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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-139
District Docket No. XIV-03-330E

IN THE MATTER OF :
 :
MICHAEL A. DeMIRO :
 :
AN ATTORNEY AT LAW :
 :

Decision

Argued: June 17, 2004

Decided: July 27, 2004

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

Robert L. Galantucci 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 conviction for conspiracy to obstruct justice.

Respondent was admitted to the New Jersey bar in 1976. On June 2, 2003, he was temporarily suspended, in accordance with R. 1:20-13(b)(1) (automatic temporary suspension following

conviction of a serious crime). In re DeMiro, 176 N.J. 417 (2003). His suspension remains in effect.

On May 28, 2003, respondent pleaded guilty to a one-count information filed in the United States District Court for the District of New Jersey charging him with conspiracy to obstruct justice, in violation of 18 U.S.C.A. 371.

During the plea hearing, Assistant United States Attorney Perry A. Carbone elicited the factual basis for the plea:

Q. Mr. DeMiro, on or about May 10th of 2000, were you summoned by James Treffinger to a meeting at a secluded County owned residence in Cedar Grove, New Jersey?

A. Yes.

Q. And did you later learn that you were summoned to the meeting to provide tactical and political advice to Mr. Treffinger?

A. Yes.

Q. Who was present at the meeting?

A. Myself, Mr. Treffinger, Irene Almeda, Raj Villa and Matthew Kirnan.¹

Q. At the meeting with James Treffinger and others that day, did you learn there was a federal

¹ This is the same Matthew Kirnan whose matter (motion for final discipline) we reviewed on May 20, 2004. We determined to impose an eighteen-month suspension. James Treffinger, too, is currently the subject of a motion for final discipline filed by the OAE.

investigation pending regarding the award of emergency contracts to the United Gunite Construction, "UGC" in Paterson, New Jersey?

A. Yes, sir.

Q. At that meeting, did James W. Treffinger counsel the Essex County Engineer to lie about the circumstances surrounding the award of County contracts to United Gunite Construction?

A. Yes, he did.

Q. At that meeting, did James W. Treffinger counsel the Essex County Engineer to create false and misleading documents intended to justify his award of emergency no bid contracts to the [sic] United Gunite Construction?

A. Yes, he did.

Q. After that meeting, did James Treffinger instruct you to meet with three [sic] County Engineer and direct him to create the false and misleading documents as he suggested on May 10th of 2000?

A. Yes, he did.

Q. And did you do so?

A. Yes, I did.

Q. Did you do all of this knowingly, willfully and with the intent to hinder, delay and prevent the communication to law enforcement officers of information relating to the commission of a federal offense?

A. Yes, I did.

[OAEbEx.B34 to 36].²

Respondent was sentenced on October 21, 2003, by Chief United States District Court Judge John W. Bissell. Prior to imposing sentence, Judge Bissell granted the government's motion for a downward departure in sentencing due to respondent's significant cooperation. That cooperation was detailed in the Assistant United States Attorney's September 12, 2003 letter to Judge Bissell:

. . . Mr. DeMiro's involvement in the case began on May 10, 2000, when he was abruptly summoned by James Treffinger to a meeting of his inner circle at a secluded County-owned residence in Cedar Grove, New Jersey. Unbeknownst to DeMiro, he was summoned by Treffinger to discuss an ongoing federal probe of Jerry Free, a salesman for United Gunite Construction, Inc. ("UGC"), a County vendor with whom Treffinger had personally met and from whom he had personally received campaign contributions. During this May 10, 2000 meeting, Treffinger hatched a plan to obstruct the ongoing federal probe by coaching the County Engineer to lie and by creating a phony paper trail calculated to insulate Treffinger from the extortion of UGC.

In the subsequent months, Treffinger enlisted DeMiro to assist him in carrying out his plan to obstruct the ongoing federal investigation. At Treffinger's direction, DeMiro met with the County Engineer and counseled him on the creation of a phony

² OAEb refers to the brief submitted by the OAE.

paper trail. During these discussions, DeMiro reiterated Treffinger's May 10, 2000 plan to obstruct the investigation and the role both he and the County Engineer were to play.

Ultimately, in December of 2000, Mr. DeMiro was confronted with the tape recordings of the conversations between him and the County Engineer. Mr. DeMiro immediately expressed profound remorse and agreed then and there to cooperate with the Government in its pending investigation of corruption in Essex County.

Mr. DeMiro's decision to cooperate against James Treffinger, his longtime associate, was a difficult one. DeMiro had known Treffinger since the early 1980's. DeMiro's decision to cooperate also meant certain financial ruin. DeMiro was a solo legal practitioner who depended in large part on the income he received from his role as the Town Attorney for the Town of Verona. DeMiro's decision to cooperate and plead guilty to a felony meant losing his license and foregoing this income, not to mention his ostracization [sic] in the community. Notwithstanding these significant countervailing pressures, DeMiro agreed to cooperate and completely, truthfully and fully disclose his prior dealings with Treffinger.

