

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-027
District Docket Nos. XIV-05-505E

_____ :
IN THE MATTER OF :
 :
ANDREW C. ABRAMS :
 :
AN ATTORNEY AT LAW :
_____ :

Decision

Argued: March 16, 2006

Decided: April 28, 2006

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

Respondent did not appear, despite proper notice.

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 on respondent's criminal conviction of two counts of wire fraud (18 U.S.C.A. §1343).

Respondent was admitted to the New Jersey and the Pennsylvania bars in 1988. He has no history of final discipline in New Jersey. He was disbarred by consent in

Pennsylvania on January 21, 2005. Respondent did not advise the OAE of his criminal conviction, as required by R. 1:20-13(a).

Once the OAE became aware of the conviction, it brought a motion for respondent's temporary suspension, which the Court granted on October 28, 2005. In re Abrams, 185 N.J. 269. Respondent remains suspended to date.

On April 29, 2003, an information was filed against respondent in the United States District Court for the Eastern District of Pennsylvania ("USDC"), charging him with two counts of wire fraud, violations of 18 U.S.C.A. §1343.

On July 23, 2003, respondent appeared before the Honorable Herbert J. Hutton, U.S.D.J., and pleaded guilty to both counts. The facts are set forth in the government's guilty plea memorandum:

Defendant Andrew Abrams has agreed to plead guilty to Counts 1 and 2 of the information, charging him with wire fraud in violation of 18 U.S.C. § 1343. These charges arise from Abrams's participation in a scheme to defraud Thermadyne Holdings Corporation ("Thermadyne"), in connection with Thermadyne's November 25, 1997 purchase of Woodland Cryogenics, Inc. ("Woodland"), of which Abrams was part owner, as well as Vice President, Secretary, and at times General Counsel

On November 25, 1997, Thermadyne and Woodland entered into an Asset Purchase Agreement ("Purchase Agreement"), pursuant to which Thermadyne purchased most of Woodland's assets, including most of

Woodland's outstanding accounts receivable. At trial, the government would introduce a copy of the Purchase Agreement, in which Woodland pledged that its accounts receivable:

are valid and genuine; have arisen solely out of bona fide sales and deliveries of goods, performance of services and other business transactions in the ordinary course of business consistent with past practice; are not subject to valid defenses, set-offs or counterclaims; and, except as set forth on Schedule 4.1.7, are collectible within 90 days after billing at the full recorded amount thereof

(Purchase Agreement ¶ 4.1.7).

Schedule 4.1.7, entitled "Accounts Receivable Not To Be Collected Within 90 Days," contained only one entry: "Rockford Industrial - approximately \$40,000 due in April, 1998."

Marguerite Barney, Woodland's accounts receivable administrator, would testify that she was working under Abrams's supervision during his negotiations with Thermadyne, and that she was the one who generated the list of Woodland's accounts receivable used during negotiations and incorporated into the Purchase Agreement. Barney would testify that Abrams instructed her to fraudulently overstate the accounts receivable. For example, Abrams instructed Barney to generate accounts receivable for some sales that had not yet been invoiced or shipped. Barney would also testify that Abrams and his co-defendant Louis Cavaliere, Woodland's former Controller, instructed her to credit and re-bill certain accounts receivable in order to make them appear current, in some cases after Barney had

already informed Abrams and Cavaliere that the receivable was uncollectible.

Barney's testimony would be corroborated by William Smith, a Woodland supplier, who would testify that, in November 1997, Abrams asked him to re-invoice Woodland using more recent dates. Smith would testify that Abrams explained Woodland was about to be purchased by another company, which would free up money to pay the supplier. This supplier agreed to issue the new invoices, and the new invoices would be introduced at trial.

The government would also offer testimony by Rudy Menn, who was a Vice President of Finance for Thermadyne. Menn would testify that, during negotiations between Thermadyne and Woodland, Abrams participated in detailed discussions regarding the state of Woodland's accounts receivable. Menn would further testify that Abrams never revealed that any of the accounts receivable had been credited and re-billed, and that such an admission would have caused Thermadyne to offer less money to Woodland or walk away from the deal entirely.

Menn also would testify, and Thermadyne records would show, that after the purchase Abrams and Cavaliere continued working for Thermadyne and knowingly misappropriated Thermadyne funds. For example, Thermadyne funds were used to pay Woodland's old debt to the IRS, even though in the Purchase Agreement Woodland clearly retained responsibility to pay its own tax obligations. Rudy Menn would testify that Thermadyne never authorized the use of its funds to pay Woodland's old tax debt or other significant Woodland liabilities which were paid out of Thermadyne funds. Documents from Thermadyne would be introduced at trial to corroborate Menn's testimony.

