SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-113

IN THE MATTER OF	:
LIBERO MAROTTA	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 11, 2000

Decided: December 20, 2000

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

Richard L. Friedman 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 upon respondent's August 11, 1999 guilty plea in the United States District Court for the District of New Jersey to one count of obstruction of justice, in violation of 18 *U.S.C.A.* §§1503 and 2.

Respondent was admitted to the New Jersey bar in 1955. In 1979 he was publicly reprimanded for engaging in a conflict of interest and creating an appearance of impropriety

when he represented an individual applying for a liquor license transfer before the Union City Board of Commissioners, while he served as counsel to that body. *In re Marotta*, 80 *N.J.* 622 (1979).

Respondent was temporarily suspended by the Court on September 2, 1999, following his guilty plea. *In re Marotta,* 161 *N.J.* 139 (1999).

In February 1995 respondent agreed to assist a realtor, Ronald Cervelli, in a real estate transaction. Cervelli had advised a prospective purchaser, Manny Feingold, that he knew how Feingold could buy an apartment building located at 379 Sanford Avenue, Newark, New Jersey with "no money down," notwithstanding contractual provisions to the contrary. Under the terms of the real estate contract, Feingold was to pay $425,000 for the property, as follows: a down payment of $21,250, $106,250 in cash or certified funds at closing and a mortgage loan of $297,500.

At a December 23, 1994 meeting, Cervelli, Feingold and another individual represented to two Summit Bank loan officers that Feingold would pay $127,500 in cash or certified funds at closing and that there would be no secondary financing. Notwithstanding these representations, at the time Cervelli was seeking secondary financing for Feingold.

Following these events, in February 1995 respondent agreed to assist Cervelli in the real estate transaction. Although Feingold submitted a $21,250 check purporting to represent the down payment, it was agreed that the check would never be cashed.

In March 1995 respondent, Cervelli and Feingold signed a "side" agreement providing that the $21,250 check was given solely "for the purpose of showing the seller and/or bank that the binder was in place." The "side" agreement was not disclosed to the Summit Bank officers.

On April 25, 1995 Cervelli and Feingold, among others, received subpoenas from a federal grand jury seeking documents in connection with the Sanford Avenue mortgage, including records relating to Summit Bank. At a subsequent meeting, respondent instructed Cervelli and Feingold not to comply with the subpoena and to destroy certain documents, including the side agreement.

According to the record,

> Marotta, an attorney, abused a position of trust by his conduct. His actions, however, do not rise to the level that 'significantly facilitated the commission or concealment of the offense.' Feingold was a co-operator for the government. Feingold kept the government informed of all actions taken by Cervelli and Marotta. Consequently, any actions taken by Marotta would not have facilitated the offense. . . .
>
> Marotta stated he pled guilty to Obstruction. He indicated that during April 1995, he met with Manny Feingold and later Ronald Cervelli at a real estate office. The defendant stated he told Feingold to destroy documents which were under subpoena. In a subsequent interview, Marotta indicated he later instructed Cervelli, who was in and out of the meeting, to do the same. Marotta expressed remorse for his conduct.

On January 31, 2000 respondent was sentenced to a three-year term of probation. He was confined to house arrest for six months, ordered to perform 100 hours of community service and directed to pay a $3,000 fine.

The OAE urged us to impose a two-year suspension, retroactive to respondent's September 2, 1999 temporary suspension. Respondent consented to the imposition of the recommended discipline.

* * *

Following a review of the full 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 guilty plea to obstruction of justice 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) and of *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); *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.

For conduct similar to respondent's, the Court has imposed long-term suspensions. *See, e.g., In re Van Dam*, 140 *N.J.* 78 (1995) (attorney suspended for three years after he pleaded guilty to making a false statement to a savings and loan institution and obstructing justice; attorney concealed his partner's involvement as shareholder of a company that had obtained a loan from a financial institution for which respondent's partner was director and general counsel); *In re Power*, 114 *N.J.* 540 (1989) (three-year suspension where attorney pleaded guilty to one count of obstruction of justice; the attorney purposely advised a client not to disclose any information to law-enforcement authorities regarding a stock-fraud investigation, motivated by fear that the attorney himself was also a target of the investigation; he also assisted a client in filing a false insurance claim, despite harboring a reasonable suspicion that the claim was false); *In re Verdiramo,* 96 *N.J.* 183(1984) (seven-year "time-served" suspension where attorney pleaded guilty to one count of obstruction of justice in attempting to persuade a prospective witness to testify falsely before a federal grand jury; more than eight years had elapsed between the commission of the crime and the imposition of discipline); *In re Silverman*, 80 *N.J.* 489 (1979) (eighteen-month suspension where attorney pleaded guilty to one count of obstruction of justice; the attorney had filed

an answer in a bankruptcy matter falsely stating that his client had a lawful right to maintain custody of approximately twenty-six tractors and trailers belonging to the bankrupt firm).

There are several mitigating factors here. At the time of sentencing, respondent was seventy-one years old and was the primary caregiver of his wife, who was very ill; he did not benefit from his wrongdoing; he had been very active in civic and *pro bono* activities and submitted to the sentencing judge thirty-six letters attesting to his good character and his contributions to the community; he became involved in the fraudulent real estate transaction after its inception and was involved in it for only about one month; and his conduct was aberrational. In a December 22, 1999 letter to the sentencing judge, respondent offered the following explanation:

> It is hard for me to explain or even understand why I directed them to destroy documents. The fact is, I panicked and I was concerned that the documents would raise questions about certain advice I had given to Mr. Cervelli. I know that telling Cervelli and Feingold to destroy documents after having been served with a Grand Jury subpoena was wrong and that I am here because of what I did. I was weak, my judgment may have been clouded by the personal problems I was having and I panicked. I do not offer the personal problems of my wife or myself as an excuse for what I did. I can only blame myself for my own actions.
>
> I have hurt and betrayed my family, my friends, the people in the community who have respected and relied upon me and the legal profession which I love so dearly. I have already lost my license to practice law, which has been suspended as a result of the action for which I pled guilty.

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, we unanimously determine that a two-year suspension, retroactive to September 2, 1999, the date of respondent's temporary suspension sufficiently addresses the serious nature of his conduct and the goals of the disciplinary system. One member did not participate.

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

Dated: 12/20/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Libero Marotta
Docket No. DRB 00-113

Argued: May 11, 2000

Decided: December 20, 2000

Disposition: Two-year suspension

Members	Disbar	Two-year Suspension	Reprimand	Admonition	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:		8					1

By Isabel Frank 3/27/01
Robyn M. Hill
Chief Counsel