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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-175

IN THE MATTER OF

HUGH J. BREYER

AN ATTORNEY AT LAW

Decision

Argued: July 8, 1999

Decided: February 22, 2000

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

Anthony J. Zarrillo, Jr. appeared on behalf of respondent.

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

This matter was before us on a Motion for Final Discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's guilty plea to an accusation charging him with one count of failure to make required disposition of property received, in violation of

N.J.S.A. 2C: 20-9.

Respondent was admitted to the New Jersey bar in 1983. On October 28, 1998, the Supreme Court temporarily suspended him, pending the final resolution of this matter. In re Breyer, 156 N.J. 415 (1998). Respondent has no prior disciplinary history.

In December 1994, respondent became a law librarian for the Administrative Office of the Courts ("AOC") at the Hughes Justice Complex, Trenton, New Jersey. His duties included the collection, distribution and disposal of the AOC's law books. Between April 1995 and March 1996, respondent sold and traded the AOC's law books to several companies without the knowledge or approval of the AOC and kept the money from the sales and trades for himself. Respondent admitted that the value of the property that he stole totaled $16,145.

On January 29, 1999, respondent was sentenced to two and one-half years' probation. The sentencing court also required respondent to perform one hundred hours of community service and to pay $16,145 in restitution.

The OAE urged a three-year suspension for respondent's criminal conduct.

* * *

Upon a review of the full record, we determined to grant the OAE's Motion for Final Discipline.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R.

1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction for failure to make required disposition of property received established a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). The sole issue to be determined is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

The OAE urged that we suspend respondent for three years, rather than recommend his disbarment, because it appeared to the OAE that respondent's criminal conduct did not rise to the same level as that of the attorneys in In re Dade, 134 N.J. 597 (1994) and In re Spina, 121 N.J. 378 (1990). We disagree.

In Spina, the Court disbarred an attorney who had pled guilty in Washington, D.C. to taking property without right, the equivalent of a disorderly persons offense under New Jersey law. Between March 1979 and June 1981, the attorney had embezzled more than $30,000 from his employer, the International Law Institute ("ILI") by submitting fraudulent reimbursement claims and by depositing contributions to the ILI in his personal account.

When one of the contributors questioned what had happened to its contribution, Spina lied to his employer. The Court found that the attorney's ethics violations were so "flagrant" that "[n]o discipline short of disbarment can be justified." In re Spina, supra, 121 N.J. at 390.

Respondent's criminal conduct, like that of Spina, involved a protracted fraudulent scheme, rather than a single criminal episode. Like Spina, respondent stole from his employer. Spina's employer was a law institute while respondent's employer was the Administrative Office of the Courts.

In Dade, the attorney, who worked as a claims supervisor for an insurance company, stole $458,000 from the company over a four-year period by issuing checks to herself, sometimes using her maiden name. Notwithstanding that the majority of the attorney's criminal conduct predated her admission to the New Jersey bar and that her misconduct was not related to her professional status as an attorney, the Court disbarred her.

In mitigation, respondent argues that his criminal conduct occurred when he was under stress because he was a new parent and was separated from his wife. Respondent also relies on the letters from clients and colleagues attesting to his dedication to his professions of librarian and attorney. He asserts that his misconduct was aberrational and will not be repeated.

We are convinced that respondent's conduct was at least as egregious as that of the attorneys in Spina and Dade and requires disbarment. See, also, In re Siegel, 133 N.J. 162

(1993) (attorney disbarred for knowingly misappropriating funds belonging to his law firm). Respondent's conduct demonstrated a disregard of "the honor and integrity demanded of a member of the bar." In re Pennica, 36 N.J. 401, 423 (1962). Even if it is "unlikely that [respondent] will repeat his 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 it." In re Hughes, 90 N.J. 32, 36-37 (1982).

Therefore, we unanimously determined to recommend respondent's disbarment. One member did not participate.

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

Dated: 2/22/2000

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board