SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-182

IN THE MATTER OF	:
JEFFREY M. SPIEGEL	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 21, 2001

Decided: October 26, 2001

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 us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's disbarment in New York. Respondent was convicted, in the Supreme Court of the State of New York, of a violation of §352c(5) of the New York General Business Law (the "Martin Act"), a Class E felony.

Respondent was admitted to the New Jersey bar in 1992 and has no prior discipline. He failed to notify the OAE of his New York disbarment, as required by R.1:20-14(a) (1). The OAE discovered respondent's disbarment during a routine search of New York disciplinary orders. Thereafter, respondent was temporarily suspended in New Jersey on October 22, 2000, pursuant to R. 1:20-13(b)(1), and remains suspended to date.

Respondent's disbarment followed respondent's January 15, 1998 guilty plea to an eight-count indictment filed in the Supreme Court of the State of New York, County of New York, charging him with a violation of §352c(5) of the Martin Act.[1] Exhibits A-C.

On February 25, 2000 respondent was sentenced to a three-year period of Conditional Discharge,[2] due to expire on February 25, 2003. In addition, respondent was ordered to pay a $1,500 fine.

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[1] § 352c(5) of the Martin Act provides:

> Any person, partnership, corporation, company, trust or association, or any agent or employee thereof who intentionally engages in any scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation or purchase of any securities or commodities, as defined in this article, shall be guilty of a Class E felony.
>
> [Exhibit F]

[2] A conditional discharge in New York is an alternative to incarceration, imposed upon a guilty plea or conviction. A defendant cannot avoid prosecution, only a custodial sentence.

Prior to sentencing, on February 25, 1999, respondent was disbarred by the Appellate Division of the Supreme Court of New York, First Judicial Department. Exhibit E. Because respondent's conviction was for the commission of a felony, under New York Judiciary Law §90(4)(b), his disbarment was automatic.

The facts that form the basis for respondent's conviction are contained in a February 14, 2000 letter to the sentencing court from Robert Morganthau, District Attorney for New York County:

> Defendant Jeffrey Spiegel comes before the Court for sentence having been convicted by a plea of guilty on January 15, 1998 of one count of Violation of General Business Law 352(c), a Class E felony. Pursuant to a letter of cooperation dated January 15, 1998, the District Attorney's Office has agreed to communicate to the Court prior to sentencing Mr. Spiegel's criminal conduct and the nature, extent and value of his cooperation. The People have agreed to recommend a non jail sentence.
>
> Mr. Spiegel's criminal conduct consisted of trading in the securities of several companies after having received confidential non-public information about such companies from his girlfriend Tina Eichenholz who had received such information from Jeffrey Streich. Such companies included Owen Healthcare (OWN), Health Images Inc. (HII), Starsight Telecast (SGHT), Ontrak Systems (ONTK), American Medical Response (EMT), Reading and Bates (RB), ROHR and Georgia Pacific. In addition, Mr. Spiegel tipped certain family members and entered into a tipping arrangement with a friend and trading partner. The Securities and Exchange Commission which assembled and reviewed Mr. Spiegel's complete trading records as well as those of his tippees calculated Mr. Spiegel's illegal trading profits of $66,281 and his tippees' total illegal trading profits at $917,925. In addition, Mr. Spiegel received between

$25,000 and $50,000 in cash from his trading partner as payment for tips. Of this amount, Mr. Spiegel gave Ms. Eichenholz approximately $11,000.

Mr. Spiegel's cooperation with the Manhattan District Attorney's Office commenced in January of 1998. Mr. Spiegel met with representatives of the Manhattan District Attorney's Office and provided information which completed the picture of the operation of the insider trading ring. This information had not been available to the District Attorney's Office prior to Mr. Spiegel's plea in that it concerned a segment of the insider trading ring about which other cooperating witnesses were unaware. The timing of Ms. Eichenholz's plea, just 5 days after Mr. Spiegel's pleas as well as the prior relationship between the two indicates that Mr. Spiegel's plea was a catalyst for the plea of Ms. Eichenholz.

In addition to meeting with representatives of the District Attorney's Office, Mr. Spiegel has also met several times with representatives of the Securities and Exchange Commission. Members of the District Attorney's Office attended one of those meetings. Due to the identity of some of the individuals about whom Mr. Spiegel provided information, the fact and content of his cooperation could reasonably have caused Mr. Spiegel concern about his own safety. Mr. Spiegel expressed such concerns during his cooperation but did not decline to answer any questions because of them. Mr. Spiegel's cooperation with the SEC has continued to the present date. As recently as a month ago, Mr. Spiegel met with the SEC to provide information with respect to an insider trading matter which remains the subject of an open SEC investigation. Representatives of the SEC have informed this office that Mr. Spiegel has made himself available to them when requested and that this information was helpful.

