SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 88-148

IN THE MATTER OF	:
	:
CARMINE P. LUNETTA	:
	:
AN ATTORNEY-AT-LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: August 17, 1988

Decided: February 16, 1989

Robyn M. Hill, Esq. appeared on behalf of the Office of Attorney Ethics.

Carmine P. Lunetta, Esq., appeared pro se.

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

This matter is before the Board on a Motion for Final Discipline Based Upon a Criminal Conviction filed by the Office of Attorney Ethics ("OAE") pursuant to R. 1:20-6(b)(2)(i). Respondent pleaded guilty to conspiracy (receipt and sale of stolen securities) in violation of 18 U.S.C. 371.

Respondent was admitted to the New Jersey Bar in 1966. On March 29, 1984, respondent waived indictment by grand jury and pleaded guilty to a one-count federal information. He also was suspended from federal practice and on May 11, 1984 agreed to be suspended from state practice.

The information charged respondent with violation of 18 U.S.C. 371, by conspiring to receive and dispose of stolen securities which had been a part of interstate commerce, in

violation of 18 U.S.C. 2315. Prior to his guilty plea, respondent agreed to cooperate with the government and to testify before the grand jury as well as at any subsequent trials. In return, the United States Attorney's office agreed not to prosecute further and to bring the extent of respondent's cooperation to the attention of the court, for purposes of sentencing.

Respondent's guilty plea was the result of an F.B.I. investigation about allegations that more than $200,000 in stolen bonds had been "fenced" through an account in the Morristown, New Jersey, office of a brokerage firm.

On February 29, 1984, the F.B.I. obtained a warrant to search respondent's office in Morristown. Prior to the search, however, respondent advised the F.B.I. the records being sought were at his residence, not at his office. Respondent voluntarily retrieved the documents and gave them to the F.B.I. He subsequently went to the Newark office of the United States Attorney, where he made a full and complete confession.

Respondent conspired with others to receive and dispose of $200,000 worth of stolen bonds. The conspirators created a fictitious person, "Lysa A. Jansen," in whose name the securities would be negotiated. An account on behalf of "Lysa A. Jansen" was opened at the brokerage firm, through which the stolen securities could be negotiated by an account executive.

From July 1983 until February 1984, an acquaintance of respondent's delivered the stolen securities to the account

executive at the brokerage firm. The account executive negotiated the stolen bonds through his firm and issued the latter's checks to respondent under a power of attorney for "Lysa A. Jansen." These checks, representing the proceeds of the sale of stolen securities, were deposited by respondent into his attorney trust account. Respondent then distributed these funds from his trust account to himself and to his co-conspirators. The conspiracy realized approximately $170,000. Respondent admitted to receiving between $20,000 and $25,000 for his part in the scheme.

After respondent pleaded guilty in March 1984, he testified at a federal grand jury. His cooperation led to the convictions of five individuals. In addition, respondent agreed to a postponement of his own sentencing, at the request of the government, until the conclusion of the matters requiring his cooperation. On July 1, 1987, respondent was sentenced to a two-year suspended sentence and five years' probation, conditioned upon 500 hours of community service. He was not incarcerated.

A Motion For Final Discipline Based Upon a Criminal Conviction was filed on May 27, 1988. The OAE seeks respondent's disbarment.

CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of respondent's guilt. Matter of Goldberg, 105 N.J. 278, 280 (1987); Matter of

Tuso, 104 N.J. 59, 61 (1986); In re Rosen, 88 N.J. 1, 3 (1981). R. 1:20-6(c)(1). Accordingly, there is no need to make an independent examination of the underlying facts to ascertain guilt. Matter of Conway, 107 N.J. 168, 169 (1987); In re Bricker, 90 N.J. 6, 10 (1982). The sole issue to be determined is, therefore, the extent of final discipline to be imposed. Matter of Goldberg, supra, 105 N.J. at 280; Matter of Kaufman, 104 N.J. 509, 510 (1986); Matter of Kushner, 101 N.J. 397, 400 (1986); In re Addonizio, 95 N.J. 121, 123-124 (1984); In re Infinito, 94 N.J. 50, 56 (1983); In re Rosen, supra, 88 N.J. at 3; In re Mirabelli, 79 N.J. 597, 602 (1979); In re Mischlich, 60 N.J. 590, 593 (1977).

Respondent's conspiracy conviction clearly and convincingly shows that he engaged "in illegal conduct that adversely reflects on his fitness to practice law," in violation of DR 1-102(A)(3) and (6). In addition, respondent violated DR 1-102(A)(4), in that his criminal conduct involved "dishonesty, fraud, deceit or misrepresentation."

A calculus for discipline, even in cases of criminal conviction, must include the nature and severity of the crime, whether the crime was related to the practice of law and any mitigating factors, such as evidence of the attorney's good reputation and character. In addition, every disciplinary matter is factually different and must be judged on its own merits. There is no rule, therefore, that requires a certain penalty be imposed for conviction of a certain crime. Matter of Friedman,

106 N.J. 1,6 (1987); Matter of Litwin, 104 N.J. 362, 365-366 (1986). However, the Court has held that "certain types of ethical violations are, by their very nature, so patently offensive to the elementary standards of a lawyer's professional duty that they per se warrant disbarment." Matter of Conway, supra, 107 N.J. at 180.

The Court has made clear it that "even if it is unlikely that the attorney will repeat the misconduct, certain acts by attorneys so impugn the integrity of the legal system that disbarment is the only appropriate means to restore public confidence." In re Hughes, 90 N.J. 32, 36 (1982) (where the Court recognized the substantial mitigating factors but, nevertheless, ordered that the attorney be disbarred).

Convictions of conspiracy to commit a variety of crimes have uniformly led to disbarment. Matter of Rigolosi, 107 N.J. 192 (1987) (bribery); Matter of Conway, supra, 107 N.J. 168 (1987) (bribery); Matter of Baldino, 105 N.J. 453 (1987) (official misconduct); Matter of Goldberg, 105 N.J. 278 (1987) (distribution of controlled substance); Matter of Surgent, 104 N.J. 566 (1986) (theft by deception and other crimes). The Court in Surgent, supra, 104 N.J. at 570, reiterated that "convictions of New Jersey attorneys on charges of insurance fraud and conspiracy to commit fraud have regularly resulted in the attorney's disbarment." Moreover, "where, as in this case, an attorney's criminal deeds directly involve his law practice, the misconduct is even more egregious in the disciplinary context."

Matter of Goldberg, supra, 105 N.J. at 282.

Respondent's criminal activity warrants disbarment. Respondent not only conspired to receive and dispose of stolen securities, but he directly involved his law practice by polluting his trust account with the tainted funds. For over three months, his trust account was used to "launder" the funds. Even though respondent's conduct did not directly involve the administration of justice, such a gross criminal use of his attorney trust account certainly corrupted his position as an officer of the court and impugned the "integrity of the legal system." In re Hughes, supra, 90 N.J. at 36.

The Board therefore unanimously recommends that respondent be disbarred. One member disqualified himself. Two members did not participate.

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

Dated: 2/16/89

By: Raymond R. Trombadore
Raymond R. Trombadore, Esq.
Chair
Disciplinary Review Board