

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-090

IN THE MATTER OF :
YALE M. FISHMAN :
AN ATTORNEY AT LAW :

Decision

Argued: May 15, 2003

Decided: July 21, 2003

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

Appearance was waived by respondent's counsel Kim D. Ringler.

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"), following respondent's guilty plea to misprision of felony, in violation of 18 U.S.C.A. 4.

Respondent was admitted to the New Jersey and New York bars in 1991. On August 30, 2002, he was temporarily suspended in New Jersey, following his guilty plea,

pursuant to R.1:20-13(b). In re Fishman, 174 N.J. 289 (2002). His suspension remains in effect.

On June 4, 2002, respondent pleaded guilty to a one count information filed in the United States District Court for the Southern District of New York, charging him with misprision of felony, in violation of 18 U.S.C.A. 4. During his plea hearing, the following colloquy occurred:

THE COURT: Mr. Fishman, tell me what you did in connection with the crime to which you are entering a plea of guilty.

THE DEFENDANT: Several years ago in early 1998, I helped certain individuals set up charitable trusts in an offshore jurisdiction. At a time later than that, I learned that these trusts contained proceeds of a securities fraud. I did not report this information to any authority or court, and I agreed to assist those individuals obtain their proceeds and thereby conceal their offense.

THE COURT: So after you set up the trust, you learned that the trust was being used to hold proceeds of a crime?

THE DEFENDANT: Securities fraud.

THE COURT: Knowing that, you failed to advise law enforcement?

THE DEFENDANT: That is correct.

THE COURT: In addition, you acted to conceal the fact of the securities fraud?

THE DEFENDANT: Correct.

THE COURT: You said this was in early '98 that you set up the trust. How about the other things? When did they occur, the learning that the proceeds were from a securities fraud, acting to conceal?

THE DEFENDANT: Sometime in 2000.

THE COURT: Did any part of this take place in Manhattan?

RESPONDENT: Yes, your Honor.

. . .

THE COURT: At the time that you did these things, did you know that what you were doing was wrong and illegal?

RESPONDENT: Yes, your Honor.

[Exhibit B to the OAE's brief at 15-16]¹

The assistant United States attorney summarized the government's case as follows:

If this case were to proceed to trial, the government would prove that in early 1998, several individuals – two of them ultimately became cooperating witnesses with the government – approached Mr. Fishman and asked him to assist them in setting up offshore accounts for a fund. Sometime thereafter, approximately the summer of 1999, one of those individuals specifically advised Mr. Fishman that the money and securities that were in those accounts had come from the proceeds of a securities fraud that had been perpetrated by the government's witness. Nevertheless, Mr. Fishman proceeded to continue to assist these individuals in converting the securities that were in those accounts to cash and in remitting the proceeds of those transactions back to the United States.

At that point, your Honor, the FBI had been involved and some of the proceeds were returned back to an FBI account here in Manhattan. In addition, some of the meetings between Mr. Fishman and the government's cooperating witnesses occurred in Manhattan.

[Id. at 16-17]

¹ A more detailed recitation of the pertinent underlying facts is set forth in respondent's presentence investigation report. That document and respondent's sentencing memorandum, both of which were placed under seal during the underlying proceedings, have been separately provided to the Court.

Respondent admitted to the court that the prosecutor's statements concerning his conduct were accurate.

At sentencing on November 21, 2002, respondent was placed on probation for two years, fined \$5,000 and ordered to pay a special assessment of \$100.

Relying on In re Primavera, 157 N.J. 459 (1999) and In re DeSantis, 171 N.J. 142 (2002), the OAE urged us to impose an eighteen-month suspension, retroactive to August 30, 2002, the date of respondent's temporary suspension.

* * *

Following 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 guilty plea to misprision of felony, arising out of his concealment and failure to report the securities fraud offense of others, 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 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 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 offence was not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

Although respondent's criminal activity did not involve the practice of law, it did extend over a substantial period of time, from August 1999 to February 2000. Moreover, respondent had a financial interest in the events.

The OAE correctly pointed out that this type of criminal conduct generally warrants a lengthy term of suspension. In In re Primavera, supra, 157 N.J., the attorney represented the sellers of a house. Shortly before closing, Primavera learned that the purchaser and his attorney, Joseph A. Panepinto², intended to submit a false RESPA statement to the purchaser's mortgagee. The statement contained false information concerning the purchase price of the house and the cash that the purchaser would bring to the closing. Despite the fact that Primavera knew that the purchaser and Panepinto intended to submit the false RESPA, he proceeded with the closing. In addition, Primavera failed to show the false RESPA to the real estate brokers who attended the closing to limit the number of people who knew that the information on the document was false and to decrease the likelihood that the fraud would be revealed to the mortgagee.

² Panepinto pleaded guilty to conspiracy to commit bank fraud and received a two-year suspension from practice. In re Panepinto, 157 N. J. 458 (1999).

Primavera pleaded guilty to misprision of felony. In his disciplinary proceeding Primavera received an eighteen-month suspension.

Also instructive is In re DeSantis, *supra*, 171 N.J., where the attorney pleaded guilty to obstruction of justice. DeSantis gave false testimony and engaged in a cover-up to obstruct an SEC investigation of insider trading. Although DeSantis' criminal activity did not involve his law practice, it did extend over a nineteen-month period. In addition, his involvement in the insider trading was motivated by personal gain. Although we noted that this type of misconduct ordinarily warrants a lengthy term of suspension, we determined to impose a one year suspension, due to extensive mitigating factors. The Court agreed that a one year suspension was appropriate.³

Prior to reaching a decision herein, we also reviewed cases where lengthier suspensions were imposed, specifically, In re Woodward, 149 N.J. 562 (1997) (three-year suspension where attorney pleaded guilty to conspiracy to commit securities fraud); In re Van Dam, 140 N.J. 78 (1995) (three-year suspension where attorney pleaded guilty to a two-count information charging him with making a false statement to an institution insured by the Federal Savings and Loan Insurance Corporation and obstruction of justice); and In re Solomon, 110 N.J. 56 (1988) (two-year suspension imposed where attorney received confidential information about proposed take-overs, provided the information to others, then traded in the stock and options of the take-over candidates).

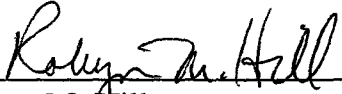
³ At the time of the Court's order, DeSantis had already been temporarily suspended for almost eighteen months.

We determined, however, that the misconduct in those two- and three-year suspension cases was significantly more serious than that of this respondent. The conduct herein, while serious, did not quite reach the level of “indifference to the essence of the character that we have deemed essential to the licensure of every member of the Bar,” as found in Solomon, supra.

We, therefore, agree with the OAE’s assessment of this matter and find Primavera, who was convicted of the same offense as respondent, to be the most applicable precedent. Thus, we determined to impose an eighteen-month suspension, retroactive to August 30, 2002, the date of respondent’s temporary suspension.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Robyn M. Hill
Chief Counsel

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

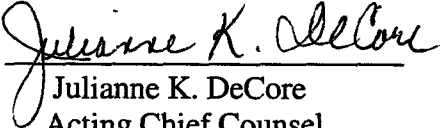
In the Matter of Yale M. Fishman
Docket No. DRB 03-090

Argued: May 15, 2003

Decided: July 21, 2003

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:		9					


 Julianne K. DeCore
 Acting Chief Counsel