SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-314

IN THE MATTER OF

RICHARD W. WOODWARD

AN ATTORNEY AT LAW

Decision

Argued: October 17, 1996

Decided: March 25, 1997

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 filed by the Office of Attorney Ethics ("OAE"), based upon respondent's criminal conviction in federal court of conspiracy to commit securities fraud, in violation of 18 U.S.C.A. 371.

Respondent was admitted to the New Jersey bar in 1990. On March 31, 1995, a one-count information was filed against him in the United States District Court for the Southern District of New York, charging him with conspiracy to commit securities fraud, in violation of 18 U.S.C.A. 371. On June 28, 1995, pursuant to a plea agreement, respondent pleaded guilty to the charge. On June 26, 1996, respondent was sentenced to a two-year term of probation and a five-month term of home confinement, and ordered to pay a special assessment of $50. Also, in accordance with an agreement

made with the Securities Exchange Commission, respondent complied with disgorgement obligations set by the SEC. Pursuant to R. 1:20-13(b)(1), respondent was placed on temporary suspension in New Jersey on July 18, 1995. In re Woodward, 140 N.J. 636 (1995). That suspension remains in effect to date.

The facts of the instant misconduct, as derived from the United States Attorney's Office information report, are as follows:

Respondent was an associate at the law firm of Cravath, Swaine, and Moore of New York City between 1989 and 1995. He was assigned to the firm's corporate finance department, which gave him access to confidential, material, and non-public information on trading and stocks. Cravath had a policy that, among other things, prohibited employees from "revealing 'inside' information to anyone else except on a strict 'need to know basis'." This policy was disclosed annually to all employees in the firm's memorandum entitled "Prohibition of Disclosure or Use of Inside Information."

Approximately from 1990 through 1995, respondent divulged confidential, material, and non-public information regarding mergers, takeovers, and tender offers to his brother and to his best friend. The brother and the best friend then traded in the stocks of the companies on which respondent gave such information, making a profit of about $305,500 in total. Respondent, however, did not realize any financial gain from his misconduct.

The OAE urged the Board to suspend respondent for three years.

* * *

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). Respondent's criminal conviction of securities insider trading clearly and convincingly demonstrates that he committed "a criminal act which adversely reflects 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)]. Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2)(ii); In re Goldberg, 105 N.J. 278, 280 (1987).

Respondent abused his privilege as an attorney by using his position to assist his brother and his friend in improperly earning a substantial amount of money. His conduct entailed breach of his fiduciary duties to the firm and to the firm's clients by divulging confidential information entrusted to him. Respondent's misconduct directly involved his law practice.

Similar misconduct has resulted in a two-year suspension. In re Solomon, 110 N.J. 56 (1988). In that case, Solomon, like respondent here, was convicted of insider securities trading. In Solomon, the Court declared that this type of misconduct "manifests an indifference to the essence of the character that we have deemed essential to the licensure of every member of the Bar." The Court warned that "in the future such conduct will result in a lengthy suspension or disbarment." Id. at 57. In a later case, an attorney was disbarred based on his criminal conviction of securities fraud, conspiracy to defraud the United States, obstruction of proceedings, perjury, false statements, and obstruction of justice. In re Sprecher, 142 N.J. 432 (1995).

In light of the Court's pronouncement in Solomon, respondent's misconduct warrants a suspension greater than two years. However, respondent's conduct does not rise to the level of that in Sprecher. Unlike Sprecher, respondent's actions were not committed for his personal financial

gain. Additionally, respondent cooperated with the authorities during the investigations, unlike Sprecher, who made false statements to the government and committed perjury. Hence, respondent's misconduct does not warrant a disbarment.

Under the totality of the circumstances, the Board unanimously determined to suspend respondent for three years, retroactive to the date of his temporary suspension in New Jersey. In addition, respondent must provide proof that he has completed the Institute for Continuing Legal Education's Skills and Methods courses prior to reinstatement.

The Board also determined to require that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 3/25/97

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board