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Decision
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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-260

IN THE MATTER OF :
 :
VICTOR M. MUSTO :
 :
AN ATTORNEY AT LAW :
 :
 :

Decision

Argued: October 17, 1996

Decided: March 25, 1997

Richard J. Engelhardt 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 on a Motion for Final Discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's criminal conviction in federal court of conspiracy to distribute cocaine, in violation of 21 U.S.C.A. 846, and his criminal conviction in state court of possession of methyl ecgonine, in violation of N.J.S.A. 2C:35-10a(1); conspiracy to possess heroin and cocaine, in violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:35-10; and possession of heroin and cocaine, in violation of N.J.S.A. 2C:35-10a(1).

Respondent was admitted to the New Jersey bar in 1983. On January 6, 1994, a four-count indictment was filed against him in the United States District Court for the District of New Jersey, charging him with one count of conspiracy to distribute cocaine, in violation of 21 U.S.C.A. 846,

and three counts of distribution of cocaine, in violation of 21 U.S.C.A. 841(a)(1). On September 23, 1994, pursuant to a plea agreement, respondent pleaded guilty to count one, conspiracy to distribute cocaine, in violation of 21 U.S.C.A. 846. On April 7, 1995, respondent was sentenced to six months' imprisonment and three years' supervised release, and ordered to pay a \$50 special assessment.

On February 14, 1994, an indictment was filed against respondent in Monmouth County Superior Court, charging him with possession of methyl ecgonine, in violation of N.J.S.A. 2C:35-10a(1). On March 21, 1994, another indictment was filed against respondent, charging him with possession of heroin and cocaine, in violation of N.J.S.A. 2C:35-10a(1), and conspiracy to possess heroin and cocaine, in violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:35-10. Finally, on April 25, 1995, an accusation charged respondent with possession of heroin and cocaine, in violation of N.J.S.A. 2C:35-10a(1); eluding an officer, in violation of N.J.S.A. 2C:29-2b; tampering with physical evidence, in violation of N.J.S.A. 2C:28-6(1); and hindering apprehension or prosecution, in violation of N.J.S.A. 2C:29-3.

On April 25, 1995, pursuant to a plea agreement, respondent pleaded guilty to possession of methyl ecgonine, a controlled dangerous substance, in violation of N.J.S.A. 2C:35-10a(1); conspiracy to possess heroin and cocaine, in violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:35-10; and possession of heroin and cocaine, in violation of N.J.S.A. 2C:35-10a(1).

On April 28, 1995, respondent was sentenced to three concurrent four-year terms of imprisonment, and ordered to pay a \$2,000 Drug Enforcement and Demand Reduction penalty, a \$225 Safe Streets penalty, a \$150 Violent Crimes Compensation Board penalty, and a \$100 lab fee. His driving privileges were also revoked for one year.

Respondent did not notify the OAE of the charges against him, as required by R. 1:20-13 (a)(1). Respondent's arrest was discovered through a newspaper article. On June 15, 1995, respondent was temporarily suspended in New Jersey pursuant to R. 1:20-13(d). In re Musto, 140 N.J. 520 (1995). The suspension remains in effect to date.

The facts of the instant misconduct, as derived from the U.S. Probation Office's presentence investigation report, are as follows:

The FBI made arrangements for a cooperating witness (respondent's ex-girlfriend) to meet with respondent and purchase cocaine after information from local law enforcement revealed that respondent was selling cocaine and using the profits to purchase heroin for personal use. On June 29, 1993, in Asbury Park, New Jersey, the FBI cooperating witness met with respondent and gave him \$800 in return for one ounce of cocaine. On August 3, 1993, the cooperating witness again met with respondent and gave him \$3,000 in return for four ounces of cocaine. On August 12, 1993, in Allenhurst, New Jersey, the cooperating witness met with respondent a third time and gave him \$2,000 in return for two ounces of cocaine. Following this final transaction, respondent was taken into the FBI office in Tinton Falls, New Jersey. Although respondent admitted to selling cocaine, he was released to the community after he agreed to enter a drug treatment program.

As to the state charges, on October 2, 1993, while in a club, respondent was searched incident to a search warrant for the club and was found to be in possession of drugs in his jacket. On October 25, 1993, respondent was stopped in his car with two other persons. The passengers in respondent's car had purchased heroin and cocaine and were in possession of the drugs. Finally, on April 19, 1995, respondent was observed purchasing drugs. When the police attempted to pull him

over, he continued to evade the police. The passenger of the car then threw the drugs out of the window, at the request of respondent.

The OAE urged the Board to recommend respondent's disbarment.

* * *

The existence of a conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's criminal conviction clearly and convincingly demonstrates that he committed "a criminal act which adversely reflects on his honesty, trustworthiness or fitness as a lawyer . . ." [RPC 8.4(b)], and that he engaged in "conduct involving dishonesty, fraud, deceit or misrepresentation" [RPC 8.4(c)].

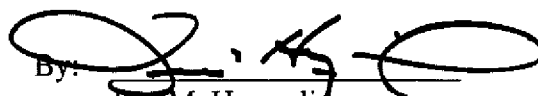
Commission of a criminal act by an attorney is also a violation of that attorney's professional duty to uphold and honor the law. In re Bricker, 90 N.J. 6, 11 (1982). The fact that respondent's offense did not relate directly to the practice of law does not negate the need for discipline. Whether related to the practice of law or not, even a minor violation tends to lessen public confidence in the legal profession as a whole. In re Addonizio, 94 N.J. 121, 124 (1984). "An attorney is bound even in the absence of the attorney-client relationship to a more rigid standard of conduct than required of laymen. To the public he is a lawyer whether he acts in a representative capacity or otherwise." In re Katz, 109 N.J. 17, 22-3 (1987). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2)(ii); In re Goldberg, 105 N.J. 278, 280 (1987).

Prior cases involving a criminal conviction for the distribution of drugs for profit have resulted in disbarment. See, e.g., In re McCann, 110 N.J. 496 (1988) (disbarment for large scale drug distribution) and In re Goldberg, 105 N.J. 278 (1987) [disbarment for conspiracy to distribute and possession with the intent to distribute phenyl acetone (speed)].

Nothing in this record compels the imposition of different discipline. Accordingly, the Board unanimously determined to recommend that respondent be disbarred from the practice of law.

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

Dated: 6/8/97 _____

By: 
Lee M. Hymerling
Chair
Disciplinary Review Board