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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-021
District Docket Nos. XIV-04-142E
and VA-05-900E

IN THE MATTER OF	
HERBERT TAN	
AN ATTORNEY AT LAW	

Decision

Argued: April 20, 2006[1]

Decided: July 25, 2006

Nitza Blasini appeared on behalf of the Office of Attorney Ethics.

Alan Zegas 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 recommendation for discipline (three-month suspension) filed by the District VA Ethics Committee ("DEC"). According to the formal ethics

[1] After respondent's argument before us, we required him to submit to us additional information (a certified transcript). We, therefore, carried this matter to our June 15, 2006 session, at which time we deliberated on the matter.

complaint, respondent made false representations to the Board of Bar Examiners that he had earned a Bachelor's degree, when he was one course shy of that degree. The complaint charged respondent with violating RPC 8.1(a) (knowingly making a false statement of fact in connection with a bar admission application) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1998. He maintains a law practice in Newark, New Jersey. He has no history of discipline.

The relevant facts are not in dispute. Respondent attended New York University, College of Arts and Science ("NYU"), from the fall of 1988 through the spring of 1992. He did not receive a degree because he failed to successfully complete one course. Nevertheless, he attended Pace University Law School ("Pace"), without revealing that deficiency, and obtained a Juris Doctor degree in 1996. Later, respondent falsely represented to the Board of Bar Examiners that he had earned his Bachelor's degree.

The Office of Attorney Ethics ("OAE") advocates the revocation of respondent's license to practice law, while respondent's counsel argues that discipline short of license revocation is warranted. For the reasons expressed below, we determine that a reprimand is sufficient discipline in this case.

Respondent was born in the Philippines and came to the United States at age two. When he was a teenager, he became a naturalized United States citizen.

While respondent was still in high school, he began dating Susan De los Reyes, whom he later married. He started his undergraduate studies at NYU in September 1988. During his senior year at NYU, Susan, who at that time was attending nursing school in the Philippines, began experiencing health problems. Initially, doctors believed that she was suffering with Hodgkin's disease. Because of Susan's illness, respondent left school, in January 1992, to be with his then-fiancée.

Respondent remained in the Philippines for two to three months. During that time, he did not make arrangements with his NYU professors to complete his missed class work. Instead, his friends kept him up-to-date on his class assignments. When Susan's health appeared to improve, respondent returned to the United States in time to sit for his final exams at NYU. He passed all of his classes, with the exception of a "senior seminar," a graduation requirement, for which he had to submit a thesis. Although respondent submitted the thesis, he did not receive a passing grade. As a result, he did not receive his degree.

About that same time, respondent was accepted to Pace. He failed to inform the law school that he had not received a degree.

According to respondent, he was afraid that, if the school learned about it, his admission would be revoked. He was, nevertheless, aware of his obligation to so notify the school.

During respondent's senior year at NYU, he also suffered from thyroid problems, which, he claimed, affected his ability to concentrate. Respondent submitted a physician's report from Kamini Shreedhar, M.D., who began treating him in 1993.[2] The report provides, in relevant part:

> Mr. Tan was diagnosed with hyperthyroidism when he first came under my care in 1993 . . . . At that time, his symptoms included tremors in both hands and increased heart rate. He complained of nervousness, agitation, and decreased concentration.
>
> . . . .
>
> The patient initially received treatment in the form of radioactive iodine, given orally on a one-time basis to ablate the hyperactive gland. After radioactive iodine treatment, the patient was maintained on Synthroid.
>
> . . . .
>
> After the treatment with radioactive iodine, the patient suffered from hypothyroidism due to the amount of thyroid gland that was destroyed by the radioactive iodine. The symptoms include fatigue, depression, weight gain, cold intolerance, excessive sleepiness, decreased concentration, lethargy, labile emotions, forgetfulness, impaired memory, inability to concentrate and mental

[2] It appears that respondent had been treated for his condition prior to seeing Shreedhar.

