SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 00-250

IN THE MATTER OF

NATHANIEL K. CHARNY

AN ATTORNEY AT LAW

Decision

Argued: September 21, 2000

Decided: October 19, 2000

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

Respondent appeared pro se.

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 October 1, 1998 guilty plea to a one-count information filed in the United States District Court for the Southern District of New York, charging him with conspiracy to make false statements, in violation of 18 U.S.C.A. 371.

Respondent was admitted to the New Jersey bar in 1992. He has no disciplinary history.

According to the information, from late 1996 through March 1997, respondent was an associate at a New York City law firm, Cohen, Weiss and Simon, which acted as counsel to Ronald Carey's 1996 campaign for reelection as general president of the International Brotherhood of Teamsters (IBT). One of the law firm's responsibilities was to ensure that contributions to the Carey campaign were legal under federal labor law and permissible under the IBT's election rules. The genesis of the election rules is as follows:

After the government filed an action under the Racketeer Influenced and Corrupt Organizations (RICO) Act against IBT and others, the federal court signed an order settling the government's claims against the IBT defendants (the Consent Decree). The consent decree provided for direct, rank-and-file secret ballot elections by the IBT membership for the first time in IBT's history. In order to ensure fair and open elections, the decree provided for the appointment of an election officer to supervise the IBT election. On or about May 30, 1995, the court appointed Barbara Zack Quindel to act as the election officer. Among other things, the election officer had the authority and responsibility to oversee compliance with the rules and to investigate any alleged violations. Prohibited were (1) employers' contributions or solicitation of contributions to the election campaign of any candidate and (2) the use of IBT funds to promote the candidacy of any individual.

In late 1996, respondent's law firm entrusted him with the responsibility of reviewing donations to the Teamsters for a Corruption Free Union (TCFU), a fund-raising entity established by the Carey campaign and Cohen, Weiss and Simon, in order to receive large

election officer sought to interview respondent about his efforts to determine the propriety of contributions to TCFU and the identity of each of the donors to TCFU. Respondent then falsely asserted to the election officer that he had spoken to each of the purported TCFU donors and that he had notes of his conversations with them.

In February 1997, one of the contributors with whom respondent had not spoken submitted a signed declaration to the election officer, drafted by respondent, falsely claiming that, several days after she submitted the TCFU contribution check in late 1996, respondent had called and spoken with her about the contribution. Similarly, on or about February 20, 1997, at the direction of the election officer, respondent submitted a signed declaration to her, purporting to outline the steps he had taken to investigate the TCFU contributors. The declaration falsely stated that respondent had personally questioned one of the contributors about her donation and that he had personally spoken with the second contributor in order to determine whether the donations were permitted under the rules.

On or about March 3, 1997, Cohen Weiss and Simon submitted a position statement to the election officer on behalf of the Carey campaign, which Charny assisted in preparing, purportedly outlining the law firm's various efforts to determine the validity of the contributions to TCFU, including a false claim that the Carey campaign had subjected each TCFU contributor to lengthy interviews. On or about March 18, 1997, respondent prepared a memorandum to an attorney at his law firm, in which respondent falsely indicated that he had spoken with each of the TCFU donors in the fall of 1996. On or about March 19, 1997,

Cohen Weiss and Simon submitted a revised position statement to the election officer, which Charny assisted in preparing, which again purportedly outlined the firm's various efforts to determine the validity of contributions to TCFU, including the false claim that the Carey campaign had subjected each TCFU contributor to lengthy interviews.

Ultimately, respondent was forced to resign from his law firm and, following his guilty plea, was suspended from the practice of law. In re Charny, 158 N.J. 256 (1999).

At sentencing on April 6, 2000, the court imposed a sentence of time served[1] plus a $500 fine and a special assessment of $100.

The OAE urged the Board to impose an eighteen-month suspension, retroactive to the date of respondent's temporary suspension in New Jersey, May 17, 1999.

