

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-128

IN THE MATTER OF :
:
ROBERT A. BRAUN :
:
AN ATTORNEY-AT-LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 20, 1989

Decided: December 8, 1989

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

Robert A. Braun waived appearance for oral argument.

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

This matter is before the Board based upon a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics.

Respondent was admitted to the New Jersey bar in 1984. He was admitted to the Pennsylvania bar in the same year and practiced as a sole practitioner in Philadelphia.

On March 2, 1987, respondent pled nolo contendere in the Municipal Court of Philadelphia to one count of recklessly endangering another person. The charge arose from the discovery of a reversed gas meter in an apartment building owned by respondent.

The record establishes that, on January 6, 1986, a crew from the gas company arrived at respondent's apartment building at 1312

North 6th Street, Philadelphia, Pennsylvania. The crew had been directed to shut off range gas to one apartment¹, but was prevented from entering the building by a locked gate. A call was placed to respondent, who held the only key to the gate. He refused to allow the crew access to the meters. Respondent asserted at trial that his refusal was based on a belief that the tenant's gas was being shut off at the direction of her vindictive ex-boyfriend, in whose name the gas account was recorded.

Having been refused entry, one member of the gas company crew shimmied over the fence. Once inside, the worker found that the heating gas meter had been reversed.² The worker also discovered a leak in the meter; his measuring device indicated a near-explosive level of gas leakage. The worker surmised that, when the meter was reversed, a washer had been displaced, creating the leak.

In view of the explosive condition, the gas company crew disconnected the gas line and removed the meter. During this procedure, the workers noted that a bypass to a nearby water meter had also been created.

When respondent learned of the action taken to abate the hazard, he contacted the gas company to find out when the meter

¹ Each tenant of the building was responsible for payment of gas used for cooking, which was measured by separate meters. Heating gas for all units was supplied by respondent, who then paid the gas company.

² When a meter is installed in a "reverse" position, the meter faces the wall. This type of installation creates a bypass allowing gas use that is not registered on the meter.

could be reinstalled. He expressed concern for the older tenants and children who would suffer through winter weather in an unheated building. The gas company spokesperson advised respondent that he would have to discuss the matter with the investigative department.³

Irritated and concerned by the delay, respondent reconnected the meter. The gas company reinspected the property a few days later and found that the leak had not been abated and the near-explosive conditions were still present. The company again disconnected the meter.

Respondent petitioned the Court of Common Pleas for a temporary restraining order to have the gas turned on; relief was granted when respondent posted a \$1,000.00 bond.

Subsequently, the gas company submitted a bill to respondent for \$7,700.00. Respondent refused to pay the bill until he received a complete explanation of the charges. The gas company did not respond to this request, and filed criminal charges against respondent, including one charge of recklessly endangering another

³ The company determined that respondent intentionally reversed the meter. It based this finding on the presence of the bypassed water meter and the fact that, on March 24, 1987, another reversed meter had been found on respondent's property at 1528 North 7th Street, Philadelphia. Originally, the gas company accepted respondent's explanation for the first reversed meter. He stated that it had inadvertently been reconnected in that manner after the fire department dismantled it during a call. No response was made to respondent's contention that the second meter was incorrectly reinstalled by a handyman after a thermocouple was replaced.

person.*

Respondent entered a plea of nolo contendere to the one count; he was sentenced to thirty days' non-reporting probation, a \$2,000.00 fine and two hundred hours of community service.

As a result of his conviction, respondent was temporarily suspended by the Supreme Court of Pennsylvania on September 3, 1987. At that time, respondent voluntarily withdrew from practice in the State of New Jersey.

The Court denied respondent's Petition for Reargument and Reconsideration on April 29, 1988.

A hearing was held on May 19, 1988 before Hearing Committee 1.03. The Pennsylvania Office of Disciplinary Counsel presented its case by Stipulation. Respondent presented character witnesses.

The hearing committee found that respondent violated DR 1-102(A)(3) and (6) and recommended that respondent receive a three-month suspension from the practice of law, retroactive to the date of his temporary suspension. On February 10, 1989, the Supreme Court of Pennsylvania adopted the Committee's recommendation as final discipline.

The Office of Attorney Ethics now requests that full reciprocity be accorded to the Pennsylvania decision.

* The record is unclear as to other criminal charges brought, although the Commonwealth did agree to drop other charges when respondent entered his plea. Transcript of Hearing at 3, Commonwealth v. Braun, M. C. No. 87-02-2001, March 2, 1987.

CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board recommends that the motion be granted and that respondent be reciprocally disciplined for a period equivalent to his suspension in Pennsylvania.

Under R. 1:20-7(d), and given the lack of any procedural irregularities in the Pennsylvania proceedings, the discipline accorded in New Jersey should correspond to that employed in another jurisdiction, unless good reason to the contrary is shown. In re Kaufman, 81 N.J. 300 (1979).

Respondent does not dispute the factual findings of the Pennsylvania Supreme Court. Hence, the Board adopts those findings. Matter of Pavilonis, 98 N.J. 36, 40 (1984); In re Tumini 95 N.J. 18, 21 (1979); In re Kaufman, supra, 81 N.J. at 302. In addition, respondent does not advance any mitigating factors not previously considered by the Pennsylvania Court. Moreover, there is no dispute that respondent ceased practicing in New Jersey at the time of his Pennsylvania suspension.

The Board, therefore, unanimously recommends that the Court grant the motion for reciprocal discipline, and that respondent be

suspended from the practice of law in New Jersey for three months, retroactive to and concurrent with his Pennsylvania suspension.

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

Dated:

12/8/1987

BY:



Raymond R. Trombadore
Chair
Disciplinary Review Board