> impairment. The patient remains on Synthroid for treatment of his hypothyroidism.
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> [REx.B.][3]

According to respondent, while preparing his thesis, he suffered from thyroid problems that continued through his first year of law school. The specialist treating him was unable to control his symptoms with medication. Respondent decided against undergoing surgery. Instead, as mentioned above, he opted to have his thyroid ablated through the ingestion of radioactive iodine. Respondent continues to suffer from the effects of his hypothyroidism.

Respondent's thyroid troubles contributed to his poor first year grades. The school's review board, therefore, called respondent to appear before it and explain his deficient grades. Although it is not clear from respondent's testimony whether he was asked to leave the school, he was, nevertheless, required to apply for reinstatement, which was granted when the review board considered his medical problems. Respondent was admitted to the New Jersey bar in July 1998.

According to respondent, he had returned to NYU, in the spring of 1993, to see whether the director of the history department could help him with his seminar grade. Although the

[3] REx. Refers to the exhibits attached to respondent's June 24, 2005 pre-hearing report and statement on mitigation of discipline.

director purportedly told respondent that he would get back to him about it, neither one of them followed up on the matter.

Respondent admitted that he attended NYU from the fall of 1988 through the spring of 1992, but that no degree was conferred; that he attended and graduated from Pace, but never informed Pace officials about his degree deficiency; that he knowingly, falsely represented to the Board of Bar Examiners of New Jersey that he had earned a bachelor's degree from NYU; and that he specifically certified on his bar application that he had earned a bachelor's degree in history from NYU.

The Certified Statement of Candidate Instructions on respondent's reapplication for the bar read as follows:

> THE CERTIFIED STATEMENT OF CANDIDATE is to provide the Committee on Character with information relevant to your character and fitness to practice law. PROPER COMPLETION OF THE ATTACHED STATEMENT IS A PREREQUISITE TO YOUR ADMISSION TO THE BAR. Candor and truthfulness are significant elements of fitness. You must, therefore, provide the Committee with all available information, however unfavorable, even if you doubt its relevance. Disclosure must be as detailed as possible. Supporting documentation must be included. FAILURE TO DISCLOSE REQUESTED INFORMATION MAY RESULT IN CERTIFICATION BEING WITHHELD.
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> [EX.J-1 at 7.][4]

[4] Ex.J-1 refers to the complaint dated December 3, 2004.

In addition, Section IIID of the application, relating to respondent's educational history, inquired whether he had "ever been disciplined, reprimanded, suspended, expelled, asked to resign, or permitted to withdraw from any educational institution," to which respondent replied "no." Respondent conceded that his reply was inaccurate. When asked to explain his answer, the following exchange occurred between the presenter and respondent:

> Q. You had been disciplined at Pace University?
> A. Yes.
> Q. And could you tell us why you were disciplined at Pace University?
> A. I had received very low grades in the first year of attendance. That's what happened.
> Q. And you were expelled or dismissed?
> A. I don't - - that I'm not sure of. I'm not sure if I was actually dismissed. What happened was, I had to go to a hearing and they basically stated - - based upon the medical condition and all that, and the situation, that I could take the first year over. But if I was expelled? I don't believe I was.
> Q. On Page 3, on D, "Discipline", when you indicated no, did you know that that was a false statement, that, in fact, you had been disciplined at Pace?
> A. I - - My understanding was that I - - did not understand that to be a discipline, even though it may be. Since I was never expelled, I did not find it to be a disciplinary matter.
> Q. But you didn't . . . maintain the GPA of 2.0 and you were asked to leave or to reapply?
> A. They never asked me to leave. What they said - - They asked me to come down,

explain what happened, how come my grades were low, and I explained to them everything. And they said that I would have to take the first year over. But I never received a letter stating that I was expelled.

. . . .

Q. And Exhibit C is a letter from Pace University. Would you please take a look at that and see if it refreshes your memory as to what occurred.

A. Yes. That does refresh.

. . . .

A. I guess I was academically dismissed because of the grades, and there was a hearing before the members at the school, and they said that I could take the first year over again.

[T31-1 to T32-22.][5]

After graduating from Pace, respondent took the New York and the New Jersey bar examinations, but did not pass either one on his first attempt. Currently, he is admitted to practice only in New Jersey.

