

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 96-173

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

Decision

Argued: June 19, 1996

Decided: December 9, 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"), pursuant to R. 1:20-13(c)(2), based upon respondent's guilty plea to one count of income tax evasion, in violation of 26 U.S.C.A. § 7201.

Respondent has been a member of the New Jersey bar since 1984. On April 11, 1995, a ten-count indictment was filed against him in the United States District Court for the Eastern District of Pennsylvania, charging five counts of federal income tax evasion, in violation of 26 U.S.C.A. § 7201, and five counts of failure to file a federal income tax return, in violation of 26 U.S.C.A. § 7203.

On September 22, 1995, pursuant to a plea agreement, respondent pleaded guilty to count five of the indictment, *i.e.*, income tax evasion, in violation of 26 U.S.C.A. § 7201. However,

as stated in the plea agreement, respondent stipulated that he committed the offenses charged in the remaining counts:

The defendant agrees to plead guilty to count five of the Indictment No. 95-185 charging him with tax evasion in 1991, in violation of Title 26, United States Code, Section 7201. Defendant further agrees and stipulates that he committed the offenses charged in the remaining counts of the Indictment and that these more serious offenses may be used at sentencing, pursuant to §§ 1B1.2 and 1B1.3 of the Sentencing Guidelines, resulting in a total tax loss for purposes of the criminal case of \$116,310 for 1987-1991.

[Exhibit B to OAE's brief]

On February 16, 1996, respondent was sentenced to one-year imprisonment, three years' supervised release, a \$15,000 fine and a \$50 special assessment fee.

Respondent failed to notify the OAE of his conviction, as required by R. 1:20-13(a)(1). Respondent's criminal conviction was discovered by the OAE through a newspaper article. On March 1, 1996, he was temporarily suspended, pursuant to R. 1:20-13(b). In re Braun, 143 N.J. 405 (1996). The suspension remains in effect.

The following are the facts of this matter, as derived from the Government's Change of Plea Memorandum:

Respondent, an attorney whose practice consists mainly of arranging the adoptions of foreign children, has not filed a federal income tax return since at least 1978. According to respondent's former law associate, Judith Doherty, and other law firm clients, respondent's fee per case was approximately \$11,000.

Respondent's own mother stated that she deposited large sums of cash into their joint accounts, at his direction. Respondent also deposited more than \$65,000 into a joint account, of

which his mother was unaware. His mother was also unaware of respondent's purchase of a condominium in her name, which he later transferred to himself and his wife for \$1.

Respondent falsely represented to the IRS that he maintained three bank accounts, when in fact he maintained eight bank accounts, including one in Romania, in order to conceal his income. To further his conspiracy, respondent visited a PSFS bank, where he held one account, attempting to cash two checks, totaling \$11,000. Upon being told that a Currency Transaction Report (CTR) would be filed, he cashed only one of the two checks, in the amount of \$9,000. He later returned to the bank and cashed the remaining check for \$2,000. Once the bank noticed the "split" transaction, it contacted respondent to obtain information for the CTR. In response, respondent attempted to return the \$2,000 in cash and obtain the check. Moreover, although respondent failed to file tax returns, between 1987 and 1990 he filed Forms 4688 in order to obtain extensions. He also enclosed partial payments of the taxes due, which substantially understated his actual tax liability.

Respondent previously received a three-month suspension for a conviction of recklessly endangering another person, in violation of 18 Pa.C.S.A. § 2705, for installing a gas meter in a reversed position in an apartment building owned by him to allow the gas to flow through without registering. In re Braun, 118 N.J. 452 (1990).

The OAE urged the Board to recommend disbarment.

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Respondent's criminal conviction serves as conclusive evidence of his guilt. R. 1:20-13(c)(1); In re Rosen, 88 N.J. 1, 3 (1981). His criminal conviction clearly and convincingly demonstrates that he committed "a criminal act which adversely reflects on (his) honesty, trustworthiness or fitness as a lawyer..." and that he engaged "in conduct involving dishonesty, fraud, deceit or misrepresentation." RPC 8.4(b) and (c). 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). A lawyer's training and special knowledge of the law require that he possess a sensitive awareness of the need to fulfill all obligations created under the federal income tax laws. In re Gurnik, 45 N.J. 115, 116 (1965); In re Van Arsdale, 44 N.J. 318, 319 (1965). Any violation of a tax law committed by a member of the bar is viewed as a serious breach of ethics. In re Queenan, 61 N.J. 579, 580 (1972).

Normally, a tax evasion conviction results in a two-year suspension. See, e.g., In re Batalla, 142 N.J. 616 (1995) (two-year suspension for evading \$39,066 in income taxes by under reporting attorney's own income in 1990 and 1991, where the attorney had a prior unblemished record); In re Nedick, 122 N.J. 96 (1991) (two-year suspension for failing to include \$7,500 in taxable income on the attorney's own tax return, where he had no prior ethics history); In re Becker, 69 N.J. 118 (1976) (two-year suspension for filing false tax returns for 1967, 1968 and 1969 for an attorney with no prior infractions).

However, the Court has recognized that, under the appropriate circumstances, income tax evasion warrants disbarment. In re Tuman, 74 N.J. 143, 145 (1977) citing In re Kafes, 17 N.J. 212 (1954) (disbarment for income tax evasion for the years 1946 to 1950) and In re DePuy, 10 N.J. 282 (1952) (disbarment for failure to file income tax returns for the years 1948 to 1950).

In In re Goldberg, 142 N.J. 557, 567 (1995), the Court listed aggravating factors that normally lead to disbarment:

Criminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to theft by deception and fraud, ordinarily result in disbarment. We have emphasized that when a criminal conspiracy evidences 'continuing and prolonged, rather than episodic, involvement in crime,' is 'motivated by personal greed,' and involved the use of the lawyer's skills 'to assist in the engineering of the criminal scheme,' the offense merits disbarment. [Citations omitted].


In the instant case, respondent's actions did indeed evidence a conspiracy extending over a long period of time. The conduct was not episodic and was motivated by personal greed. Respondent's pattern of misconduct, particularly the numerous bank accounts and the filing of Forms 4688, clearly and convincingly establishes a pattern of criminal conspiracy to evade taxes.

Moreover, respondent's prior ethics history and his failure to inform the OAE of his criminal conviction are additional aggravating factors.

Accordingly, the Board unanimously recommends that respondent be disbarred. Two members did not participate.

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

Dated: 12/9/96

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board