

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-209

IN THE MATTER OF :
JOSEPH A. PANEPINTO :
AN ATTORNEY AT LAW :

Decision

Argued: July 23, 1998

Decided: February 1, 1999

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

Justin P. Walder appeared on behalf of respondent.

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 guilty plea to conspiracy to commit bank fraud, in violation of 18 U.S.C.A. § 371.

Respondent was admitted to the New Jersey bar in 1970. On February 7, 1997, the Supreme Court temporarily suspended him, pending the final resolution of this matter. In re Panepinto, 147 N.J. 431 (1997). Respondent has no prior disciplinary history.

This criminal conviction arose from respondent's representation of Antonio Fasolino in the purchase of a house from George Whelan and his wife. On August 16, 1990, Fasolino and the Whelans entered into a contract listing an inflated purchase price of \$3,200,000. In fact, the price was \$2,800,000.

Fasolino obtained a commitment from Citicorp for a \$1,925,000 mortgage, using the fraudulent contract. Citicorp required Fasolino to demonstrate that he was able to make a cash down payment of thirty-five percent of the \$3,200,00 purchase price, approximately \$1,100,000, out of his own personal funds. Because Fasolino did not have \$1,100,000 in personal funds, he obtained a \$750,000 short-term loan from respondent and from a business associate of respondent. The \$750,000 was placed in an account in Fasolino's name at Bergen Commercial Bank to deceive Citicorp into believing that the funds belonged to Fasolino. In fact, Fasolino and respondent agreed that the monies could not be withdrawn from the account and that they would be returned to respondent and his business associate as soon as Citicorp had confirmed the account balance.

On November 9, 1990, Bergen Commercial Bank advised Citicorp of Fasolino's account balance. On November 16, 1990, Fasolino returned the monies to respondent and his associate.

The real estate contract was later amended to reflect a false \$3,000,000 purchase price, although the actual price had been lowered to \$2,600,000. In addition, Whelan agreed that he would accept promissory notes from Fasolino, in lieu of a portion of the required cash payment.

The closing took place on December 26, 1990. Respondent prepared false closing documents, including a fraudulent Real Estate Settlement Procedures Act Statement ("RESPA"), in order to conceal the true purchase price and the fact that Fasolino was using promissory notes for the purchase, instead of cash. The RESPA reflected a \$3,000,000 purchase price. In fact, as noted above, it was \$2,600,000. In order to account for the difference, the RESPA indicated that Whelan had given Fasolino a \$400,000 credit for repairs to the property. The RESPA also stated that Fasolino had given Whelan a cash deposit of \$500,000. In fact, Fasolino had given Whelan a \$500,000 promissory note. Finally, the RESPA stated that Fasolino had paid \$125,000 in cash for real estate broker commissions. In fact, Fasolino gave the brokers \$25,000 in cash and a \$100,000 promissory note.

On February 3, 1997, respondent pleaded guilty to conspiracy to commit bank fraud. He was sentenced to three years' probation, ordered to perform two hundred hours of community service and required to pay a \$4,000 fine. Prior to his sentencing, respondent had reached an agreement with Citicorp to make restitution in the amount of \$300,000.¹

The OAE urged the Board to suspend respondent for two years, retroactive to February 7, 1997, the date of his temporary suspension. Respondent, in turn, urged the Board to consider his temporary suspension term as sufficient discipline.

* * *

Upon a review of the full record, the Board determined to grant the OAE's Motion for Final Discipline.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Therefore, respondent's conviction of conspiracy to commit bank fraud constituted a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer).

¹ When Fasolino defaulted on the mortgage, Citicorp suffered a loss of \$652,714.86. Whelan paid \$200,000 in restitution to Citicorp and Whelan's attorney, Thomas E. Primavera, paid \$50,000. See In the Matter of Thomas E. Primavera, Docket No. DRB 98-295. Fasolino was in prison on other charges and unable to make any restitution.

The sole issue to be determined is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

Behavior such as respondent's ordinarily results in a long-term suspension. See In re Van Dam, 140 N.J. 78 (1995) (three-year suspension following a guilty plea to a federal information charging the attorney with making a false statement in a letter to a federally insured institution and giving false deposition testimony during an investigation by the Office of Thrift Supervision); In re Gillespie, 124 N.J. 81 (1991) (three-year suspension following guilty plea for aiding a construction company in preparing a false tax return); In re Capone, 147 N.J. 590 (1997) (two-year suspension following guilty plea to a charge of making a false statement on the attorney's own loan application); In re Bateman, 132 N.J. 297 (1983) (two-year suspension following conviction for mail fraud conspiracy and for a false statement on a loan application).

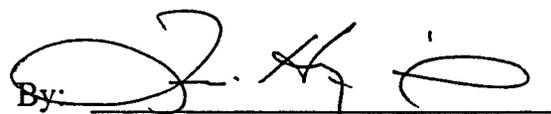
There are several mitigating factors here. Respondent has been practicing law for twenty-eight years and, with the exception of this incident, has an otherwise unblemished record. He has been very active in civic activities and submitted more than twenty-five letters from different individuals attesting to his good character. Furthermore, respondent cooperated fully with the government's investigation. According to the Assistant United States Attorney, respondent gave a "full, complete, accurate, and coherent account" of his illegal conduct. Also, even prior to his sentencing, respondent had agreed to make restitution

to Citicorp in the amount of \$300,000. As of his January 28, 1998 sentencing, he had already paid \$250,000 to Citicorp and had secured the remaining \$50,000 obligation with a mortgage on his house.

The primary purpose of discipline is not to punish the attorney, but to preserve the public's confidence in the bar. In re Barbour, 109 N.J. 143 (1988). When an attorney commits a crime, he violates his professional duty to uphold and honor the law. In re Bricker, 90 N.J. 6, 11 (1982). After balancing respondent's criminal activities with the compelling mitigating factors present in this case, the Board unanimously determined that a two-year suspension, retroactive to February 7, 1997, the date of respondent's temporary suspension, sufficiently addresses the serious nature of his conduct and the goals of the disciplinary system. One member recused himself.

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

Dated: 2/1/98

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Joseph A. Panepinto
Docket No. 98-209**

Argued: July 23, 1998

Decided: February 1, 1999

**Disposition: Two-Year Suspension (Retroactive to the date of
respondent's temporary suspension)**

Members	Disbar	Two-Year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Zazzali		x					
Brody		x					
Cole						x	
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson		x					
Total:		8				1	

Robyn M. Hill 2/1/99
Robyn M. Hill
Chief Counsel