Respondent explained that, when he applied for admission to the bar, he had to support his wife and child. He feared that, if his failure to earn a degree surfaced, he would not be permitted to practice law. As of the date of the DEC hearing, he had been married for thirteen years and had two children.

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[5] T refers to the transcript of the DEC hearing on August 16, 2005.

In 2000, respondent felt the "void" of not having an undergraduate degree. Therefore, by letter dated July 5, 2000, he wrote to the associate dean of academic affairs to attempt to obtain his undergraduate degree. The letter stated, in relevant part:

> I attended New York University from 1988 to 1992 and majored in American History . . . . [D]ue to a family emergency in the Spring of 1992, I was required to return to my home country to take care of a family emergency. I was out approximately from mid-February 1992 until late April 1992. During that time, I did not attend any classes but I was able to keep up with all my workloads and completed all final exams. The only problem was that I was missing from a History Seminar but I did turn in a thesis at the end of the semester. Unfortunately, the seminar professor did not accept my thesis and gave me a failing grade.
>
> Subsequently that same Spring, I was accepted into Pace University School of Law which required my start in August of that same year. Fearful of the fact that I could jeopardize my legal dreams, I went on to law school. Then during the Summer of 1993, I went back to the head of the History Department . . . and explained the reasons for my absence and my inability to attend the seminar. Shortly thereafter, [the professor] waived the advanced seminar requirement . . . . Fearful that should my law school find out about my deficiency, that they would expel me from their program, I did not follow up with [the professor's] letter.
>
> . . . I respectfully petition your office to waive the additional four points necessary to attain my undergraduate degree so that I may proudly state that I am an alumnus of New York University.
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> [ExJ-1 at 1.]

Judy Licad, a legal assistant/office manager, worked with respondent at a law firm formerly known as Llorens and Meneses. She testified that she found a copy of the above letter in the firm's computers when the firm was upgrading its computer server. By that time, respondent was no longer with the firm, as he had opened his own law office. Licad sent a copy of the letter to the DEC and to the OAE.

In the summer of 2004, respondent submitted a paper to NYU's history department to supplement the course work in the class he had failed. As a result, his grade was changed from an "F" to a "C." In September 2004, respondent was conferred a bachelor's degree.

According to respondent, since he was young, he dreamed of being a lawyer; as a child he was "picked upon a lot and [he] saw the law . . . as a way to put people on equal footings." Respondent apologized to the DEC for what he had done, acknowledging that he had not lived up to the standards of the legal profession. He took full responsibility for his actions, and apologized for the time expended to investigate this matter.

As mitigation, respondent referred to the work he performs on behalf of the Filipino community, including taking matters dealing with wrongful termination of employment or other job-related problems.

Respondent had sponsored Fe Algoso, a Filipino native, for a work visa. Algoso testified that, initially, she was in this country on a visitor's visa that would have expired had respondent not sponsored her. Currently, she has a "temporary green card" and is employed by Moody's Investor Service as a senior statistical analyst. Algoso believes that respondent is truthful and honest.

Enrico Aberion, a financial representative for Mutual Financial Network, testified that he has known respondent since 1997, when they met at the Lions Club, an organization that primarily raises funds to help physically impaired individuals. They are both members of a Filipino organization, the International Order of Knights of Rizal, which advances the values of their nation and promotes their ethnicity to Filipino youth. They also attend the same church.

Aberion considers respondent an important advocate for the Filipino community, fighting for their rights, particularly those relating to employment issues.

According to Aberion, respondent is a compassionate man. He admires respondent for working his way through college, which, he claimed, is "very rare" in the Filipino culture. He views respondent as a "different type of Filipino." Aberion's impression of respondent is unwavering, notwithstanding that respondent has

made misrepresentations on his bar admission application. Aberion stated his belief that, even though people make mistakes, it is "all about second chances . . . and I believe that a lot of us wouldn't be where we are right now if we weren't given second chances, or our parents weren't given second chances."

The DEC found that respondent attended NYU from 1988 to 1992, but that no degree was conferred, and that he admitted stating on his bar application that he had earned a bachelor's degree in history from NYU. The DEC noted respondent's proffered mitigation: the illness suffered by his fiancée, which prompted him to go to the Philippines, his thyroid condition, and the character witnesses that testified about his philanthropic efforts in the Filipino community.