* * *

Following a de novo review of the record, we determined to grant the OAE's motion for final discipline.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R.1:20-13(c)(1): In re Gipson 103 N.J. 75, 77 (1996). Respondent's guilty plea to conspiracy to make false statements violated RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). Only the quantum of discipline to be imposed remains at issue. R.1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445

[1] At oral argument before us, respondent stated that the sentencing court considered as "incarceration" the forty-five minute custodial time for his fingerprinting and processing by the Marshall's Service.

(1989). The primary purpose of discipline is not to punish the attorney, but to preserve the confidence of the public in the bar. In re Barbour, 109 N.J. 143 (1988). When an attorney commits a crime, the attorney violates his professional duty to uphold and honor the law. In re Bricker, 90 N.J. 6, 11 (1982).

In this case, respondent's criminal act was serious and directly related to the practice of law. Nevertheless, numerous compelling circumstances mitigate his conduct: (1) respondent was not motivated by greed; (2) the criminal activity did not extend over a lengthy period of time; (3) respondent was a young and inexperienced attorney at the time; (4) as pointed out by the United States Attorneys Office, respondent was unaware of the illegal nature of the contributions and, consequently, his false statements regarding the contributions were not designed to conceal their illegal nature; (5) the United States Attorneys Office acknowledged respondent's extensive cooperation with the government and his substantial assistance in investigating and prosecuting several other individuals; (6) the United States Attorneys Office found that "Charny was a young associate who had been given great responsibility, and whose pleas for assistance had been ignored by his law firm;" (7) the sentencing judge, the Honorable Thomas P. Griesa, found that what occurred was a "lapse" and concluded that respondent had suffered enough; and (8) respondent has shown genuine remorse for his actions and offered his apologies to the election officer, the attorneys who represented Ron Carey's opponent in the election, the government and the court.

In meting out the appropriate measure of discipline, we have taken those factors into consideration and were persuaded that respondent's grievous mistake was the product of inexperience and immaturity, rather than deficiency of character or malice. At the sentencing proceeding, respondent told the judge that,

> [t]he law is my chosen career and it is a passion for me. Having spent the last year and a half in forced isolation from my career while my license has been suspended, I speak from the heart when I tell you that if I do regain my license I will not let you down. I have learned a very, very difficult lesson. When I return to the practice of law, I will be meticulous. I will be mature, and I will not let my ego get in the way of asking for help when I need it.

At oral argument before us, too, respondent displayed contrition and genuine regret for his actions. He told us that he was before us "on [his] hands and knees, begging for an opportunity to practice law again, because this is what I do. And I miss it.".

After balancing the seriousness of respondent's conduct with the extensive mitigating circumstances present in this case, we unanimously agree with the OAE that an eighteen-month suspension, retroactive to the date of respondent's temporary suspension in New Jersey, May 17, 1999, is sufficient discipline. See, e.g., In re Silverman, 80 N.J. 489 (1979) (eighteen-month suspension for attorney who pleaded guilty to a federal indictment that charged obstruction of justice; the attorney filed an answer and a bankruptcy action falsely stating that his client had a lawful right to maintain custody of approximately twenty-six tractors and trailers, knowing of the falsity of the answer;) In re Chung, 147 N.J. 559 (1997) (eighteen-month suspension for attorney who pleaded guilty to a federal information

charging him with receiving more than $10,000 in cash in a transaction and failing to file a report of the transactions, as required by law;) In re Primavera, 157 N.J.459 (1999) (eighteen-month suspension for attorney who pleaded guilty to misprision of a felony; the attorney became aware of a conspiracy between his client and another to submit a falsified HUD-1 at a loan closing).

Two members did not participate.

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

Dated: 10/19/2000

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Nathaniel Charny
Docket No. DRB 00-050

Argued: September 21, 2000

Decided: October 19, 2000

Disposition: Eighteen-month suspension

Members	Disbar	Eighteen-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson							X
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz							X
Wissinger		X					
Total:		7					2

Date: Robyn M. Hill 10/26/00

Robyn M. Hill
Chief Counsel