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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-380
District Docket No. XIV-04-406E

IN THE MATTER OF :
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RHONDA M. ANDERSON :
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:
AN ATTORNEY AT LAW :
:
:

Decision

Argued: February 21, 2008

Decided: April 16, 2008

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

Joseph Grimes appeared on behalf of respondent.

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

This matter came before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), based on respondent's guilty plea to honest services mail fraud, in violation of 18 U.S.C.A. §§ 1341 and 1346. The OAE recommended a three-year suspension, retroactive to September 8, 2004, the

date of respondent's temporary suspension. We concur with the OAE's recommendation.

Respondent was admitted to the New Jersey and the Pennsylvania bars in 1998. At the relevant time, she maintained a law practice in Philadelphia, Pennsylvania. She has no history of discipline in either state.

The Court temporarily suspended respondent on September 8, 2004, as a result of her guilty plea to the above charges. She remains suspended to date. Based on the same charges, on February 23, 2007, the Supreme Court of Pennsylvania suspended respondent for five years, retroactive to October 15, 2004, the date of her temporary suspension in that jurisdiction.

On June 29, 2004, the United States Attorney's Office for the Eastern District of Pennsylvania filed a fifty-six count indictment against respondent and eleven co-defendants. Respondent was charged in only one count of the indictment, Count 54. That count charged that respondent and Corey Kemp, the City Treasurer for the Treasurer's Office for the City of Philadelphia (Treasurer's Office), engaged in honest services mail fraud in the redemption of city bonds.

According to this count, the Treasurer's Office was responsible for issuing checks to vendors and others to whom the City of Philadelphia (the City) owed money; issuing bonds and

other financial instruments for, among other things, funding the City's operations; and assisting bondholders to obtain payment, when the bonds were lost, stolen, destroyed, or misplaced.

In October 2002, Kemp enlisted respondent to start a business for the purpose of assisting individuals to make claims against unclaimed funds held by the City, or to have payments made to individuals who had lost or misplaced bonds issued by the City. At Kemp's direction, respondent started the business through a corporation, Estate & Charitable Solutions, LLC, in which she had an interest. Kemp advised respondent that the two could convince the successful claimants to pay them a percentage of the recovered funds.

The two agreed that Kemp would receive approximately thirty-five percent of the profits from the business and that his interest would be hidden from his employer, the City, and the public, by having his payments made in cash. Kemp explained to respondent that, because he was in charge of the agency that issued the City's checks to vendors and others, maintained the City's list of unclaimed checks and other funds, participated in the issuance of City bonds and other financial obligations, his participation in payments from the business and having an interest in the business conflicted with his employment as City Treasurer.

- To carry out this business, Kemp provided respondent with the identity of people holding outstanding City bonds. Respondent then located the individuals to inform them of their rights and to request a fee for her assistance. Altogether, respondent received approximately \$9,100 from claimants. In one instance, in early February 2003, Kemp and respondent caused a claimant to be paid approximately \$15,000. The claimant gave respondent a check for \$3,700, from which she paid Kemp \$900 in cash. On or about February 3, 2003, outside of Kemp's office at the Municipal Services Building in Philadelphia, respondent handed him an envelope with the cash. In total, respondent paid Kemp approximately \$1,300 in cash from the business, all of which was delivered to him outside of his office. Kemp did not disclose these payments to the City or the public.

Count 54 of the indictment specifically referred to a letter that respondent sent to an individual, on December 18, 2002, seeking an affidavit from that owner of a City-issued bond for \$15,000, stating that he was the owner and that the bond had been lost, stolen, destroyed or misplaced. The complaint charged that respondent's conduct in this regard violated 18 U.S.C. §§ 1341, 1346, "and 2."

At respondent's August 12, 2004 plea hearing, the U.S. Attorney summarized the scheme in which respondent was involved:

Between late 2002 and mid-2003, Anderson and Kemp . . . operated a business that located holders of outstanding and lost city bonds and obtained a percentage of the value of the bond from the bondholder when the bondholder was located and received payment.

