

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95 -261

IN THE MATTER OF :
FRANK VALENTIN :
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: September 20, 1995

Decided: July 15, 1996

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

Respondent did not appear due to his incarceration in another state.

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 disbarment in the State of New York following his criminal conviction for the sale of cocaine.

Respondent has been a member of the New Jersey bar since 1988 and the New York bar since 1986. On April 30, 1994, a three-count indictment was filed in the Bronx County Court, State of New York, charging respondent with criminal sale of a controlled substance in the first degree [N.Y. Penal Law 220.43(1)], criminal possession of a controlled substance in the first degree [N.Y. Penal Law 220.21(1)] and resisting arrest [N.Y. Penal Law 205.30]. On

November 12, 1993, respondent entered a guilty plea to a reduced charge of criminal sale of a controlled substance in the third degree [N.Y. Penal Law 220.3a(1)], a class B felony. On January 21, 1994, respondent was sentenced to an indeterminate term of imprisonment, ranging from fifty-two months to fourteen years.

The event underlying respondent's conviction occurred late at night on April 26, 1993, when he sold more than a pound of cocaine to a police informant for the sum of \$11,500. Prior to the transaction, respondent's name had arisen repeatedly in connection with narcotics deals during a wiretap investigation. This matter was not respondent's first contact with illegal drugs, as he had an admitted history of drug addiction.

Based upon respondent's conviction, on August 4, 1994, the Supreme Court of New York, Appellate Division, First Judicial Department, ordered him disbarred from the practice of law in the State of New York.

Respondent did not notify the OAE of either his criminal conviction [R. 1:20-13(a)(1)] or his disbarment in New York [R. 1:20-14(a)(1)]. The OAE was so informed by the New York Department Disciplinary Committee. On January 30, 1995, the New Jersey Supreme Court, pursuant to R. 1:20-13(b)(1), temporarily suspended respondent for his conviction of a serious crime. In re Valentin, 139 N.J. 160 (1995). The suspension remains in effect as of this date.

The OAE has requested the imposition of disbarment.

* * *

Upon review of the full record, the Board has determined to grant the OAE's Motion for Reciprocal Discipline. Pursuant to R. 1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of a disciplinary proceeding), the Board adopted the findings of the New York Supreme Court, Appellate Division, First Judicial Department. The Board also considered respondent's failure to notify the OAE of his New York disbarment and criminal conviction, in violation of R. 1:20-14(a)(1) and R. 1:20-13(a)(1).

In disciplinary proceedings, the existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Rosen, 88 N.J. 1, 3 (1981). Whenever an attorney commits a crime, he or she violates his or her professional duty to uphold and honor the law. In re Bricker, 90 N.J. 6, 11 (1982). Respondent's criminal conviction clearly and convincingly demonstrates that he committed a criminal act which adversely reflects on his fitness as a lawyer. RPC 8.4(b).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

. . . [t]he 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 upon which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary...order of the foreign jurisdiction was not entered;

(B) the disciplinary...order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary...order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) 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

(E) 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 (A) through (D). As to subparagraph (E), although respondent was disbarred in New York, a disbarred New York attorney may seek reinstatement seven years after the effective date of disbarment. 22 N.Y.C.R. 603.14. The magnitude of respondent's crime, however, warrants more severe discipline than a seven-year suspension in New Jersey. It warrants disbarment.

Prior New Jersey cases involving attorneys who distributed controlled substances for financial gain have resulted in disbarment. In In re Goldberg, 105 N.J. 278 (1987), an attorney was disbarred subsequent to his conviction of conspiracy to distribute, and possession with the intent to distribute, phenyl acetone ("speed"). In In re McCann, 110 N.J. 496 (1988), an attorney was disbarred for convictions of large scale drug distribution and income tax evasion. As the Court ruled in In re Kinnear, 105 N.J. 391, 396 (1987), "in most cases an attorney convicted of distribution of controlled dangerous substances [will]

be disbarred. Disbarment would certainly be appropriate if the distribution were done for gain or profit."

In his brief to the Board, respondent advanced a claim of post-traumatic stress disorder, not as a justification, but as an explanation for his actions. No amount of mitigation, however, will be sufficient to save respondent from disbarment in New Jersey. As the Court stated in In re Goldberg, supra, 105 N.J. at 283-84;

[t]he public must be protected from attorneys... who are unable to resist the opportunities for dishonesty which the practice of law often presents. That a lawyer, a representative of the profession sworn to honor and uphold our laws, would participate and profit from the illicit drug trade is unconscionable. Both the public and the bar are entitled to be assured that such an attorney will never return to the profession. [Citation omitted].

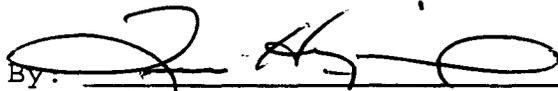
Here, too, respondent's distribution of a controlled substance for profit was unconscionable. It matters not that his criminal activity was confined to one incident. It is the magnitude of the crime that mandates disbarment. The Board unanimously so recommends.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: _____

7/15/96

By: _____


LEE M. HYMERLING,
Chair
Disciplinary Review Board