The DEC found that respondent violated RPC 8.1(a) by knowingly making a false statement of material fact in his bar application. The DEC did not find clear and convincing evidence that respondent violated RPC 8.4(c). The DEC concluded that respondent's ethical lapses resulted from his concern that he would not be able to earn a living and support his family, if he disclosed accurate and truthful information. The DEC recommended a three-month suspension.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent knowingly made false statements in his bar application, violating RPC 8.1(a). Unlike the DEC, we also find that respondent violated RPC 8.4(c). Indeed, he knowingly made false statements on his bar application, for fear that he would not be permitted to practice law if the truth became known.

Attorneys who have lied on their bar applications have either been suspended from practice or had their licenses revoked. An attorney whose dishonesty pervaded not just his responses on his bar application, but also the entire ethics proceeding, had his license revoked. He was precluded from seeking readmission to the New Jersey bar for a two-year period. In re Czmus, 170 N.J. 195 (2001). Prior to becoming an attorney, Czmus was a licensed physician in California. In his application for privileges to two local hospitals, he misrepresented that he was board-certified. After that misrepresentation came to light, he entered into a stipulation providing for the stay of the revocation of his medical license for five years and probation during that time period. Thereafter, the attorney surrendered his California license and, ultimately, his New York license, when additional charges of gross negligence and other professional misconduct came to light.

Although the attorney disclosed, in his law school application, that he had been a licensed physician, he failed to do so in his New Jersey bar application. In the bar application,

the attorney lied about his education, employment, other licenses, disciplinary proceedings, and legal proceedings. We noted, in our decision:

> [Czmus's] pattern of deception continued throughout the ethics investigation. He made [among others] the following misrepresentations during the OAE interview: (1) he did not disclose that he had a medical degree because he had misunderstood the bar application question about education, believing that it addressed only undergraduate education; (2) he did not disclose his employment history as a physician be cause he worked for a [lab] and did not have his own practice; (3) he did not disclose that he had been disciplined as a physician or that he was involved in legal proceedings because, at the time that he completed the bar application, he was advised by his California attorney . . . that the medical disciplinary matter had been administratively expunged and that disclosure was not required; (4) he did not disclose that he had been licensed as a physician because the question addressed licenses in which proof of good character had been required and, since he had completed the application twenty-five years earlier, he did not recall that proof of good character was required; and (5) [his California attorney] was ill, was of retirement age and could not be contacted because his telephone number was not known.
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> [In re Czmus, DRB 00-384 (August 2, 2001) (slip op. at 19).]

Czmus made similar misrepresentations in his answer to the formal ethics complaint. In addition, he made misrepresentations to his medical experts about the circumstances surrounding his medical discipline and the bar application; was not forthcoming

with his own attorney; and misrepresented to his character witnesses the reason for the ethics hearing, informing them that it was for renewal of his law license. We found it ironic that "[Czmus] lied to the same people he was counting on to testify to his veracity and good character." Id. at 20.

Czmus refused to accept responsibility for his actions blaming his mental state, his employer, or others for his problems.

In In re Benstock, 151 N.J. 491 (1997), the Court revoked the attorney's license to practice law, following New York Law School's ("NYLS") revocation of his Juris Doctor degree. Initially, we had recommended a three-month suspension for that attorney's failure to disclose his prior attendance and academic dismissal from two law schools on his bar admission application. The attorney had also failed to disclose, on his application for admission to NYLS, that he had previously attended Touro College Law School and had been dismissed from that school for academic insufficiency. Prior thereto, he attended Hofstra University Law School and withdrew from that school because he had not maintained passing grades.

After filing our decision in the matter, the OAE reported to the Court that NYLS had revoked Benstock's Juris Doctor degree. The Court revoked Benstock's license on the basis of the revocation of his law degree by the conferring authority, and the

fact that he no longer possessed the educational prerequisite for admission to the bar. In re Benstock, supra, 151 N.J. at 491.