The government also would present testimony by Richard Boyd, who was a Director of Engineering for Thermadyne. Boyd worked closely with Menn during Thermadyne's internal investigation, and he would testify about his investigation and conclusion that Thermadyne funds were used to pay for Woodland-retained liabilities which were not assumed by Thermadyne pursuant to the Purchase Agreement. In all, Abrams caused a loss to Thermadyne of at least approximately \$200,000.

Count 1 of the information charges that Abrams committed wire fraud on November 19, 1997, when he faxed a document entitled Schedule 4.1.7, "Accounts Receivable Not To Be Collected within 90 Days" from Philadelphia, PA, to Thermadyne in St. Louis, MO. This facsimile would be introduced at trial. As explained above, Schedule 4.1.7 - which was incorporated into the final Purchase Agreement - stated that only one of Woodland's receivables was not to be collected within 90 days. Abrams's facsimile therefore grossly overstated the collectibility of Woodland's other accounts receivable to Thermadyne, in the final stages of their negotiations.

Count 2 of the information charges that Abrams committed wire fraud by causing Thermadyne to pay \$1.508 million for the purchase of Woodland's assets on November 25, 1997. The government would offer bank records at trial, proving that this money was transmitted by means of wire communication from New York, NY, to Philadelphia, PA, on that date.

[OAEbEx.D.]

On November 20, 2003, Judge Hutton sentenced respondent to a four-month prison term, followed by a supervised release for a

term of three years. The first four months of supervised release were to be served under house arrest. Judge Hutton also imposed a \$15,000 fine and a \$200 special assessment. The sentence was lenient because of respondent's substantial cooperation with the government.

The OAE urged us to impose a three-year suspension.

Following a review of the record, we determine to grant the OAE's motion for final discipline. Respondent was convicted of two counts of mail fraud, in contravention of 18 U.S.C.A. §1341. He admitted that he defrauded Thermadyne of over \$200,000 through his scheme. Respondent's criminal conviction clearly and convincingly demonstrates that he has committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer (RPC 8.4(b)), and that he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)).

The existence of a criminal record is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Only the quantum of discipline remains at issue. R. 1:20-13(c)(2)(ii); 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." Id. at 445-46. That a respondent's offenses do not relate directly to the practice of law does not negate the need for discipline. Even a minor violation of the law tends to lessen public confidence in the legal profession as a whole. In re Addonizio, 95 N.J. 121, 124 (1984).

The Court has imposed lengthy suspensions or disbarment upon attorneys convicted of fraud. See, e.g., In re DeMesquita, 147 N.J. 290 (1997) (two-year suspension after guilty plea to two counts of mail fraud); In re DeSantis, 147 N.J. 589 (1997) (two-year suspension after guilty plea to one count of mail fraud for submitting fraudulent medical reports for the attorney's own injuries); In re Chianese, 157 N.J. 527 (1999) (three-year suspension where attorney was convicted of perjury, theft by deception, and forgery by submitting a forged document in a civil proceeding that the attorney instituted to collect a brokerage fee); In re Takacs, 147 N.J. 277 (1997) (three-year suspension following guilty plea to two counts of mail fraud for filing false insurance claims in two separate matters, including the attorney's own personal injury case); In re Lurie, 163 N.J. 83 (2000) (attorney disbarred after eight-count conviction of

scheming to commit fraud, nine counts of intentional real estate securities fraud, six counts of grand larceny and one count of offering a false statement for filing); and In re Goldberg, 142 N.J. 557 (1995) (attorney disbarred following two separate convictions for mail fraud and conspiracy to defraud the United States).

In aggravation, respondent was a prime participant in the scheme to defraud Thermadyne out of \$200,000. His obvious motivation was self-gain.

In mitigation, respondent has no prior discipline in New Jersey, cooperated fully with the federal government in its investigation of the charges, and repaid Thermadyne.

Respondent's misconduct was egregious. However, unlike that displayed in Lurie and Goldberg where disbarment resulted for where multiple transactions, it was limited to one matter. We find respondent's conduct similar to the three-year suspension cases, particularly Chianese, which also involved only one matter. There, the Court suspended the attorney for three years, retroactively to the date of his temporary suspension. Five members, thus, determined to suspend respondent for three years, retroactively to October 28, 2005, the date of his temporary suspension in New Jersey. Chair Maudsley and Members Lolla and Neuwirth voted for an indeterminate suspension. Member Wissinger

voted for disbarment.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

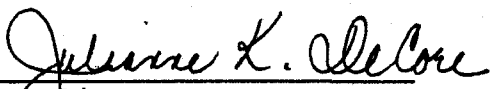
In the Matter of Andrew C. Abrams
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Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Indeterminate Suspension	Disqualified	Did not participate
Maudsley			X		
O'Shaughnessy		X			
Boylan		X			
Holmes		X			
Lolla			X		
Neuwirth			X		
Pashman		X			
Stanton		X			
Wissinger	X				
Total:	1	5	3		



Julianne K. DeCore
Chief Counsel