

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-439

IN THE MATTER OF :
:
RICHARD J. SILBERFEIN, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: February 10, 1994

Decided: September 27, 1994

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

Richard J. Silberfein appeared pro se.

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"), based upon respondent's guilty plea to the class A misdemeanor of criminal possession of a controlled dangerous substance (cocaine), in the State of New York. New York Penal Law §220.03.

Respondent was admitted to the New Jersey Bar in 1989. He was arrested on October 2, 1992, after being observed purchasing drugs in the vicinity of West 15th Street and 8th Avenue, in Manhattan. Upon arrest, he was found in possession of a bag containing 868 milligrams of cocaine. Respondent was charged with criminal possession of a controlled dangerous substance in the fifth degree, a class D felony in New York. New York Penal Law §220.06.

On December 3, 1992, pursuant to a plea agreement, respondent pleaded guilty to the class A misdemeanor of criminal possession of a controlled dangerous substance in the seventh degree. New York Penal Law §220.03. On that same day, he was sentenced to a conditional discharge with the requirement that he perform five days of community service or serve a thirty-day jail sentence (Exhibit C to OAE's brief).

To his credit, respondent promptly reported the arrest to the OAE, in compliance with R. 1:20-6(a) (Exhibit A to OAE's brief). Thereafter, upon request, he forwarded additional documentation pertaining to this matter (Exhibit B to OAE's brief).

By Consent Order dated June 21, 1994, respondent was temporarily suspended pending the final disposition of this matter.

The OAE requested that the Board recommend to the Supreme Court that respondent be suspended from the practice of law for a period of three months.

CONCLUSION AND RECOMMENDATION

A criminal conviction, including a conviction based on a plea, is conclusive evidence of respondent's guilt in a disciplinary proceeding. In re Goldberg, 105 N.J. 278, 280 (1987); In re Kaufman, 104 N.J. 509, 510 (1986); In re Tusso, 104 N.J. 59, 61 (1986); R.1:20-6(b)(1). Therefore, no independent examination of the underlying facts is necessary to ascertain guilt. In re Bricker, 90 N.J. 6, 10 (1982). Respondent's commission of a

criminal act is a clear violation of RPC 8.4(b), in that it reflects adversely on his fitness to practice law. Thus, the sole issue to be determined is the extent of the final discipline to be imposed. In re Goldberg, supra, 105 N.J. at 280; In re Kaufman, supra, 104 N.J. at 510; R. 1:20-6(b)(2)(ii).

The illegal activity underlying respondent's conviction is not related to the practice of law. See In re Kinnear, 105 N.J. 391, 395 (1987). Nonetheless, good moral character is a basic condition for membership in the bar. In re Gavel, 22 N.J. 248, 266 (1956). Any misbehavior, private or professional, that reveals lack of good character and integrity essential for an attorney constitutes a basis for discipline. In re LaDuca, 62 N.J. 133, 140 (1973). That respondent's activity did not arise from a lawyer-client relationship, that his behavior was not related to the practice of law, or that this offense was not committed in his professional capacity are immaterial. In re Suchanoff, 93 N.J. 226, 230 (1983); In re Franklin, 71 N.J. 425, 429 (1976).

The Board noted that respondent has not been previously disciplined. Also, there is no suggestion in the record that the drugs were intended for other than personal use. In addition, the Board noted that respondent promptly informed the OAE of his arrest and fully cooperated with the disciplinary authorities. Lastly, the Board has taken into account that respondent voluntarily entered into counseling for his drug problem.

Nevertheless, in a number of recent decisions the Court has ordered a three-month suspension for violations similar to

respondent's. See, e.g., In re Benjamin, 135 N.J. 461 (1994); In re Constantine, 131 N.J. 452 (1993); In re Karwell, 131 N.J. 396 (1993); In re Sheppard, 126 N.J. 210 (1991); In re Nixon, 122 N.J. 290 (1991).


In light of the foregoing, a five-member majority of the Board recommends a three-month suspension. Three members dissented, believing that a public reprimand is adequate discipline. One member did not participate.

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

Dated: _____

9/27/1994

By: _____


Raymond R. Trombadore
Chair
Disciplinary Review Board