SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-078
District Docket No. XIV-06-008E

| | |
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| IN THE MATTER OF | : |
| ERIC YIM | : |
| AN ATTORNEY AT LAW | : |

Decision

Argued: April 20, 2006

Decided: June 6, 2006

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

David H. Dugan, III appeared on behalf of respondent.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE") pursuant to R. 1:20-14(a), following an order of the Virginia State Bar Disciplinary Board revoking respondent's license to practice law. This action was based on respondent's guilty plea

to a charge of collection of extensions of credit by extortionate means, a violation of 18 U.S.C.A. §894(a)(1) and (2).

Respondent was admitted to the New Jersey bar in 2002 and the Virginia bar in 2003. He has no history of discipline in New Jersey.

On November 5, 2003, the United States Attorney's Office filed a one-count indictment against respondent in the United States District Court for the Eastern District of Virginia, charging him with violating 18 U.S.C.A. §894(a)(1) and (2). This section provides:

> (a) Whoever knowingly participates in any way, or conspires to do so, in the use of any extortionate means
>
> > (1) to collect or attempt to collect any extension of credit, or
> > (2) to punish any person for the nonrepayment thereof,
>
> shall be fined under this title or imprisoned not more than 20 years, or both.

The indictment charged that respondent "knowingly, expressly and implicitly threatened the use of violence and other criminal means to cause harm . . . in order to collect and attempt to collect an extension of credit . . . ."

On December 23, 2003, respondent entered a guilty plea to the charge. On May 14, 2004, the Honorable Gerald Bruce Lee, U.S.D.J., sentenced respondent to a twenty-eight-month term of

imprisonment, a $5,000 fine and, following his release from prison, a three-year term of supervised release.

Respondent and the Unites States Attorney's Office entered into the following Statement of Facts:

> 1. Eric Yim is an attorney licensed to practice law in the Commonwealth of Virginia, and has his office located at 4115 Anndandale [sic] Road, Annandale, Virginia, in the Eastern District of Virginia.
>
> 2. Eric Yim became acquainted with a cooperating witness (CW) in mid-2003, when the CW, who is a private investigator, performed some investigative services for Yim.
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> 3. On approximately September 10, 2003, Yim telephonically contacted the CW and requested an additional copy of a report the CW had previously provided to Yim. During that conversation, Yim asked the CW what additional services he could provide. After the CW provided a brief description, Yim asked to meet the CW to further discuss these services.
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> 4. On September 17, 2003, the CW met Yim at Yim's Annandale law office. During the meeting, Yim explained to the CW that he had certain clients with needs that he could not meet. Yim explained that he wanted to stay within the boundaries of the law, but that some of his clients could not get full relief from either the courts of law or the courts of equity. Yim stated that if he could not meet his clients' needs legally, then he wished to refer those clients to the CW. Yim proceeded to discuss several scenarios with the CW, including whether the CW could arrange for a person to be either seriously injured or killed in an apparent accident.
>
> 5. Yim then inquired whether the CW could assist him with a personal problem. Yim

explained that he had loaned $2000 to an individual (who was later identified as Jang Weon Gang) and he had not been repaid. Interest on the original $2000 loan had increased the total debt to approximately $4000. Yim explained that Gang had been dodging his attempts to collect the loan, and that Gang was, in any event, almost penniless and judgment-proof.

6. Yim and the CW proceeded to discuss in detail what measure the CW should employ to try to collect Yim's money. Yim stated that he did not want Gang hurt, but that he just wanted the CW to threaten Gang in order to collect his money. The CW explained that he would be willing to threaten Gang in exchange for a $1000 cash payment, but that Yim should understand that this was extortion, and that merely threatening Gang might not result in return of Yim's money. The CW then told Yim that he (Yim) would have to tell the CW whether he wanted something more serious done to Gang to ensure that Gang would come up with the money. Yim inquired whether it would cost more money if Gang were hurt, and the CW explained that it would not, as long as everything was done at the same time. The discussion then turned to other matters in which CW could assist Yim's clients.

7. On September 24, 2003, the CW met Yim at Yim's Annandale law office. Yim introduced the CW to a client of his, and the CW and client had a discussion about various services including having someone deported from the United States.

8. Yim then provided the CW with the following:

a) summary sheet itemizing the debt owed by Jang Weon Gang
b) loan contract signed by Gang

c) copy of bounced checks from Gang and his girlfriend
d) copy of Gang's Korean passport
e) copy of Gang's student visa
f) copy of Gang's Virginia driver's license
g) copy of Design World business card (Gang is the owner)

9. The CW told Yim that he needed to do this in such a way that Gang did not go to the police. The CW stated that Gang would get broken up and dumped somewhere, possibly in D.C. The CW asked Yim if that was all right with him, and Yim said it was OK. Yim later stated that he wanted the CW to hurt Gang enough that he came up with the money.

