

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-183

_____ :
IN THE MATTER OF :
 :
PASQUALE J. CARDONE :
 :
AN ATTORNEY AT LAW :
_____ :

Decision

Argued: June 20, 2002

Decided: August 21, 2002

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

Respondent, who is currently incarcerated, did not appear for oral argument.

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 attempted income tax evasion, in violation of 26 U.S.C.A. §7201, a felony offense.

Respondent was admitted to the New Jersey bar in 1976. In January 1999, he was suspended for three years for violations of RPC 1.8 (conflict of interest/prohibited

business transaction with a client), RPC 1.15(d) (recordkeeping violations) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent's criminal conviction stems from his failure to pay federal individual and employer's quarterly income taxes, his actions to conceal income from the Internal Revenue Service ("IRS") and his personal use of funds that were to be paid to his employees.

In August 1992, respondent filed an employer's quarterly tax return for the quarter ending June 30, 1989, showing that \$2,758 was due. In April 1993, he filed individual tax returns for 1987 through 1991, showing the taxes for each year. However, respondent failed to pay the taxes. Respondent owed a total of \$77,706 to the IRS.

Thereafter, respondent took various steps to prevent the IRS from collecting the outstanding taxes. He opened "at least" two bank accounts, one in the name of a "fictitious" business and one in the name of his secretary, and deposited "substantial funds," including income from his law practice, into the bank accounts. Respondent only transferred enough funds from the "fictitious" accounts into the business account to pay his operating expenses. However, he wrote checks for amounts up to \$5,000, payable to cash, from the "fictitious" accounts. In June 1994, respondent demanded that the IRS release its levy on the business account, claiming that he needed the funds to cover his payroll.¹ However, respondent used the funds for non-payroll expenses, including his

¹ Although the record is not entirely clear, apparently the business account was respondent's attorney business account.

personal expenses. Respondent admitted that his actions were intended to prevent the IRS from collecting the taxes that he owed.

On December 19, 2001, respondent was sentenced to a year and a day imprisonment and two years of supervised release. He is presently incarcerated in Florida. The OAE urged us to disbar respondent.

In a May 25, 2002 letter, respondent requested that he be suspended, rather than disbarred. In mitigation, he pointed to his service to the bar and the community, as follows: founder and chair of the matrimonial early settlement panel in Atlantic County, president of the Atlantic County Bar Association, member of a district ethics committee, trustee of a trust that awarded scholarships to deserving students and pro bono representation in sixty cases.

* * *

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 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.

In situations involving tax evasion convictions, a two-year suspension has frequently been determined to be adequate, particularly when the attorney has not previously run afoul of the ethics system. See In re Batalla, 142 N.J. 616 (1995); In re Nedick, 122 N.J. 96 (1991); In re Becker, 69 N.J. 119 (1976).

In support of its position that respondent should be disbarred, the OAE cited In re Bok, 163 N.J. 499 (2000) and In re Braun, 149 N.J. 414 (1997). In Bok, the attorney was disbarred following his conviction for income tax evasion and the filing of false corporate income tax returns. The attorney failed to include nearly \$200,000 in his personal tax return and under-reported gross receipts by more than \$4,000,000 on his corporate tax return, causing the government a tax loss of nearly \$1,500,000. The attorney had been temporarily suspended since 1987 as a result of his failure to reply to a request for the production of his books and records in connection with an unrelated ethics matter. In Braun, the attorney was disbarred following his guilty plea to income tax evasion. During a five-year period, the attorney had evaded at least \$116,310 in federal

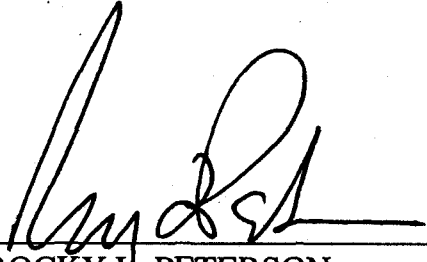
income taxes by various means. Among other things, he opened eight bank accounts, including one in Romania, to conceal his income. The attorney had previously been suspended for three months, following his conviction for reckless endangerment for installing a gas meter in a reversed position in an apartment building that he owned, so that the gas use would not register on the meter.

Like the attorneys in Bok and Braun, respondent has a disciplinary history. As set forth above, in 1999, he was suspended for three years for violations of RPC 1.8, RPC 1.15(d) and RPC 8.4(c). In that matter, respondent obtained a total of \$325,000 from his client in three business transactions, knowing that, if he had disclosed the actual terms of the transactions, the client would not have participated in them. The transactions were not fair and reasonable to the client and respondent failed to advise her to seek independent counsel and to obtain her written consent to the transactions. After signing an agreement that he still owed her \$254,300 and that the debt was non-dischargeable, respondent ultimately sought to discharge the debt in bankruptcy, although he later abandoned that position. In addition, respondent engaged in at least two instances of conduct involving dishonesty, fraud, deceit or misrepresentation and failed to maintain proper business and trust account records.

After consideration of the relevant circumstances, including the severity of respondent's actions here, and his prior discipline for duplicitous conduct, we unanimously determined to recommend that he be disbarred from the practice of law.

One member recused herself. Two members did not participate.

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

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

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

In the Matter of Pasquale J. Cardone
Docket No. DRB 02-183

Argued: June 20, 2002

Decided: August 24, 2002

Disposition: Disbar

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>	X						
<i>Maudsley</i>						X	
<i>Boylan</i>	X						
<i>Brody</i>	X						
<i>Lolla</i>	X						
<i>O'Shaughnessy</i>	X						
<i>Pashman</i>							X
<i>Schwartz</i>							X
<i>Wissinger</i>	X						
Total:	6					1	2

Robyn M. Hill 8/15/02
Robyn M. Hill
Chief Counsel