SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-251

IN THE MATTER OF :
:
JOHN JAY PERRONE :
:
AN ATTORNEY AT LAW :

Decision

Argued: September 21, 2000

Decided: June 20, 2001

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

Robert P. Zoller 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 final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's criminal conviction for mail fraud, in violation of 18 U.S.C.A. §§ 1341 and 1342.

Respondent was admitted to the New Jersey bar in 1984. On February 22, 2000 he was temporarily suspended based on his criminal conviction, pursuant to R.1:20-13(b). In re Perrone, 162 N.J. 544 (2000). His suspension remains in effect.

On February 10, 2000 respondent pleaded guilty to a one-count information filed in

the United States District Court for the District of New Jersey charging him with mail fraud. The factual basis for the plea was elicited during the plea hearing. Essentially, on or about May 30, 1997, respondent's wife applied for a mortgage loan in connection with their joint acquisition of property. The loan application falsely stated his wife's income, in order to overstate that income. Respondent caused to be submitted to the lender a false verification of employment for his wife. The application included false forms, specifically a W-2 relating to the wage income of his wife. In addition, respondent executed a document falsely certifying to the truth and completeness of the information set forth in the loan application.

At sentencing on May 3, 2000 respondent was placed on probation for three years and ordered to pay a fine of $5,000.

* * *

Upon a de novo review of the record, we determined to grant the OAE's motion for final discipline.

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 conviction of mail fraud 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 to be imposed remains at issue. R.1:20-13(c)(2)(ii); In re Goldberg, 105 N.J. 278, 280 (1987).

The OAE relied primarily on two cases to arrive at its conclusion that an eighteen-month suspension is the appropriate discipline for respondent's misconduct: In In re Labendz, 95 N.J. 273 (1984), the attorney received a one-year suspension for knowingly submitting a client's RESPA statement containing an inflated purchase price so that the buyer could obtain a higher mortgage. In imposing the suspension, the Court noted that this was the attorney's only instance of misconduct, that no one was harmed and that he received no personal benefit from the transaction.

In In re Capone, 147 N.J. 590 (1997), where more severe discipline was imposed, the attorney contracted to buy property for $600,000. Thereafter, he applied to a bank for a $480,000 mortgage loan, representing eighty percent of the $600,000 contract price. One month later, the attorney negotiated with the seller a $125,000 reduction in the purchase price, which the attorney did not disclose to the bank. Rather, to induce the bank to approve his loan application, he continued to submit documents that listed the purchase price as $600,000 The bank relied on the attorney's misrepresentations and approved the loan. He ultimately defaulted on the loan. The attorney pleaded guilty to knowingly making a false statement on a loan application and was sentenced to four months' home confinement and probation for three years, fined $2,000 and ordered to make restitution to the bank in the amount of $169,715. The Court suspended Capone for two years.

The OAE also pointed to several suspension cases where the attorney had filed false documents as "a favor" for a friend or client. In re Silverman, 80 N.J. 489 (1979) (eighteen-

month suspension imposed where the attorney, who had been admitted to the bar for almost fifty years, pleaded guilty to obstruction of justice after he made a false statement in an answer in a bankruptcy action); In re Konigsberg, 132 N.J. 263 (1993) (thirty-three-month suspension (time served) where the attorney pleaded guilty to making a false statement to an agency of the United States after having backdated a contract for a client in order to obtain insurance proceeds for the client) and In re Bateman, 132 N.J. 297 (1993) (two-year suspension after attorney was convicted of mail fraud conspiracy and false statement on a loan application, thereby assisting a client to get an inflated appraisal value on property).

In the OAE's view, because respondent was convicted of a crime (a federal felony) and was acting for his own benefit, his misconduct calls for more serious discipline than that imposed in Labendz. On the other hand, the OAE added, because no one was harmed by respondent's actions, he deserves less than the two-year suspension imposed in Capone. Accordingly, the OAE recommended that respondent receive an eighteen-month suspension. The OAE suggested that respondent's suspension be retroactive to the date of his temporary suspension, February 22, 2000.