In In re Scavone, 106 N.J. 542 (1987), the attorney misrepresented on his law school application that he was a member of a minority group. After he completed one year of law school, the attorney altered the grades on his transcript and falsified his resumé to indicate that he had achieved a higher score on the law school aptitude test, all in an effort to obtain employment. After the law school discovered the misrepresentations, it offered the attorney the option of withdrawing or being expelled. The attorney chose to withdraw, signing an agreement that, if he failed to withdraw, the law school would immediately convene a disciplinary committee to hear charges against him. The attorney subsequently graduated from another law school and applied to take the New Jersey bar examination. In his certified statement of candidate, he failed to disclose that he had withdrawn from another law school under the threat of disciplinary charges.

At a hearing conducted by the Committee on Character, the attorney maintained that his answer on the certified statement was correct because his withdrawal from law school had been voluntary. He also asserted that he believed that the second law school would provide the information to the Committee on Character. At the hearing, the attorney showed no remorse and

demonstrated that he still had no regard for the truth, testifying that he would still complete the application in the same way and that, if he answered differently, it would only be to "appease" the Committee on Character.

In revoking the attorney's license to practice law, the Court concluded that he was not fit to practice because of his concealment of material facts from the Committee on Character. The Court noted that

> [c]andor and honesty are a lawyer's stock and trade. Truth is not a matter of convenience. Sometimes lawyers may find it inconvenient, embarrassing, or even painful to tell the truth. Nowhere is this more important than when an applicant applies for admission to the bar.
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> [Id. at 553.]

The Court found that the attorney's inability to tell the truth about himself demonstrated a lack of good moral character and unfitness to practice law. The Court was particularly troubled by the attorney's failure to rehabilitate himself. The Court, nevertheless, did not foreclose the possibility that, at some future time, the attorney might be able to demonstrate his fitness to practice law.

In In re Gouiran, 130 N.J. 96 (1992), the attorney failed to disclose disciplinary proceedings in connection with his real estate broker's license. The attorney misrepresented, in his

certified statement of candidate, that he had not been a party to any civil proceeding, that he had not been disciplined as a member of any profession, and that disciplinary proceedings had not been filed against him. At the ethics hearing, the attorney explained that, because he had read the questions narrowly, he had answered them in good faith, adding that he would answer them differently now. Although the Court revoked his license, it stayed the revocation to permit the attorney to reapply for admission. The stay was based on the significant passage of time (eight years) since the attorney had applied for bar admission, the attorney's recognition of his mistake, and the attorney's current awareness of a lawyer's duty of candor.

Discipline in the form of a six-month suspension, rather than license revocation, was imposed in In re Solvibile, 156 N.J. 321 (1998). When the attorney finally passed the Pennsylvania bar examination, after three attempts, her application to the Pennsylvania bar was returned because it was received after the filing deadline. The attorney informed the assistant executive director for the Pennsylvania Board of Law Examiners (PBLE) that the money order accompanying the application was misdated, and that the application had been mailed prior to the closing deadline, which she knew was not true. With the assistance of her boyfriend, Solvibile obtained a letter from a post office employee stating

that the money order was misdated. When Solvibile's misrepresentations came to light, she admitted her actions, explained why she had tried to deceive the PBLE, and presented character witnesses in her behalf. Solvibile was denied admission and given the alternative of seeking judicial review of the PBLE's determination or submitting a request for reconsideration no less than one year from the date of the PBLE's determination.

Solvibile notified the OAE of the circumstances surrounding the denial of her application. She accepted full responsibility for her actions, admitted her wrongdoing to PBLE and New Jersey disciplinary authorities, and was remorseful. We found that Solvibile's conduct was more the product of poor judgment and inexperience than malice or deficiency of character.

