

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-290

IN THE MATTER OF :
 :
THOMAS E. BOCCIERI :
 :
AN ATTORNEY AT LAW :
 :
 :

Decision

Argued: October 19, 2000

Decided: May 7, 2001

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

Kim D. Ringler 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 an information charging him with mail fraud, in violation of 18 U.S.C.A. §1341.

Respondent was admitted to the New Jersey bar in 1986. He has no disciplinary

history. On June 22, 1999, the Court temporarily suspended him, pending the final resolution of this matter. In re Boccieri, 158 N.J. 578 (1999).

In 1997, respondent represented Communication Corporation of America (“CCA”) in connection with various corporate matters, including the preparation of a private placement memorandum. He also was CCA’s escrow agent for the company’s private security offerings.

On May 13, 1997, respondent received notification that he was no longer CCA’s attorney. On that same date, May 13, 1997, respondent instructed CCA’s stock transfer agent to issue 42,500 shares of CCA’s common stock in his name. Respondent did not advise the transfer agent that he was no longer CCA’s attorney and that he did not have authority to have the stock issued to himself. The transfer agent delivered the stock certificate for 42,500 shares of CCA stock to respondent, as instructed.

Approximately one week later, CCA learned of the issuance of the stock certificate to respondent and demanded its return. Respondent returned the certificate to the company.

According to respondent, he had the transfer agent issue the stock to him because he was owed \$17,000 in legal fees by CCA. CCA disputed its obligation to pay respondent’s legal fees. According to CCA, the fees had been incurred prior to a reorganization of the company and the new CCA did not owe the fees. CCA also disputed the amount of the fees claimed by respondent.

Finally, there was a dispute as to the value of the 42,500 shares of CCA stock.

According to the pre-sentence investigation report, one share of CCA stock was valued at \$2 at the time of the transfer to respondent and thereafter rose to \$4 a share.

According to respondent, CCA was an “illiquid” stock that was not listed on any exchange. He calculated the number of shares necessary to pay his \$17,000 legal bill on the \$.40 a share offering price. According to respondent, he had previously been paid legal fees with CCA stock based on the \$.40 per share price.

On June 7, 1999, pursuant to a plea agreement, respondent pleaded guilty to a one-count information charging him with mail fraud. On March 21, 2000, respondent was sentenced to one-year and one-day imprisonment and two years supervised release. He was also fined \$10,000. Respondent served his prison sentence at a half-way house.

The OAE urged that we suspend respondent for three years. Respondent conceded that his criminal conduct warranted a period of suspension but contended that an eighteen-month or a two-year suspension was an adequate sanction for the misconduct.

* * *

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 for mail fraud 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) and of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). 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 recent cases, the Court imposed periods of suspension from two to three years on attorneys convicted of mail fraud. In re DeMesquita, 147 N.J. 290 (1997) (two-year suspension after guilty plea to two counts of mail fraud); In re DeSantis, 147 N.J. 589 (1997) (two-year suspension after guilty plea to one count of mail fraud for submitting fraudulent medical reports for the attorney’s own injuries); In re Takacs, 147 N.J. 277 (1997) (three-year suspension following guilty plea to two counts of mail fraud for filing false insurance claims in two separate matters, including the attorney’s own personal injury case). However, in one case, the Court imposed a five-year suspension where the attorney had already been suspended for five years in Pennsylvania for the mail fraud conviction. In re Valentino, 161 N.J. 143 (1999).

In determining the quantum of discipline, we took into account the many letters from


respondent's family, friends, clergy, clients and fellow attorneys attesting to his good character and his devotion to his family.

On the other hand, respondent's mail fraud conviction was rendered more egregious because the intended victim of the fraud was respondent's client and the intended beneficiary was respondent. But for the fact that respondent had a colorable claim that he was owed fees by CCA, he would be facing disbarment.

Based on the foregoing, we unanimously determined to suspend respondent for three years, retroactive to June 22, 1999, the date of his temporary suspension. Two members did not participate.

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

Dated: May 7, 2001

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

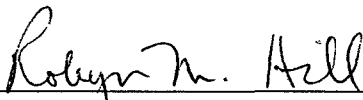
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Thomas E. Bocchieri
Docket No. DRB 00-290

Decided: May 7, 2001

Disposition: three-year suspension

Members	Disbar	three-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Peterson							x
Boylan							x
Brody		x					
Lolla		x					
Maudsley		x					
O'Shaughnessy		x					
Schwartz		x					
Wissinger		x					
Total:		7					2


Robyn M. Hill 7/10/01
Chief Counsel