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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-282

IN THE MATTER OF
SUSAN E. CARDULLO
AN ATTORNEY AT LAW

Decision

Argued: September 12, 2002

Decided: October 25, 2002

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

Albert B. Jeffers waived appearance for oral argument 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 upon respondent's guilty plea to assault by auto, in violation of N.J.S.A. 2C:12-1c(2), a crime of the fourth degree.

Respondent was admitted to the New Jersey bar in 1996. She has no disciplinary history.

On October 4, 2000, respondent rear-ended an automobile that was turning into a

parking lot. She then left the scene of the accident. Shortly thereafter, she was stopped by the police. Respondent initially denied having been in an accident. After the police officer told her that there were witnesses to the accident, she admitted that she had been at the scene, but denied having hit the other vehicle. Respondent told the officer that she had to stop suddenly when the vehicle in front of her stopped, but claimed that she did not hit it. She added that she could hear the woman in the other car crying, that she sat in her car for ten to fifteen minutes, and that she pulled around the stopped car and then drove home.

Respondent later admitted to the officer that she hit the car, but stated that it was the other driver's fault for having stopped suddenly. At this time, she described the other driver as screaming, rather than crying. Because the police officer observed signs that respondent was under the influence of alcohol, he conducted sobriety tests, which she failed. Her breathalyzer tests yielded results of 0.17% and 0.16%.

Ashley Nestor, the driver of the other car, was taken by ambulance to a hospital, suffering from neck and back injuries. At respondent's sentencing, Nestor stated that she had received physical therapy for one month, was unable to work for two weeks and "was not able emotionally to drive myself anywhere for about a month." Her automobile sustained damages of \$770.18.

On July 9, 2001, respondent pled guilty to assault by auto, as well as to the motor vehicle offenses of driving while intoxicated and leaving the scene of an accident. This

was respondent's third conviction for driving while intoxicated.

On March 15, 2002, respondent was sentenced to 180 days in the county jail, but was given credit for her 180-day inpatient alcohol rehabilitation program and the two days she spent in jail. She also received two years' probation and ninety days' community service. She was required to continue outpatient counseling and to complete her New Jersey Lawyers' Assistance Program plan. Finally, respondent was required to pay \$500 in restitution to Nestor (the amount of Nestor's automobile insurance deductible) and \$270.18 to Nestor's insurance company. Respondent received concurrent sentences for driving while intoxicated and leaving the scene of the accident, as well as a mandatory ten-year loss of her driver's license and a \$1,000 fine.

The OAE urges us to reprimand respondent for her criminal conviction.

* * *

Upon a de novo review of the full record, we determined to grant the OAE's motion for final discipline. However, our granting of this motion should not be construed to mean that we would impose discipline solely on the basis of a conviction of driving while intoxicated. Here, respondent was convicted of assault by auto and sentenced to a jail term. It is the conviction of assault by auto that requires disciplinary action.

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).¹

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. The fact that respondent's actions did not involve the practice of law does not save her from discipline. "That respondent's misconduct did not directly involve the practice of law or a client is of little moment. It is well-established that the private conduct of attorneys may be the subject of public discipline." In re Magid, 139 N.J. 449, 452 (1995).

In urging a reprimand, the OAE took into consideration that Nestor did not suffer serious bodily injury, that respondent has taken measures to combat her alcohol addiction and that there is no precedent for this sort of conduct. The OAE relied on analogous cases: In re Guzzino, 165 N.J. 24 (2000) (attorney suspended for two years following his

¹ Even a disorderly persons' offense can establish a violation of RPC 8.4(b). See In re Magid, 139 N.J. 449 (1995) and In re Principato, 139 N.J. 456 (1995) (attorneys reprimanded after convictions for simple assault, a disorderly persons' offense, involving acts of domestic violence); In re Power, 114 N.J. 540 (1989) (attorney reprimanded following his guilty plea to obstructing the law, a disorderly persons' offense).

guilty plea to second degree manslaughter and driving while intoxicated; while driving at a high rate of speed, the attorney lost control of his vehicle and struck another vehicle, causing the death of a passenger in that vehicle) and In re Barber, 148 N.J. 74 (1997) (attorney suspended for six months following his conviction for vehicular homicide for the death of the passenger; although the attorney had not been convicted of driving while intoxicated, we considered his consumption of alcohol prior to the one-car accident to be an aggravating factor); In re Howard, 143 N.J. 526 (1996) (attorney suspended for three months after conviction for death by auto, a crime of the third degree, for driving her auto recklessly and running over her husband; there was no evidence that the attorney had been drinking prior to the accident; however, the Court warned that “[l]onger suspensions will be called for when alcohol plays an aggravating role in a vehicular homicide case.” Id. at 533).

A person is guilty of fourth degree assault by auto when he or she drives a vehicle recklessly and causes bodily injury. N.J.S.A. 2C:12-1c(2). Fortunately for respondent and for her victim, no serious injuries resulted from respondent’s driving while intoxicated. Furthermore, respondent has embarked on the road to recovery from her alcohol addiction. She spent six months in an inpatient treatment facility, is receiving regular counseling for her addiction and is complying with the New Jersey Lawyers’ Assistance Program plan.

In light of the foregoing, seven members determined that a reprimand is sufficient

discipline for respondent's misconduct. One member voted to deny the OAE's motion, finding that respondent's actions did not rise to the level of unethical conduct. One member recused himself.

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 Susan Cardullo
Docket No. DRB 02-282

Argued: September 12, 2002

Decided: October 25, 2002

Disposition: Reprimand

<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:			7		1	1	

Robyn M. Hill 10/30/02
Robyn M. Hill
Chief Counsel