10. Yim then counted out $1000 in cash and gave the money to the CW. The CW told Yim that he would bring Yim the money Gang owed him, along with a photo taken of Gang after he was beaten. Shortly thereafter, the CW left Yim's office.

11. The conversation on September 17, 2003 was recorded by audio, and the conversation on September 24, 2003 was recorded by audio and video.

[OAEbEx.D.[1]]

After respondent entered a guilty plea, but before sentencing, he notified the Virginia disciplinary authorities of his desire to surrender his law license. Apparently, respondent executed an Affidavit Declaring Consent to Revocation. The Virginia bar requires the execution and notarization of this document when "charges," presumably ethics charges, are pending

[1] OAEb refers to the OAE's brief dated March 9, 2006.

against an attorney. The record does not include the signed, notarized document. However, Exhibit F (a March 4, 2004 order of the Virginia State Bar Disciplinary Board revoking respondent's license to practice law in the courts of the Commonwealth of Virginia), refers to respondent's March 1, 2004 Affidavit Declaring Consent to Revocation of his license.

Respondent's New Jersey counsel notified the OAE about the Virginia proceedings. Thereafter, on February 17, 2006, respondent was temporarily suspended pursuant to R. 1:20-13(b)(1).

Respondent argued before us that he agreed to the original plea agreement because he was assured a limited period of incarceration, that he was "set-up and entrapped by a government informant," and that he did not contest the charge against him because he would have risked a long period of confinement and separation from his family. Respondent, however, did not raise the entrapment defense below. His conviction is conclusive evidence of his guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986).

In his brief, respondent maintained that the criminal case against him was created by a government informant (the CW), who secretly recorded conversations with him, and that it was the informant's idea to use "force" against Gang. The record does not support respondent's claims. Respondent was not an innocent victim of entrapment. He initiated the contact with the CW to have him

perform various services – services that were outside the scope of the law – criminal acts. Respondent submitted with his brief a copy of the transcription of one of their meetings. The transcript established that respondent initiated contact with the CW. ("You [respondent] asked to meet with me [the CW]" (Ra29)[2]; "Well you're [respondent] the one who contacted me [the CW]; ". . . you [respondent] contacted me [the CW] and that's how we got hooked up" (Ra64)).

During their meeting, respondent explained to the CW that he was in business to make a profit and generally would not help individuals who could not afford his services. In providing certain services respondent stated:

> I, obviously from an, an attorney's prospective [sic] I want to stay within the boundaries of law. Okay, there's [sic] certain things I won't do but you know I, I could, ah, you know, if there's [sic] certain things that I, if I find something and I can't get it done legally as an attorney then I'm gonna, then it's time for me to refer them to you.
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> [Ra36.]

This conversation related to an earlier discussion about getting someone deported and staging accidents. Respondent inquired "hypothetically" about what the CW could do for his clients who were unable to obtain justice through the court

[2] Ra refers to the appendix to respondent's brief.

system and who were seeking revenge either in the form of bodily injury or possibly death. The CW told respondent that it would cost "a lot of money" for those services. Afterwards, the CW directed the conversation to methods that he could use to threaten and to coerce Gang to repay respondent.

Respondent also informed the CW about one client who wanted someone deported and did not care how it was accomplished, or who, alternatively, might be interested in just having that individual hurt. Respondent told the CW that he would have to talk to his client to determine how much injury to inflict.

Respondent made it known to the CW that he wanted his "cut" for referring matters to him. Respondent further explained to the CW that he wanted to smuggle someone in from South Korea, but that no drugs were involved.

The following exchange also took place:

> CW: Ah, we talked the other night when I mentioned asset recovery you talked about drugs and I said I wouldn't go after or move any drugs.
>
> EY: Okay.
>
> CW: And when we talked about having the fatal accident, ah, I said this was murder for hire and I said I wouldn't do this.
>
> EY: That's right.
>
> CW: Okay that's what I said. Well the room is secure now . . . .

EY: Sure.

CW: . . . . so we can talk to the bottom line.

. . . .

EY: You would do this if the price was right.

CW: If the price was right sure.

[Ra68.]

Respondent wanted assurances from CW that, if respondent acted as the broker for his clients, he would not get into trouble.

The transcript of respondent's conversation with CW demonstrated that he was not an innocent participant, and that he was neither "set-up" nor "entrapped." He was a willing actor, who initiated contact with the CW, so the CW would do his bidding.

The OAE urged that respondent be disbarred.

Following a review of the full record, we determine to grant the OAE's motion for reciprocal discipline.

Pursuant to R. 1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of disciplinary proceedings), respondent's guilty plea to an indictment demonstrates that he has violated RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a

lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> (E) the unethical conduct established warrants substantially different discipline.

We agree with the OAE that a review of the record demonstrates that paragraph (E) is applicable because Virginia's Supreme Court Rules permit an attorney whose license has been revoked to petition for reinstatement five years from the effective date of the revocation. Part 6, §IV, ¶13(I)(8)b of the Rules of the Supreme Court of Virginia.

As noted above, 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). Thus, the only issue left for determination is the degree of discipline to impose. R. 1:20-13(c)(2) and In re Zauber, 122 N.J. 87, 92 (1991).

The case of In re Sajous, 175 N.J. 441 (2003), is analogous to this matter. In Sajous, the attorney was disbarred for soliciting a third party to threaten with physical injury a fourteen-year-old boy to prevent him from testifying against Sajous' client. The details of the attorney's actions were described in a deposition of a detective who listened to the tape-recording of a conversation between Sajous and Gilbert Pagan, the third party:

> On that tape, I heard Sajous give Pagan instructions to find Malverne High School and to locate Smith's home on Woodfield Road. Sajous gave Pagan a physical description of Smith and had Pagan write down all of the information relating to Smith. Sajous told Pagan that he wanted Pagan to cause Smith to be too frightened to testify. He told Pagan that paying Smith would not work. Sajous and Pagan had a conversation about getting somebody to help Pagan do the job and the amount of money to be paid. Sajous agreed when Pagan stated that Sajous wanted him to '**** up' Smith. Sajous told Pagan that he wanted Smith to understand that Smith would be 'really hurt' if Smith testified against [his client].
>
> [In re Sajous, Docket No. 02-178 (DRB November 21, 2002) (slip op. at 2-3).]

In Sajous, we concluded that the attorney's actions revealed such a flaw in his character that he should never again be permitted to practice law in this State.

In In re Mintz, 101 N.J. 527 (1986), the attorney received a two-year suspension. The Court found that Mintz solicited his client, Anthony Capolla, to murder a former client, Leonard Sherwood. After representing Sherwood, Mintz became involved with Sherwood's ex-wife. Thereafter, Sherwood began threatening Mintz's life, to the extent that Mintz wrote to two prosecutor's offices notifying them that, if he were found dead, Sherwood was the likely suspect.

Cappolla, who was a police informant in organized crime activities, was gathering information for the police in exchange for the dismissal of a number of criminal charges pending against him. Id. at 529. Cappolla was wearing a police wire when Mintz told him that "the body [Sherwood's] had to be found," but that he did not want the murder to take place at that time. Mintz stated that he wanted to see what Sherwood would do after Mintz married Sherwood's ex-wife. Mintz further told Cappolla that he and his girlfriend had discussed killing Sherwood, but had decided against it.

After reviewing the conversation, law enforcement officials decided to wait for further developments between Mintz and

Cappolla. When Mintz was confronted by the Attorney General's Office, he admitted asking Cappolla if he could kill Sherwood, but described it as a preemptive strike because he felt in danger. He claimed that the great strain he was under impaired his judgment and that he had made a mistake; acknowledged that his conduct was improper; denied any serious intention to conspire to commit murder; and claimed that his actions were merely verbal fantasizing. At the DEC hearing, a board certified psychiatrist confirmed that Mintz was merely "putting into words his fantasies."

Mintz was also accused of making statements about arranging a drug transaction (cocaine), and advising Cappolla on how to jump bail and how to avoid standing trial with a false medical report. Law enforcement officials concluded that, based on the tape, it was unlikely that Mintz would be convicted of criminal charges. In addition, Cappolla died in 1982.

The Court found that the attorney's statements relating to the solicitation of the commission of crimes constituted conduct prejudicial to the administration of justice and adversely reflected on his fitness to practice law, and the advice to his client on how to jump bail or avoid standing trial by using a false medical report was improperly counseling or assisting a client in illegal conduct.

In determining the appropriate discipline, the Court considered Mintz's unblemished record of eleven years and the lack of clear and convincing evidence that he actually intended to commit or have his client commit any of the criminal acts. The absence of such nefarious intent justified withholding more extreme discipline. As noted above, Mintz received a two-year suspension.

The OAE cited two additional cases where attorneys were disbarred for other types of misconduct. In In re Edson, 108 N.J. 464 (1987), the attorney counseled his client to fabricate an extrapolation defense in a DWI case that involved material facts that the attorney and client knew were false, participated as defense counsel while the client perjured himself in court, and personally lied to the prosecuting attorney.