Mr. DeMiro thereafter provided extremely timely, critical and useful assistance to the Government in connection with the prosecutions of James Treffinger and Matthew Kirnan. DeMiro attended many debriefing sessions with investigators and prosecutors during which he provided truthful and complete answers to all questions posed. During these meetings, DeMiro detailed his role in the Treffinger fundraising machine and the role of others. Given the longtime close relationship between Treffinger and

DeMiro, the depth, reliability and accuracy of his information cannot be overstated. Mr. DeMiro's detailed information about James Treffinger disclosed a political figure blinded by ambition who used the full extent of any political office he held to advance his own political goals.

Mr. DeMiro's cooperation significantly broadened the investigation into Mr. Treffinger's activities. For instance, it was DeMiro's cooperation that led to the inclusion in the Treffinger Indictment of Counts Twelve through Fourteen, charging the use of County funds to pay campaign workers. Treffinger ultimately plead [sic] guilty to this scheme, along with the scheme to obstruct the investigation. DeMiro's cooperation has also contributed significantly to other ongoing investigations into public corruption in Essex County.

The most significant aspect of DeMiro's cooperation relates to the covert recordings he made of his conversations with Treffinger between January and October, 2001. Those secretly-recorded conversations contain the most damning evidence gathered during the investigation into Treffinger's activities. In those discussions, Treffinger described in graphic detail the lengths to which he went to obstruct the federal investigation, which included his efforts to seek an appointment to the Office of the United States Attorney in order to terminate the investigation and to improperly control County employees with knowledge of the scheme by making favorable personnel decisions.

Further, it was during these conversations that James Treffinger made allegations to DeMiro and others—ultimately unfounded — that Matthew Kirnan had taken excessive and unauthorized

treasurer's fees from Treffinger's campaign, and instructed DeMiro to confront Kirnan. Through these discussions, the Government learned that Kirnan had made false statements on his tax returns, and when confronted by the Government with that evidence, Kirnan agreed to cooperate in the investigation of Treffinger and, as the Court is aware, pleaded guilty to a tax-fraud offense.

Finally, the enormous value of Mr. DeMiro's exceptional cooperation was due in no small part to the personal efforts he made during his cooperation with the Government. He made himself available on a moment's notice to meet with the Government and to make consensual recordings, and spent countless hours assisting the investigation without complaint. His cooperation was truthful, complete, accurate and invaluable.

Based upon the foregoing, it is clear that Mr. DeMiro has provided substantial assistance in the investigation and prosecution of others and has provided useful and reliable information about their activities in a timely manner. On this basis, and pursuant to Section 5K1.1 of the Sentencing Guidelines, the United States respectfully moves [sic] the Court to grant a downward departure from the Guidelines in its sentence.

[OAEbEx.D1 to 3].

Judge Bissell sentenced respondent to a three-year probationary term. As conditions of probation, Judge Bissell required respondent to be confined to his residence for a period of two months and contribute 300 hours of community service. He did not impose a fine due to respondent's inability to pay.

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

Respondent has been convicted of conspiracy to obstruct justice, in violation of 18 U.S.C.A. 371, admitting that, at the behest of then-Essex County Executive James W. Treffinger, he met with the County Engineer and instructed him to create false and misleading documents in order to stymie a federal investigation. Respondent's criminal conviction clearly and convincingly demonstrates that he has committed "a criminal act that reflects adversely on (his) honesty, trustworthiness or fitness as a lawyer" and that he has engaged in "conduct involving, dishonesty, fraud, deceit or misrepresentation." RPC 8.4(b) and (c).

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). 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 based on the commission of a crime depends on a number of 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 445-446. Discipline is imposed even though an attorney's offense was not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

The OAE argued that the law and facts of this case require the imposition of an eighteen-month suspension. As the OAE noted, at the time of his crime, respondent was an experienced member of the bar, particularly knowledgeable in the area of municipal and governmental matters. He could have declined to assist his longtime associate, Treffinger, but decided not to do so. In support of its position, the OAE cited a number of cases where attorneys convicted of federal felonies in the course of "doing a favor" for a friend, associate or client received substantial suspensions from the practice.

