

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 94-084

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IN THE MATTER OF :  
DAVID H. VAN DAM, :  
AN ATTORNEY AT LAW :

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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: May 18, 1994

Decided: March 5, 1995

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

Respondent waived appearance for oral argument.

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 based upon a criminal conviction filed by the Office of Attorney Ethics ("OAE"). R. 1:20-6(c)(2)(i). On February 23, 1993, respondent pleaded guilty to a two-count felony information charging him with making a false statement to an institution insured by the Federal Savings and Loan Insurance Corporation (18 U.S.C.A. 1014 and 2) and obstruction of justice (18 U.S.C.A. 1505 and 2).

Respondent was admitted to the New Jersey bar in 1981. In late 1989, the Office of Thrift Supervision ("OTS") started a routine investigation of Polifly Savings and Loan ("Polify"). During the course of the investigation, the OTS made some inquiries

into the activities of Robert K. Hartmann, Esq., Polifly's Director and General Counsel, and respondent, who was Hartmann's law partner.

From July to December 1986, respondent Hartmann and two other individuals were stockholders in a company known as Changebridge East, Inc. During that period, Changebridge obtained loans from Polifly totalling more than one million dollars. In October 1986, Polifly asked Changebridge for a list of shareholders. On or about October 30, 1986, respondent submitted a letter to Polifly in which he named himself and two other individuals as the only stockholders in Changebridge. Respondent admitted that that statement was false and knowingly made for the purpose of influencing Polifly in connection with its administration of the loan to Changebridge.

On March 14, 1991, during a deposition to OTS, respondent knowingly made a false statement about the identity of Changebridge's shareholders. Respondent admitted that his purpose was to mislead OTS and "obstruct the flow of truthful information to it."

On May 4, 1993, respondent was sentenced to a three-year term of probation.

Shortly after respondent entered into a plea agreement, in December 1992, respondent so notified the OAE, in accordance with R. 1:20-6(a). On March 4, 1993, respondent was temporarily suspended from the practice of law. The suspension remains in effect as of this date.

The OAE requested that the Board recommend a term of

suspension for respondent's criminal conviction.

#### CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive proof of an attorney's guilt. R. 1:20-6(c)(1); In re Goldberg, 105 N.J. 278, 280 (1987). Therefore, no independent examination of the underlying facts is necessary to ascertain guilt. In re Bricker, 90 N.J. 6 (1982). The only issue to be determined is the quantum of discipline to be imposed. In re Kushner, 101 N.J. 397, 400 (1986). Respondent's conviction establishes that he engaged in conduct that adversely reflects on his fitness to practice law and conduct involving dishonesty, fraud, deceit and misrepresentation, in violation of RPC 8.4(b) and(c).

Although, as noted by the OAE, it does not appear that respondent was motivated by greed but, instead, but his misguided sense of loyalty to his law partner and legal mentor, and although respondent accepted personal responsibility for his misconduct, nonetheless, a lengthy term of suspension nonetheless is warranted. See In re Konigsberg, 132 N.J. 263 (1993) (thirty-three month time-served suspension for an attorney who pleaded guilty to making a false statement to an agency of the United States. The attorney's guilty plea stemmed from a scheme to defraud an insurance company by filing a false insurance claim on behalf of a client); In re Bateman, 132 N.J. 297 (1993) (two-year suspension when an attorney was convicted of mail fraud conspiracy and making a false statement on a loan application). After consideration of the relevant

circumstances, which included the lack of greed, the absence of loss from respondent's crime and the acceptance of responsibility for his role in the offense charged, a six-member majority of the Board recommends that respondent be suspended for three years, retroactive to the date of his temporary suspension on March 4, 1993. One member dissented, voting for disbarment. Two members did not participate.

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

Dated: 3/5/95

By: Elizabeth L. Buff  
Elizabeth L. Buff  
Vice-Chair  
Disciplinary Review Board