On the other hand, respondent's counsel argued that his conduct warrants either a suspension of less than one year or "time served." Counsel asserted that respondent did not intend or cause any loss to the lender, intended to repay the loan in full and knew that the value of the property would protect the lender from loss in the event of a default. In his brief respondent's counsel stated that "[respondent's] misrepresentation of his wife's income was

more for the purpose of convenience than a desire for personal gain." Counsel explained that respondent was applying for a loan through his brother-in-law, a mortgage broker, on his home in the amount of $180,000. (The home was valued at approximately $300,000 and the mortgage represented approximately 62% of the home's value.) Because the mortgage broker was respondent's brother-in-law, he did not pay as close attention to the details of the transaction as he should have. Counsel explained further that respondent desired to put the property in his wife's name. The mortgage, therefore, also had to be in her name. Although respondent's wife was not earning an income at the time, she routinely assisted respondent in bookkeeping, office management and other clerical functions. Respondent was informed by the mortgage broker (his brother-in-law) that, in order to close the loan, a verification of salary of respondent's wife would be necessary. Respondent agreed to proceed with the loan and to apportion a percentage of his income to his wife, stating that she was formally employed.

Counsel added that respondent's wife applied to refinance the loan with a different lender three months after the loan was granted. The refinancing was accomplished without any income-verification requirements. Counsel countered the OAE's assertion that respondent acted for personal benefit by pointing out that respondent and his wife would have qualified for a mortgage without misrepresenting her income, as evidenced by the fact that they did so several months later.

Counsel also distinguished respondent's conduct from Capone's, pointing to Capone's

pattern of misrepresentations about the purchase price of the property and to the ultimate harm to the lender, when the attorney defaulted on the loan. Here, counsel stated, there was no harm to the lender.

Counsel argued that, in the past, misconduct similar to respondent's, involving the knowing submission of false or misleading documents, has resulted in a suspension of one year or less, citing a number of such cases. He argued further, in mitigation, that respondent cooperated with the federal court proceeding and reported his conduct to the OAE. Counsel also noted the comments of the presiding judge at respondent's sentencing. The judge clearly viewed respondent as an asset to the legal community, stating that he is paying a 'harsh price' for 'a moment of foolishness.' In addition, counsel submitted a number of letters from respondent's former clients, who continue to hold him in high regard.

In fashioning the appropriate quantum of discipline for this respondent, we cannot overlook the seriousness of his offense and note that more than one false document was involved. Furthermore, we cannot accept counsel's argument that respondent did not act for personal benefit. He clearly acted to fulfill his purpose to put the house in his wife's name. In addition, as the OAE pointed out, respondent had been an attorney for thirteen years at the time of his misconduct and had served as an assistant prosecutor. Respondent should have known better.

However, we also considered counsel's statement that this was a temporary lapse in the career of an otherwise valued member of the bar and agreed with counsel that the

eighteen-month suspension recommended by the OAE is too harsh a penalty in this case. Of additional significance was the lack of harm to the lender. On the other hand, we cannot agree with respondent's counsel's argument that "time-served" or a suspension of less than one year is sufficient discipline. Respondent's misconduct was serious and merits severe discipline. Accordingly, a four-member majority of the Board determined to impose a one-year suspension. Two members dissented, believing that respondent's temporary suspension since February 2000 constitutes adequate discipline for his criminal offense. One member voted for an eighteen month-suspension. Two members did not participate.

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

Dated: 6/26/01

By: _____

Mary J. Maudsley
Vice Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD VOTING RECORD

In the Matter of John Jay Perrone
Docket No. DRB 00-251

Argued: September 21, 2000

Decided: June 20, 2001

Disposition: One-year suspension

Members	Time-served Suspension	One-year Suspension	Reprimand	Eighteen-month Suspension	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	4		1			2

Robyn M. Hill 6/28/01
Robyn M. Hill
Chief Counsel