Kemp's interest in this business was hidden, because as city treasurer, he had a conflict of interest as he was the city official responsible for overseeing the issuance of these bonds. Kemp told Anderson to keep his name out of the business and explained that they could earn easy money from this business.

Kemp did not disclose this benefit to his superiors or recuse himself in light of his hidden financial interest in this business. To hide his interest in the business, Kemp instructed Anderson to give him his share of the payments in cash which amounted to 35 percent of the proceeds obtained from - - the scheme.

And essentially, the scheme worked as follows. Anderson would locate the bondholder and forward paperwork to Kemp which Kemp said was needed to get the bondholder paid. Anderson would then obtain her fee which was a percentage of the value of the bond. Once Anderson had received her fee from the bondholder, she would usually cash the check and deposit the cash into one of her bank accounts either at Citizens Bank or PNC. Anderson would then write a check to cash and distribute the cash to Kemp outside his office in envelopes which constituted Kemp's share of the proceeds of the business.

Anderson's records show that she received a payment in connection with a \$15,000 Philadelphia Gas Works bond held by a Philadelphia resident who is identified in the indictment as S.S.S. Anderson located this person and informed him of his interest

in the bond, and she mailed him an affidavit in connection with this on December 18, 2002, and that mailing is the subject of Count 54 of the indictment to which the defendant is pleading guilty.

The - - person received the proceeds of the bond and paid Anderson her fee in early 2003. Bank records show that [Anderson] made a \$3,700 cash deposit which was the fee for that transaction on January . . . 30, 2003 and that she cashed a check for \$2,900 on the same account on February 3, 2003. She then delivered \$900 in cash to Kemp in an envelope in the courtyard outside of his office, and that represented Kemp's share of the fee for the redemption of that bond, and bank records corroborate this payment to Kemp showing a cash deposit into his account at Commerce Bank of approximately \$675 on February 4, 2003, and that December 18th affidavit was sent by Unites States mail.

THE COURT: All right. Ms. Anderson, do you agree with those facts?

MS. ANDERSON: Yes.

[OAEbEx.C19-18 to 21-16.]¹

As part of the guilty plea agreement, respondent stipulated to an additional offense:

In approximately March 2003, [respondent] participated in a scheme to defraud the Pennsylvania Department of Public Welfare by submitting a fraudulent \$3,200 invoice for professional services to a state-funded

¹ OAEb refers to the OAE's brief and appendix in support of its motion.

program welfare-to-work program when, in fact, she had not provided to the program all of the services in the invoice and the mails were used in furtherance of this scheme, in violation of 18 U.S.C. § 1341. [Respondent] also consents to the entry of a restitution order in connection with this conduct.

[Ex.B9¶19d.]

At the plea hearing, the U.S. Attorney summarized this scheme as well:

With respect to the Welfare-to-Work scheme, the facts are as follows. The defendant [respondent] and co-defendant Corey Kemp, engaged in a mail fraud scheme essentially to defraud the Welfare-to-Work program which was funded by the Department of Public Welfare for the State of Pennsylvania.

Kemp and co-defendant Francis McCracken operated the program at their Reading, Pennsylvania church, and this is the conduct that the defendant has agreed to stipulate to.

In summary, Kemp and the defendant used a false invoice to obtain funds from this program. Kemp contacted the defendant in March, 2003 and told her that there were approximately \$3,200 of program funds left in the bank that had not been used that were appropriated for this Welfare-to-Work program. Kemp told the defendant to send him an invoice for this amount showing that the defendant had performed certain professional services for the program.

As the defendant and Kemp knew, the defendant was not entitled to this \$3,200. Although she had performed some work for other Kemp and McCracken ventures, this invoice included work unrelated to the

Welfare-to-Work program. Anderson agreed to submit the invoice even though she knew that the Welfare-to-Work program did not owe her the full \$3,200.