In another case, the Court declined to revoke an attorney's license, choosing instead to impose discipline. In re Guilday, 134 N.J. 219 (1993). There, the attorney failed to disclose on his bar admission application that, beginning when he was seventeen years old until he was twenty-seven, he had been arrested five times for driving while under the influence of alcohol and once for disorderly conduct. After he was admitted in New Jersey and Pennsylvania without disclosing his arrest record, he applied for admission to the Delaware bar. The Delaware Board of Bar Examiners discovered one of the charges against him. When

an investigator questioned him about its omission from his bar application, he did not disclose to the investigator the rest of his arrest record. In performing a final review of the attorney's bar application, the Delaware Board discovered one of his drunken-driving arrests. Again, the attorney declined to reveal the remainder of his arrest record, disclosing only the specific violation identified by the investigator. After the Delaware Board determined that the attorney had failed to produce evidence of good character, the attorney requested a hearing, at which time he disclosed his entire arrest record.

Shortly before that hearing, the attorney notified the New Jersey Board of Bar Examiners of his prior arrests. The Committee on Character recommended revocation of the attorney's license to practice law, based on his practice of deception over a six-year period. The Committee on Character rejected the explanation offered by a psychiatrist that the attorney was "traumatized about reporting past offenses" because of a strict Catholic upbringing and high school education, because of his relationship with his father, "a punitive and critical parent," and because of his college's military, authoritarian approach to education.

We, too, rejected that attorney's explanation that he did not intend to conceal his arrests, but had repressed those incidents due to embarrassment and humiliation, noting that he

exercised "selective self-restraint" in not disclosing them because he was ashamed. We observed that the attorney had engaged in a pattern of deception and had chosen to perpetuate his wrongdoing, when given an opportunity to rectify it. The Court suspended the attorney for six months.

In another case, In re Kotok, 108 N.J. 314 (1987), the Court suspended the conditional revocation of the attorney's license because of unique circumstances. The attorney had exhibited unethical conduct in three separate matters. In the first matter, he became involved in an impermissible conflict of interest. In the second matter, in his certified statement in connection with his application for admission to the bar, the attorney falsely described a criminal offense for which he had been convicted. The third matter involved the attorney's mischaracterization of his 1975 disorderly person's conviction in a 1983 application to purchase a handgun.

As to the attorney's misstatements in his bar application, instead of disclosing his guilty plea to a disorderly persons' charge of carrying a weapon with intent to commit an assault, the attorney falsely stated that he had been convicted of a disorderly persons offense of "possession of a weapon without a permit." He also deliberately misquoted a remark by the sentencing court.

The Court noted that, because the attorney had already been admitted to the bar, typically the appropriate discipline would be to revoke his license to practice law. In assessing the appropriate measure of discipline for the attorney's conduct in the first two matters (the conflict of interest and the bar application matters), the Court considered that the attorney had no disciplinary history since his admission to the bar in 1977; that the ethics offenses had taken place almost ten years before, when the attorney had just entered the legal profession; that, in the intervening years, he had gained professional experience, skill, and understanding; and that he had achieved a commendable level of professional competence and recognition, as shown by his appointment as a municipal court judge. Reasoning that the imposition of a suspension or a license revocation would be contrary to the rehabilitative goals of discipline, the Court concluded that a probationary sanction was appropriate. Accordingly, the Court suspended the imposition of the one-year suspension for the conflict of interest and the conditional revocation of the attorney's license for his misstatements on the bar application, and placed the attorney on probation for one year, subject to his performance of legal services of a community nature. With regard to the third violation, the Court noted that, because the transgression had occurred in 1984, the

considerations of remoteness did not justify the modification of the appropriate discipline. The Court, thus, imposed a (public) reprimand for that offense.

In another context, the Court ruled that a candidate for admission to the bar was unfit to practice law. Application of Triffin, 151 N.J. 510 (1997). In that case, prior to law school, Triffin incorporated a business, which was a "non-recourse purchaser" of delinquent commercial accounts. Later, he incorporated a company that purchased obligations and debts incurred under leases of personal property. When his businesses failed, he went to law school. Triffin was denied admission to the Pennsylvania and New Jersey bars, based on the Pennsylvania courts' findings of civil fraud, unauthorized practice of law, and unprofessional conduct in two contested legal matters; his lack of respect for the judicial process; his lack of financial responsibility; and the lack of even a scintilla of evidence of rehabilitation. In addition, although the majority of the thirteen attorneys who testified at the hearing before a panel of the Committee on Character testified that the candidate had positive attributes, several of the witnesses raised questions about his honesty and integrity.

