

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-098

IN THE MATTER OF
DAVID E. SLOANE
AN ATTORNEY AT LAW

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Decision

Argued: May 15, 1996

Decided: September 16, 1996

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

Respondent failed to appear, 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 Final Discipline filed by the Office of Attorney Ethics (OAE), based upon respondent's criminal conviction of mail fraud, in violation of 18 U.S.C.A. §§ 1341 - 1342.

Respondent has been a member of the New Jersey bar since 1989. In an indictment filed in the United States District Court for the Eastern District of Pennsylvania on July 14, 1994, respondent was charged with one count of mail fraud, in violation of 18 U.S.C.A. §§ 1341 - 1342. Exhibit A to OAE's brief. On November 7, 1994, in accordance with a guilty plea agreement (Exhibit B to OAE's brief), respondent pleaded guilty to the charge. Exhibit C to OAE's brief.

The pertinent underlying facts are set forth in the Government's change of plea memorandum:

From in or about 1988 to in or about 1991, Dr. Frank DeLia, in concert with many of his patients, engaged in a scheme to defraud insurance companies and other parties. The patients, all of whom were pursuing, or about to pursue, personal injury claims, came to DeLia's office on one occasion, during which time he recorded basic information about their accidents and physical complaints. From that point on, DeLia, with the knowledge and permission of these patients, submitted fraudulent medical reports, progress notes, and bills, all of which falsely reflected that the patients were receiving months of therapy, as often as two or three times a week, at DeLia's office. In fact, the majority of these patients received no physical therapy at DeLia's office whatsoever, and indeed, never returned to DeLia's office.

As part of the fraudulent scheme, these patients, if questioned by insurance company representatives or anyone else, falsely indicated that they had received the therapy in question from Dr. DeLia.

On the basis of the fraudulent reports and bills submitted by Dr. DeLia, the insurance companies and other civil defendants settled the majority of the claims, and provided thousands of dollars to these patients. Typically, both the fraudulent medical reports and the subsequent, resulting cash settlements were sent through the mails....

Dr. Frank DeLia with the knowledge and permission of David Sloane, submitted fraudulent medical reports and bills in support of a personal injury claim which Sloane had filed in connection with an injury Sloane suffered in 1990. In reliance upon the fraudulent DeLia medical reports and billings, an insurance carrier issued and mailed a settlement check in the amount of \$10,500 to David Sloane and his attorney on December 13, 1990.

[Exhibit D to OAE's brief]

At sentencing on April 11, 1995, respondent was placed on probation for a period of forty-eight months. As conditions of probation, respondent was ordered to remain in home custody for a period of five months and to pay a \$5,000 fine and a \$50 special assessment fee.

He was also directed to make restitution in the amount of \$10,500. Exhibits E and F to OAE's brief.

Respondent did not advise the OAE of his criminal proceeding, as required under R. 1:20-13(a). Respondent was temporarily suspended on January 23, 1996. The suspension remains in effect as of this date.

The OAE urged the Board to impose a two-month suspension.

* * *

Following a review of the record, the Board determined to grant the OAE's Motion for Final Discipline.

A criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). An independent examination of the underlying facts is not necessary to ascertain guilt. In re Leahey, 118 N.J. 578, 580-81 (1990). The sole issue for determination by the Board is the quantum of final discipline to be imposed. R. 1:20-13(c)(2); In re Infinito, 94 N.J. 50, 56 (1983). Respondent's guilty plea to mail fraud clearly and convincingly establishes that he engaged in illegal conduct that adversely reflects on his honesty, trustworthiness or fitness as a lawyer. RPC 8.4 (b). He also engaged "in conduct involving dishonesty, fraud, deceit or misrepresentation." RPC 8.4(c).

Criminal acts as serious in nature have resulted in substantial suspensions from the practice of law. See, e.g., In re Batalla, 142 N.J. 616 (1995) (a two-year suspension was imposed on an attorney who pleaded guilty to a one-count felony information charging him with

income tax evasion, in violation of 26 U.S.C.A. § 7201); In re Bateman, 132 N.J. 297 (1993) (a two-year suspension imposed upon an attorney who was convicted of mail fraud conspiracy and making a false statement on a loan application); In re Nedick, 122 N.J. 96 (1991) (a two-year suspension was imposed on an attorney who pleaded guilty to a one-count felony information charging him with income tax evasion); In re Ragucci, 112 N.J. 40 (1988) (a two-year suspension was imposed upon an attorney who discovered a pension check for \$194, forged an endorsement of the true payee and then converted those funds to his own use); In re Solomon, 110 N.J. 56 (1988) (a two-year suspension was imposed upon an attorney who pleaded guilty to one count of conspiracy to defraud the United States by trading upon confidential securities information). All of the above acts were motivated by personal financial gain, as was respondent's acts.

The Board unanimously determined to impose a two-year suspension, retroactive to respondent's temporary suspension on January 23, 1996. Two members did not participate.

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

Dated: 9/16/96

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board