Around the same time, Corey Kemp explained to her that he needed \$1,600 of the funds returned to him in cash for him to give to McCracken so that McCracken could make an unrelated donation to a school that was honoring him. Anderson e-mailed the invoice to Kemp, and she received a \$3,200 check in the mail from Kemp. Anderson cashed the check at the bank, placed the cash in her PNC personal checking account, and withdrew \$1,600 in cash and delivered it to Kemp. She met Kemp outside his office at the . . . Municipal Services Building in Philadelphia and gave him the cash.

Anderson does not know whether Kemp passed this cash along to McCracken or whether he kept it. However, the evidence shows that Kemp kept at least part of this money as there is a corresponding \$850 cash deposit in Kemp's account on March 27, 2003. Your Honor, that's the conduct the defendant has stipulated to.

[OAEbEx.C18-4 to 19-16.]

Respondent entered a guilty plea to mail fraud, under 18 U.S.C. §§ 1341 and 1346.

The government's sentencing memorandum and motion to permit departure from guideline sentencing range acknowledged respondent's cooperation with the government. In part, because of respondent's availability to testify, another defendant entered a

guilty plea, and Kemp stood trial and was convicted. According to the memorandum, respondent's conduct was "partially ameliorated by her substantial cooperation in the case." The conviction of Kemp and others "were based largely on Anderson's credible testimony. . . ." Besides providing the only witness testimony in that scheme, respondent was also an important witness in the "wider welfare-to-work fraud." The memorandum added:

Anderson's cooperation was also notable for the fact that she admitted her wrongdoing well before the filing of the indictment, at the instant she was approached by government investigators. Even before she was told that she was a target of the inquiry, she admitted her conduct and immediately pledged to provide all possible assistance in the government's investigation. This permitted the indictment of Kemp and McCracken on all appropriate charges, as well as their later convictions.

[OAEbEx.G4-5.]

The U.S. Attorney's office recommended "a substantial downward departure based on respondent's valuable assistance in the investigation and prosecution of others." Respondent was sentenced to a two-year probationary period, ordered to perform one-hundred hours of community service, and directed to make restitution in the amount of \$12,300, \$3,200 of which had been paid by the time she was sentenced, and to pay a \$100 special assessment.

In recommending a three-year suspension, the OAE relied on the following cases: In re Abrams, 186 N.J. 589 (2006) (three-year retroactive suspension for attorney who pled guilty to two counts of wire fraud; in the sale of a company of which he was part owner and held various offices, the attorney directed his accounts receivable administrator to overstate the accounts receivable and to make other accounts appear current to obtain a greater purchase price; the attorney was sentenced to four months' imprisonment and three years' supervised release, the first four to be served under house arrest, and ordered to pay a \$15,000 fine; the sentence was lenient because of the attorney's substantial cooperation with the government); In re Noce, 179 N.J. 531 (2004) (three-year retroactive suspension for attorney who pled guilty to conspiracy to commit mail fraud; the attorney and others participated in a scheme to defraud the Department of Housing and Urban Development (HUD) by assisting in the procurement of home mortgage loans for unqualified buyers, from which HUD suffered losses of over \$2.4 million; the attorney was the settlement agent and closing attorney for unqualified buyers in fifty closings; he knowingly certified HUD-1 statements and gift transfer certifications that contained misrepresentations; he was paid only his regular fee and cooperated fully with the government); In re Panarella, 177 N.J. 565 (2003) (three-year suspension for attorney who pled guilty to being an