In re Chung, 147 N.J. 559 (1997), involved an attorney who pleaded guilty to receiving more than \$10,000 in cash in a transaction, and failing to file the report of the transaction required by law. A client retained Chung to represent him in the purchase of a restaurant. The client delivered more than \$100,000 in cash to Chung in connection with this sale. Thereafter, Chung made fifteen cash deposits of less than \$10,000 each into five different escrow accounts at five different banks. The deposit slips used for the transactions did not have any

notation as to the source or purpose of the cash. Neither Chung nor his law firm filed any Forms 8300 (Report of Cash Payments Over \$10,000 Received in a Trade or Business) with the Internal Revenue Service. Furthermore, there were no Currency Transaction Reports filed by any bank, relative to the cash deposits into the bank accounts of Chung's law firm. In recommending the imposition of an eighteen-month suspension, which was adopted by the Court, we took note of Chung's seventeen-year career without any prior incidents, his performance of legal services to the poor and community organizations for little or no compensation, the absence of greed³, and his son's serious neurological problems.

An eighteen-month suspension was also imposed in In re Silverman, 80 N.J. 489 (1979), where the attorney, who had been admitted to the bar for almost fifty years, pleaded guilty to obstruction of justice. He had filed an answer in a bankruptcy action falsely stating that his client had a lawful right to maintain custody of approximately twenty-six tractors and trailers, knowing full well that the answer was false and that an addendum to a lease covering the vehicles had been backdated to support his client's claim.

³ Chung did, however, expect to receive more work from the client he was assisting.

A two-year suspension was imposed in In re Bateman, 132 N.J. 297 (1993), after the attorney was convicted of mail fraud conspiracy and false statement on a loan application, thereby assisting a client in obtaining an inflated appraisal value of property.

Similarly, in In re Gassar, 124 N.J. 395 (1991), a two-year suspension was imposed for an attorney who was convicted of conspiracy to defraud the Internal Revenue Service by writing two letters on behalf of his father-in-law, stating that the father-in-law had not collected any money on a bad debt, when, in fact, he had collected \$10,000.

See also In re Konigsberg, 132 N.J. 263 (1993) (thirty-three-month time-served suspension imposed after the attorney pleaded guilty to making a false statement to an agency of the United States, having backdated a contract for a client in order to obtain insurance proceeds for the client); In re Gillespie, 124 N.J. 81 (1991) (three-year suspension imposed where an attorney pleaded guilty to a charge of willfully aiding and assisting in the presentation of false corporate tax returns); In re Van Dam, 140 N.J. 78 (1995) (three-year suspension imposed where the attorney pleaded guilty to making a false statement to an institution insured by the Federal Savings and Loan Insurance Corporation, and obstruction of justice; Van Dam made a false

statement to federal authorities regarding the activities of his law partner and gave false testimony during a deposition).

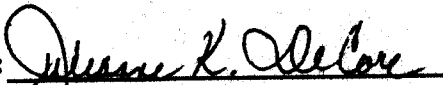
The OAE's position is that an eighteen-month suspension appears to be the minimum suspension imposed for a federal felony conviction, the only exception being In re DeSantis, 171 N.J. 142 (2002). In DeSantis, the attorney pleaded guilty to obstruction of justice. He gave false testimony and engaged in a cover-up to obstruct an SEC investigation of insider trading, in which he was involved. Although DeSantis' criminal activity did not involve his law practice, it extended over a substantial period of time. In addition, he was motivated by self-gain. Although we noted that this type of misconduct ordinarily warrants a lengthy term of suspension, we determined to impose a one-year suspension because of extensive mitigating factors. The Court agreed. At the time of the Court's order, however, DeSantis had already been temporarily suspended for almost eighteen months.

In the OAE's view, the above-cited cases, combined with the mitigating factors of respondent's substantial cooperation with the government and his previously-unblemished disciplinary history, indicate that a suspension of eighteen months is the appropriate discipline in this case. The OAE suggested that the suspension be made retroactive to June 2, 2003, the date of respondent's temporary suspension.

Respondent conspired to obstruct justice in an attempt to aid a friend. His dishonest and illegal actions were aimed at the people of Essex County and, regardless of his motivation, cannot be excused. As suggested by the OAE, we considered as mitigating factors respondent's cooperation with the government and his unblemished career, prior to this incident. We find that this matter is akin to In re DeSantis, supra, 171 N.J. 142 (2002), where the attorney engaged in dishonest conduct to obstruct an SEC investigation; he received an eighteen-month suspension, in view of extensive mitigating factors. In light of the foregoing, we determine that an eighteen-month suspension is appropriate here as well. The suspension is to be made retroactive to June 2, 2003. Vice-Chair William J. O'Shaughnessy, Esq., did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

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

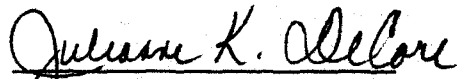
In the Matter of Michael A. DeMiro
Docket No. DRB 04-139

Argued: June 17, 2004

Decided: July 27, 2004

Disposition: Eighteen-month suspension

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


 Julianne K. DeCore
 Chief Counsel