuana and for failure to deliver a controlled dangerous substance (cocaine) to a law enforcement officer); and In re Nixon, 122 N.J. 290 (1991) (three-month suspension for possession of less than 50 grams of marijuana and .26 grams of cocaine). Nevertheless, in this case, the Board is convinced that

to impose a three-month suspension would serve no other purpose but to punish respondent. Numerous compelling mitigating circumstances have persuaded the Board that respondent should not be actively suspended for three months. At the Board hearing, respondent sincerely expressed his deep regret for the shame he has brought on his professional colleagues and his family, for which he sincerely apologized. Respondent explained that, at the time of his misconduct, he did not recognize how ill he was and did not understand the seriousness of his offenses. Respondent pointed to the prompt and extensive remedial action that he undertook immediately after his arrest, including participation in a drug and alcohol rehabilitation program for one and one-half years, and regular attendance at AA meetings. To this date, respondent participates in AA meetings three or four times a week. Moreover, respondent's conduct occurred three years ago and, according to him, has completely changed his life. Respondent contended that, without this change, he would probably have died. He also informed the Board that his work and productivity have increased greatly since his recovery and that his career as an attorney is his whole life.

In light of the foregoing, a requisite majority of the Board recommends that respondent receive a suspended three-month suspension. This result would accomplish the purpose of continued notice to the bar that this type of conduct will be met with a suspension in all but the most compelling cases and, at the same time, give recognition to respondent's heroic efforts to

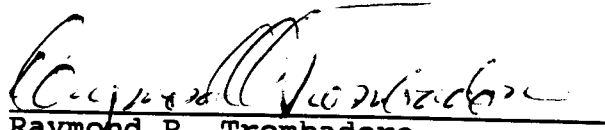
rehabilitate himself. It would also permit him to continue to serve the profession without unnecessary disruption. One member would impose a three-month active suspension. Two members did not participate.

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

Dated: _____

1/1/91

By: _____



Raymond R. Trombadore
Chair
Disciplinary Review Board