

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-457

IN THE MATTER OF :
DENNIS A. MAYCHER :
AN ATTORNEY AT LAW :

Decision

Argued: February 7, 2002

Decided: April 15, 2002

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

Barry D. Epstein 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 based on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's guilty plea to a one-count information charging him with willfully failing to maintain the originals or copies of records of transactions regarding the establishment of letters of credit of more than \$10,000 from a place outside the United States, in violation of 12 U.S.C.A. §1956, a

misdemeanor offense.¹

Respondent was admitted to the New Jersey bar in 1973. He has no disciplinary history.

In January 1997, respondent represented a South Korean client, identified only as JK, in the purchase of a restaurant and a liquor license. The purchase price exceeded \$4,000,000. Respondent was paid \$30,000 “with a remaining balance of \$70,000 due five years later.” As collateral for loans for the transaction, JK obtained three letters of credit, for \$100,000, \$200,000 and \$200,000, from a South Korean bank. Respondent received copies of the letters of credit. Pursuant to 31 U.S.C.A. §5312(a)(2)(U), “persons involved in real estate closings and settlements” are included in the definition of “financial institution” and are, therefore, subject to certain bank reporting requirements and to the federal money laundering laws. As a person involved in a real estate transaction, respondent was required to maintain copies of the letters of credit. However, he failed to do so.

On February 18, 1997, JK gave respondent \$90,000 in cash and, on February 20, 1997, \$85,000 in cash for the closing. In order to avoid the filing of a currency transaction report (“CTR”), respondent had an employee go to various bank branches and make nineteen separate deposits, of \$9,000 each, into his attorney trust account.

¹ In various places in their briefs and other papers, the OAE and respondent incorrectly referred to this matter as a motion for reciprocal discipline. However, it was clear that the parties understood that the motion was predicated upon respondent’s criminal conviction. Respondent was not prejudiced as a result of the incorrect references.

Respondent deposited the remaining \$4,000 in his attorney business account. According to respondent, he wanted to avoid the filing of a CTR because an inquiry by the Internal Revenue Service (“IRS”) could have delayed the closing of the transaction, which would likely have caused the deal to collapse. Respondent was concerned that he “would be facing a malpractice claim” if the transaction failed.

On January 8, 2001, respondent pleaded guilty to willfully failing to maintain the copies of the letters of credit that JK had obtained from the South Korean bank.

Respondent was sentenced to one year of probation and ordered to pay a \$20,000 fine.

* * *

Respondent presented numerous letters from family, friends and colleagues that attested to his good character and his exemplary life, except for this incident. Respondent has enjoyed a previously unblemished twenty-eight year legal career. He has been active in professional, civic, charitable, church and political organizations. Respondent’s former law partner offered a compelling depiction of respondent’s history of dedication to charitable causes:

One should understand that his service to the Y and other similar organizations is not limited to monthly meetings in a conference room discussing policy and procedure. Rather, it is standing out on a cold winter night selling Christmas trees or helping out at Eva’s Kitchen for the homeless and the battered. These are not things that [respondent] has simply undertaken within the past week, months or years, but is a reflection of his desire to help others that I have consistently seen him undertake for twenty years and more.

* * *

The OAE urged that we suspend respondent for six months. Respondent, on the other hand, argued that a reprimand is sufficient discipline for his misdemeanor conviction.

* * *

Upon a review of the full record, we 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). Respondent's conviction established a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). 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).

The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

In support of its position that respondent should be suspended for six months, the

OAE analogized respondent's misdemeanor conviction to convictions for willful failure to file federal income tax returns. In re Silverman, 143 N.J. 134 (1996); In re Doyle, 132 N.J. 98 (1993); In re Leahey, 118 N.J. 578 (1990). In those cases, the attorneys were suspended for six months.

Respondent, on the other hand, argued that his misconduct was more analogous to that of the attorney in In re Rushfield, 142 N.J. 617 (1995). In Rushfield, the Court reprimanded an attorney who had pleaded guilty to a three-count federal information charging him with violating ERISA's reporting requirements, a federal misdemeanor. Rushfield knew that his union client's annual financial reports were overstating expenses, because the attorney's wife, who was not an employee, had been listed on the union's payroll. There were compelling mitigating circumstances in Rushfield, including the attorney's cooperation with the government, his admission of wrongdoing, his offer to make restitution and his genuine remorse.

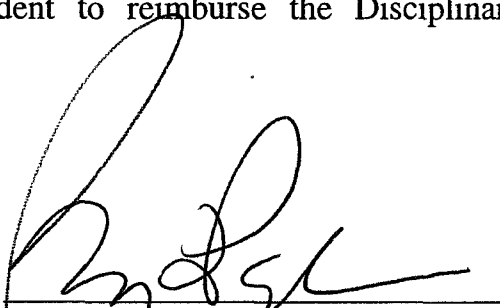
There are similar compelling mitigating circumstances in this case. Throughout his career, respondent has been actively involved in professional, civic and charitable organizations; his family, friends and colleagues have attested to his good character and his exemplary life, save for this incident; and he has enjoyed a previously unblemished twenty-eight year legal career.

However, we agree with the OAE that respondent's misconduct was more serious than that of the attorney in Rushfield. In motions for final discipline based on criminal

convictions, it is appropriate “to examine the totality of circumstances” in reaching a decision as to the sanction to be imposed. In re Spina, 121 N.J. 378, 389 (1990). As part of the factual basis for his plea, respondent admitted that he not only failed to retain documentation of the letters of credit, he also had an employee make nineteen separate deposits into his attorney trust account, at different bank branches, in order to avoid the filing of a CTR.

After balancing the serious nature of respondent’s misconduct with the extensive mitigating factors and the aberrational nature of his actions, we unanimously determined that a three-month suspension is sufficient discipline in this case. One member did not participate.

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

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Dennis A. Maycher
Docket No. DRB 01-457

Decided: April 15, 2002

Disposition: three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>		X					
<i>Maudsley</i>		X					
<i>Boylan</i>		X					
<i>Brody</i>		X					
<i>Lolla</i>							X
<i>O'Shaughnessy</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Wissinger</i>		X					
Total:		8					1

Robyn M. Hill
Chief Counsel