During the entire period of Mr. Spiegel's cooperation with this Office, he made himself available whenever requested, arrived promptly and worked diligently for the full period of time requested by the office. The information Mr. Spiegel provided in the insider trading case was consistent with portions of the

documentary evidence in the case which were not shown to Mr. Spiegel and with statements of other cooperating witnesses which were not disclosed to Mr. Spiegel. These factors indicate that the information Mr. Spiegel provided to this office was accurate and truthful.

In connection with charges filed against him by the Securities and Exchange Commission, Mr. Spiegel has consented to the entry of a Final Judgment ordering him to disgorge $984,206.84 in illegal trading profits plus prejudgment interest. Based on Mr. Spiegel's having demonstrated to the SEC's satisfaction his inability to pay the full disgorgement amount, all but $99,469 of his disgorgement amount was waived.

The maximum possible sentence of the E Felony to which Mr. Spiegel pled guilty is four years in state prison. As mentioned above, by letter agreement of January 15, 1998, the District Attorney's Office promised Mr. Spiegel that at the time of sentencing the District Attorney would recommend to the Court that a non jail sentence be imposed on Mr. Spiegel if Mr. Spiegel completely adhered to his promise of truthful cooperation. All information available to this office indicates that Mr. Spiegel has done so. In addition, Mr. Spiegel pled guilty at an early stage of the prosecution. His timely plea assisted in this office's insider trading prosecution through information he provided, through the impact it may have had on remaining defendants Eichenholz, Youngswick, D'Antoni, Nogid, Breed and Napolitano and through the plea's effect of freeing up resources to focus on the prosecution of the remaining defendants. Mr. Spiegel's sentence should be imposed with a view toward meting out consistent and proportional punishment vis a vis the other defendants in this case. Of the defendants who did not cooperate with the District Attorney's Office and who have been sentenced since Mr. Spiegel's plea, only Robert Breed received jail time (7 months in a state correctional facility). Defendant Nogid received a conditional discharge and D'Antoni received a sentence of 250 hours of community service. The substantial assistance Mr. Spiegel provided in this prosecution indicates that his sentence should be less than that of defendants Breed, Nogid and

> D'Antoni who pled guilty months later and provided no assistance to the District Attorney's Office in this or in any other case. (Exhibit F, pp. 1-2)

As noted in the OAE's brief, respondent's guilty plea in New York subjected him to that state's automatic disbarment rule. 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..." and that he has engaged "in conduct involving dishonesty, fraud, deceit or misrepresentation." RPC 8.4(b) and (c).

The OAE argued for the imposition of a three-year suspension.

* * *

Upon review of the full record, we determined to grant the OAE's motion. We adopted the findings of the Appellate Division of the Supreme Court of New York that respondent was guilty of violating §352c(5) of the Martin Act, a Class E felony. The New York disciplinary authorities determined to disbar respondent, which is the equivalent to a seven-year suspension in New Jersey. A disbarred New York attorney can apply for reinstatement at the conclusion of the seven-year term.

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

> . . . The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face

of the record upon 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 matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). However, subparagraph E is implicated insomuch as respondent's misconduct, while serious, would not have resulted in a seven-year suspension in New Jersey - because respondent's criminal activity was not related to his practice of law. However, in aggravation, respondent 1) acted for personal gain; and 2) did so on a number of occasions over more than one year - between summer 1996 and November 1997.

Attorneys convicted of similar "money" crimes have received lengthy suspensions from the practice of law. See e.g., In re Woodward, 149 N.J. 562 (1997) (three-year suspension imposed where the attorney pleaded guilty in the United States District Court for

the Southern District of New York to conspiracy to commit securities fraud, in violation of 18 U.S.C.A. §371); and In re Van Dam, 140 N.J. 78 (1995) (three-year suspension imposed where the attorney pleaded guilty in New Jersey to federal charges of making a false statement to a banking institution insured by the Federal Savings and Loan Insurance Corporation [18 U.S.C.A. 1014 & 2] and obstruction of justice in connection with a deposition given to the Office of Thrift Supervision [18 U.S.C.A. 1505 & 2].

In our view, Woodward and Van Dam are factually similar to the case now before us, and support the conclusion that "substantially different discipline" is required here – a three-year suspension, rather than New York's seven-year suspension/disbarment.

We unanimously determined to impose a three-year suspension, retroactive to respondent's October 20, 2000 temporary suspension. One member did not participate.

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

Dated: 10/24/01

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Three-year suspension

Members	*Disbar*	*Three-year Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson		X					
Maudsley		X					
Boylan		X					
Brody		X					
Lolla		X					
O'Shaughnessy		X					
Pashman		X					
Schwartz							X
Wissinger		X					
Total:		8					1

Robyn M. Hill 4/11/02
Robyn M. Hill
Chief Counsel