The Court was concerned about Triffin's "present" fitness to practice law, based on evidence of lack of reform and rehabilitation relevant to the assessment of his moral character.

In assessing whether Triffin had demonstrated rehabilitation, the Court listed the factors enumerated in Application of Matthews, 94 N.J. 59 (1983) as being probative of reform and rehabilitation:

> (1) an applicant's complete candor in filings and proceedings conducted by the Committee on Character; (2) an applicant's renunciation of his or her past misconduct; (3) the absence of misconduct over a period of intervening years; (4) 'a particularly productive use of [the applicant's] time subsequent to the misconduct'; and (5) '[a]ffirmative recommendations from people aware of the applicant's misconduct who specifically consider the individual's fitness in light of that behavior.'
>
> [Application of Triffin, supra, 151 N.J. at 528.]

Finding that Triffin was "presently unfit to practice law," the Court directed the Committee on Character to withhold certification of his character and fitness, without prejudice to his right to present evidence of rehabilitation no earlier than three years from the filing of the Court's decision.

Here, respondent's behavior was not venal or as pervasive as in Czmus (making misrepresentations about other licenses, his education, employment, disciplinary and legal proceedings, and refusing to accept responsibility for his problems – revocation of license and prohibition against reapplication for two years) or Scavone (representing himself as a member of a minority group to obtain admission to law school, altering grades on his transcript,

making misrepresentations on bar application, showing no remorse or rehabilitation – license revocation, but with opportunity to show fitness to practice in the future).

Under the Matthews criteria, respondent has shown that his character has been salvaged. He was candid about his misconduct; he recognized that it was improper, as shown by his attempts to rectify the situation as early as the Spring of 1993, and again in 2000, and his correction of the problem in 2004; this is his first ethics infraction since his admission to the bar in 1998; he has assisted the Filipino community; he presented witnesses to attest to his good character; and eight years have elapsed since he made misrepresentations on his bar admission application.

Respondent's circumstances are more akin to that of Gourian (revocation stayed because of the passage of time for making misrepresentations in his certified statement of candidate about disciplinary proceedings relating to his real estate broker's license) and Kotok (suspension of conditional revocation of attorney's license for misrepresenting facts of a prior arrest, given the attorney's lack of ethics history, passage of time, and achievement of a commendable level of professional competence).

Here, respondent was one course shy of obtaining a degree from NYU, ostensibly because of his fiancée's and his own health problems. After receiving his acceptance to law school, he was

fearful that, if the truth became known, he would be foreclosed from attending Pace – his life-long dream. Subsequently, he perpetuated this misrepresentation by silence and by falsely stating his degree status on the bar admission application. At that point, respondent feared that, if the truth were revealed, he would be unable to support his wife and child.

Respondent was not without a conscience. He tried twice to rectify the situation at NYU, but neither time pursued the matter to fruition for fear that he would be discovered. Currently, he has resolved his dilemma - NYU has conferred him a degree. Thus, all of his requirements for membership in the bar have been met.

We find, thus, that respondent's misrepresentations were made under pressure and as a result of poor judgment and inexperience, as opposed to the lack of scruples exhibited by Czmus and Scavone. Respondent has accepted responsibility for his wrongdoing, has recognized the impropriety of his conduct, was remorseful, has no history of discipline, his offense occurred more than eight years ago and, in the intervening years, he has achieved a certain degree of professionalism and has given back to the Filipino community. We agree with respondent's character witness that respondent deserves a second chance. Moreover, at this juncture, revoking or suspending his license to practice law would be contrary to the rehabilitative goals of discipline. We,

therefore, conclude that a reprimand is the appropriate discipline in this case. Chair O'Shaughnessy recused himself.

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

Disciplinary Review Board
Louis Pashman, Vice-Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Herbert J. Tan
Docket No. DRB 06-021

Argued: April 20, 2006

Decided: July 25, 2006

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy				X	
Pashman		X			
Baugh		X			
Boylan		X			
Frost		X			
Lolla		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		8		1	

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel