

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-026

IN THE MATTER OF
RAFAEL A. VARGAS
AN ATTORNEY AT LAW

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Decision

Argued: March 15, 2001

Decided: July 18, 2001

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

Respondent failed to appear, despite proper notice.

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

This matter was before us based on a motion for final discipline filed by the Office of Attorney Ethics (OAE). On February 2, 2001 respondent entered into a plea agreement in the United States District Court for the District of New Jersey. Respondent pleaded guilty to a one-count information charging him with making false statements on immigration and naturalization documents, in violation of 18 U.S.C.A. 1001.

Respondent was admitted to the New Jersey bar in 1989 and has no disciplinary history.

At the plea hearing, the judge elicited the factual basis for the guilty plea:

Q On April 16th, 1999, were you responsible for representing individuals identified with the initials M.G. and G.S. in connection with their respective applications to INS to establish permanent residence?

A Yes.

Q Was M.G. a non citizen living and working for C.H., Inc. in Ohio, who wished to establish permanent resident status?

A Yes.

Q Was G.S. a non citizen living and working for C.H., Inc. in Ohio, who wished to establish permanent non-resident status?

A Yes.

Q Despite representing to M.G. and G.S., among others, that you had been attempting to get approval from INS for their respective applications to establish permanent resident status, had you failed as of April 16th, 1999 to take the necessary action to fulfill your responsibilities to M.G. and G.S.?

A Yes.

Q On April 16th, 1999, did you speak by telephone to an INS employee in Cincinnati, Ohio, concerning the applications of M.G. and G.S.?

A Yes

Q On April 16th, 1999, did the INS employee tell you that she needed INS 'Notice of Action' forms for M.G. and G.S. to process their respective applications to establish permanent resident status?

A Yes

Q On April 16, 1999 did you tell the INS employee that you would submit previously-issued Notices of Action for M.G. and G.S. that purported to indicate that their respective applications to establish permanent resident status had been received by INS?

A Yes.

Q Immediately following this telephone conversation, did you cause two purported Notices of Actions for M.G. and G.S., respectively, to be submitted to the INS in Cincinnati, Ohio by facsimile transmission?

A Yes.

Q Did the Notice of Action for M.G. purport to indicate that her application to adjust permanent resident status had been received by INS on August 26, 1998?

A Yes.

Q In fact, had you falsified and forged this Notice of Action, utilizing an INS 'A' number that did not correspond to M.G., to further the false representation that you had previously submitted an application on M.G.'s behalf?

A Yes.

Q At the time you committed these acts, did you know that what you were doing was against the law?

A Yes.

[Exhibit A at 18-21]

The record reveals that, initially, respondent lied to investigators about forging the INS documents, claiming that a paralegal in his office had done so. Respondent later admitted that he had falsified the documents.

On July 17, 2000 respondent was sentenced to a three-year term of probation, fined \$500 and required to perform 200 hours of community service. As a condition of probation, respondent was ordered not to perform any type of immigration work during his probation. Exhibit D at 9-10.

On March 3, 2000 the New Jersey Supreme Court temporarily suspended respondent from the practice of law pursuant to R. 1:20-13(b)(1). Respondent remains suspended to date.

The OAE urged the imposition of a lengthy suspension, without specifying its duration.

* * *

Upon a de novo review of the record, we determined to grant the OAE's motion for final discipline. 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). Respondent's conviction for theft by failure to make required disposition of property received is clear and convincing evidence that he violated RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Only the quantum of discipline remains at issue. R. 1:20-13 (c) (2) (ii); In re Goldberg, 105 N.J. 278, 280 (1987).

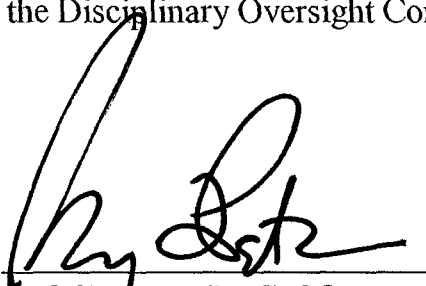
The OAE urged the imposition of a lengthy suspension for this respondent, relying on three cases involving similar crimes: In re Silverblatt, 142 N.J. 635 (1995) (three-year suspension imposed where the attorney obtained employment authorization for ten aliens by falsely stating on immigration forms that the aliens were in the country for political reasons); In re Biederman, 134 N.J. 217 (1993) (eighteen-month suspension imposed where the attorney assisted aliens to enter the country with fraudulent United States passports); and In re Brumer, 122 N.J. 294 (1991) (three-year suspension imposed where the attorney filed false labor certificates in order to assist foreign nationals in obtaining permanent resident visas).

Here, respondent falsified INS notices of approval from prior clients by changing the names on the documents. Thereafter, respondent submitted the false documents to the INS to illegally obtain residency status for new clients. Moreover, respondent lied to investigators, claiming that a paralegal had falsified the documents. In light of the seriousness of respondent's criminal conduct, a seven member majority determined to impose a three-year suspension, retroactive to respondent's March 3, 2000 temporary suspension in New Jersey. Prior to reinstatement, respondent must complete the skills and methods courses offered by the Institute for Continuing Legal Education. Following reinstatement, respondent is to practice under the supervision of a proctor, approved by the

OAE, for a period of two years. Two members voted for disbarment.

We also required respondent to reimburse the Disciplinary Oversight Committee for all administrative expenses.

Dated: July 18, 2001



ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

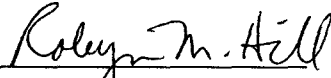
**In the Matter of Rafael A. Vargas
DRB Docket No. 01-026**

Argued: March 15, 2001

Decided: July 18, 2001

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley	X						
O'Shaughnessy		X					
Schwartz	X						
Wissinger		X					
Total:	2	7					

 9/25/01
Robyn M. Hill
Chief Counsel