Another attorney was disbarred when, knowing that $5,000 had been paid to bribe a state police officer to file a false police report, he counseled other co-conspirators on how to arrange, through improper means, for the dismissal of the criminal charges that were the subject of the report. In re Rigolosi, 107 N.J. 192 (1987).

Here, the OAE's position was that, if disbarment was the appropriate sanction for an attorney who counseled his client to fabricate a defense, and for another who provided counsel on the

improper dismissal of criminal charges after bribery of a witness, then disbarment was also required for this respondent, who paid an individual $1,000 to severely injure someone who had not repaid a loan from respondent.

Several cases support the position that attorneys who engage in acts demonstrating moral turpitude should be disbarred. The attorney in In re Hasbrouk, 152 N.J. 336 (1998), was disbarred after her guilty plea to several counts of burglary and theft by unlawful taking. To support her continuing addiction to pain-killing drugs, Hasbrouck burglarized the homes of doctors in four different counties to obtain their office keys, in order to obtain samples of prescription drugs. She also took jewelry and purses from the doctors' homes.

In assessing the proper discipline for attorney Hasbrouck, the Court stressed that "[s]ome criminal conduct is so utterly incompatible with the standard of honesty and integrity that we require of attorneys that the most severe discipline is justified by the seriousness of the offense alone." Id. at 372-73. Among other cases, the Court looked for guidance in In re "X", 120 N.J. 459 (1990), and In re Goldberg 105 N.J. 278 (1987).

In In re "X", the Court disbarred an attorney based on his conviction of three counts of second-degree sexual assault against his minor daughters. The Court agreed with us that

"respondent's atrocious acts justify his disbarment . . . . A less severe discipline would undermine the gravity of the ethics offenses, the seriousness of the crimes, and the confidence reposed by the public on the members of the legal profession and on the judicial system." Id. at 464.

The attorney in In re Goldberg was disbarred after a federal conviction for conspiracy to distribute a Schedule II controlled dangerous substance. The Court found that "the object of the conspiracy constituted a direct threat to society," and that his "conduct demonstrated his lack of fitness to be a lawyer and his unsuitability to be entrusted with the privileges and duties of the legal profession." The Court held that "[d]isbarment, the strongest sanction available, must be imposed in order to preserve the integrity of the bar." Id. at 283.

The attorney in In re Alosio, 99 N.J. 84 (1985), pleaded guilty to one count of presenting a false and fraudulent claim to his insurance company and six counts of receiving stolen property (high-end automobiles). The attorney was engaged in a sophisticated and continuing illegal operation – a continuing car theft scam. In assessing the appropriate quantum of discipline, the Court noted that "[t]here is no hard and fast rule that requires a certain penalty for conviction of a certain crime." Id. at 89. In ordering the attorney's disbarment,

substantial weight was given to the fact that the attorney's criminal activity established "a total lack of moral fiber requisite in any member of the Bar." Id. at 89.

Here, respondent's criminal conduct is "utterly incompatible with the standard of honesty and integrity that we require of attorneys." In re Hasbrouk, supra, 152 N.J. at 372-73. When he was unable to collect on a loan to Gang, he hired the CW to "beat up" Gang "enough that he came up with the money." This case is more serious than Mintz (a two-year suspension) because this respondent was convicted of a crime and, unlike Mintz, did more than just fantasize about committing a crime. He committed a crime – soliciting and paying the CW to "beat-up" Gang – a violation of 18 U.S.C.A. § 894(a)(1) and (2). This case is more akin to Sajous, where the attorney was disbarred for hiring a third person to "frighten" a witness who would be testifying against his client. Hasbrouk, "X", Goldberg, and Alosio stand for the proposition that attorneys who commit crimes that evidence a total lack of "moral fiber" must be disbarred in order to protect the public, the integrity of the bar, and the confidence of the public in the legal profession. Respondent's conduct was just the type of crime that "directly poison[s] the well of justice" and warrants his disbarment. In re Verdiramo, 96 N.J. 183, 187 (1984).

We, therefore, recommend to the Court that respondent be disbarred. Chair O'Shaughnessy recused himself. Vice-chair Pashman did not participate.

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

Disciplinary Review Board
Matthew P. Boylan, Esq.

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

*SUPREME COURT OF NEW JERSEY*
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Eric Yim
Docket No. DRB 06-078

Argued: April 20, 2006

Decided: June 6, 2006

Disposition: Disbar

| ***Members*** | Disbar | 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: | 7 | | | | 1 | 1 |

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Chief Counsel