SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-053

IN THE MATTER OF

ANDREW DRUCK

AN ATTORNEY AT LAW

Decision

Argued: March 18, 1999

Decided: November 17, 1999

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

Respondent did not appear for oral argument despite proper notice of the hearing.

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 guilty plea to aiding and abetting wire fraud, in violation of 18 U.S.C.A. §§1343 and 2.

Respondent was admitted to the New Jersey bar in 1974. On April 29, 1998, the Supreme Court temporarily suspended him, pending the final resolution of this matter. In re Druck, 154 N.J. 1 (1998). Respondent has no prior disciplinary history.

Respondent did not notify the OAE of his guilty plea on October 27, 1997, as required by R. 1:20-13(a)(1). In April 1998, the Minnesota Office of Lawyers Professional Responsibility notified the OAE that respondent had been disbarred by consent in Minnesota.

From 1994 to 1996, respondent was the president and general counsel of Consortium International, Inc., a corporation that was purportedly engaged in the business of commercial lending. He was also a shareholder and a director of the company. John Ross was the founder, principal shareholder and chairman of the board of directors of Consortium. When Ross approached respondent about representing the company, he explained to respondent that he had a personal fortune of $30,000,000, which he intended to lend to commercial borrowers, and that he needed an attorney experienced in secured transactions.

Although Consortium took fees that ranged from $3,000 to more than $140,000 from potential borrowers, it never approved any loans. Initially, according to respondent, he believed that Ross was simply "paranoid" about securing the transactions and would only lend money under the most ideal circumstances. However, it became apparent to respondent that Ross did not intend to fund any loans. Respondent admitted that he became involved in finding "technical or arbitrary reasons" to disapprove the loans. He also admitted that he had committed "criminal fraud"and that he "helped create and perpetuate an organization

which wrongfully took money, destroyed business plans, and in the pursuit of my dreams, destroyed other people's dreams."

The commercial borrowers' losses were greater than $2,500,000 but less than $5,000,000.

On November 12, 1998, respondent was sentenced to eight months imprisonment, to be served at the Volunteers of America Halfway House, Minneapolis, so that he could retain his new employment and his ties to his family. The sentencing court also imposed a three-year term of supervised release during which respondent will be required to perform two hundred hours of community service. No fine was imposed because the sentencing court determined that respondent was financially unable to pay a fine; however, respondent was ordered to pay $4,000 in restitution.

At sentencing, the court reduced respondent's custodial sentence because of his cooperation with the government, including his testifying against Ross. However, the court noted that respondent's participation in the fraud involved "more than minimal planning" and that respondent's "use of his role as an attorney and his legal expertise" constituted an abuse of a position of trust.

The OAE urged that respondent be disbarred for his criminal conduct.

* * *

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). 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.

Respondent was involved in a continuing criminal conspiracy in which he used his skills and position as an attorney to further the conspiracy. The two letters that formed the bases for the wire fraud charge, one sent by Ross and one by respondent, had assured a commercial borrower that $2,500,000 had been transferred to respondent's trust account, when, in fact, those funds had not been transferred. It is, thus, clear that respondent used his position as an attorney to further the fraud.

In In re Goldberg, 142 N.J. 557 (1995), the Court, in disbarring an attorney who had been convicted of mail fraud and conspiracy to defraud the United States, emphasized that, "when a criminal conspiracy evidences 'continuing and prolonged, rather than episodic, involvement in crime,' is 'motivated by personal greed,' and involved the use of the lawyers' skills 'to assist in the engineering of the criminal scheme,' the offense merits disbarment." Id. at 567 (citations omitted). See, also, In re Chucas, 156 N.J. 542 (1999) (attorney disbarred following a criminal conviction for conspiracy to commit wire fraud, wire fraud and unlawful monetary transactions where attorney and co-defendant collected $238,000 from numerous victims by telling them that the funds would be used to purchase stock when respondent and his co-defendant never intended to purchase the stock and used the money for their own purposes).

Therefore, we unanimously determined to recommend respondent's disbarment. Three members did not participate.

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

Dated: 11/17/99

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Andrew Druck
Docket No. DRB 99-053

Argued: **March 18, 1999**

Decided: **November 17, 1999**

Disposition: **Disbar**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling	x						
Zazzali							x
Cole	x						
Brody	x						
Lolla	x						
Maudsley							x
Peterson	x						
Schwartz	x						
Thompson*	On temporary leave of absence						x
Total:	6						3

Robyn M. Hill 12/1/99

Robyn M. Hill
Chief Counsel