accessory-after-the-fact in a wire-fraud scheme to deprive the public of honest services of an elected official; the attorney paid a state senator \$330,000 over a four-year period, through another, to conceal their financial relationship; the senator was on the Board of Directors of the attorney's company, which contracted with local governments to collect taxes from non-residential businesses under Pennsylvania Law; the senator drafted an amendment to legislation favoring the attorney's business and helped the attorney obtain collection work; the attorney assisted the senator in filing false disclosure statements; the court sentenced the attorney to a six-month prison term and one-year of supervised release and ordered him to pay a \$20,000 fine and a \$100 special assessment); In re Bocchieri, 170 N.J. 191 (2001) (three-year suspension for attorney who, after being discharged as the company's attorney, instructed the stock transfer agent for the company to transfer 42,500 shares of the company's common stock in his name; a week later, when the company learned of the unauthorized transfer, the attorney returned the certificate; the attorney claimed he took the action because of his unpaid legal fee; he pled guilty to one count of mail fraud, was sentenced to one-year and one-day imprisonment, which he served at a half-way house, two years' supervised release, and fined \$10,000); and In re Bateman, 132 N.J. 297 (1993) (two-year retroactive suspension for

attorney convicted of mail-fraud conspiracy and making false statements on a loan application to assist a client in obtaining an inflated appraisal value for property (\$6.5 million) to secure \$5,000,000 in financing from a lender; the purpose of the loan was to develop property that had an estimated value of only \$300,000; the attorney was sentenced to a suspended five-year prison term, three years' probation, fined \$15,000, and ordered to perform three hundred hours of community service).

The OAE noted that attorneys who have been disbarred exhibited more egregious conduct. See, e.g., In re Druck, 163 N.J. 81 (2000) (attorney convicted of aiding and abetting wire fraud; he participated in fraudulently obtaining \$2.7 million in funds from commercial lenders as general counsel of a financial services company); In re Chucas, 156 N.J. 542 (1999) (attorney participated in a scheme where numerous victims were defrauded of more than \$2,000,000); and In re Dade, 134 N.J. 597 (1994) (attorney submitted fraudulent claims and settlement checks during her employment as a claims adjuster, defrauding her employer of \$458,000 over four and a half years).

Following a review of the full record, we determine 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 (1986). Respondent's guilty plea to honest services mail fraud constitutes a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). 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 (1989).

The sanction 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.

In gauging the suitable measure of discipline for this respondent, we find In re Panarella, *supra*, 177 N.J. 565 (three-year suspension) instructive. In both Panarella and this case, the attorneys' businesses depended on the assistance of public officials for the furtherance of their personal financial gain. In Panarella, not only was the senator on the Board of Directors of the attorney's company, but he also drafted an amendment to legislation that benefited Panarella. In this matter, respondent relied on information supplied by the City treasurer in one scheme. In the other scheme, she and the City treasurer used false invoices

to defraud a state welfare program. Although the payments to the senator in Panarella (\$330,000) suggest that that their scheme was more profitable, the schemes in both cases were equally egregious. Compared to In re Bateman, 132 N.J. 297 (1993) (two-year suspension), we find that respondent's wrongdoing warrants greater discipline because it was of longer duration. While Bateman's conduct was serious (obtaining a grossly inflated appraisal of property to secure financing and making false statements on a loan application), it involved only one instance of flagrant misconduct.

Like the federal sentencing judge, we find that respondent's substantial cooperation with the government is a mitigating factor. We, therefore, determine that the appropriate discipline here is a three-year suspension, to be made retroactive to the date of respondent's temporary suspension, September 8, 2004.

Members Lolla, Neuwirth and, Baugh did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

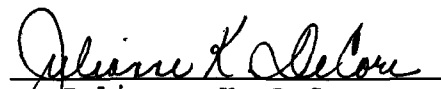
In the Matter of Rhonda M. Anderson
Docket No. DRB 07-380

Argued: February 21, 2008

Decided: April 16, 2008

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh						X
Boylan		X				
Frost		X				
Lolla						X
Neuwirth						X
Stanton		X				
Wissinger		X				
Total:		6				3


Julianne K. DeCore
Chief Counsel