

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-343

IN THE MATTER OF :
: :
JOSEPH S. CARUSO :
: :
AN ATTORNEY AT LAW :
:

Decision

Argued: November 15, 2001

Decided: February 8, 2002

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

Saul J. Steinberg 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 upon respondent's January 27, 2000 guilty plea to one count of conspiracy to travel in interstate commerce to promote and facilitate bribery, in violation of 18 U.S.C.A. §371.

Respondent was admitted to the New Jersey bar in 1990. He was temporarily suspended by the Court on February 8, 2000. *In re Caruso*, 162 N.J. 344 (2000). That suspension continues to date. In 1996 he received an admonition for recordkeeping violations that led to a negligent misappropriation.

In 1997 respondent was the municipal prosecutor for the City of Camden. In August of that year, he traveled to Pennsylvania with the mayor of Camden. During that trip, the mayor indicated to respondent that he intended to reappoint the Camden municipal public defender, contingent on the public defender's \$5,000 contribution to a political committee. Respondent agreed to act as the mayor's intermediary. He solicited and received the \$5,000. Although another attorney had been nominated as municipal public defender, respondent informed the current public defender that the other attorney's nomination would be removed from the city council agenda upon payment of the \$5,000 contribution. During respondent's conversation with the public defender, respondent stated that he was not comfortable discussing the matter on the telephone because he knew that the exchange of the political contribution for the reappointment was illegal.

On April 20, 2001 respondent was sentenced to probation for a period of three years, including a period of six months during which he was confined to his residence and required to wear an electronic monitoring device. No fine was imposed.

The OAE urged us to recommend a three-year suspension, retroactive to the date of his temporary suspension. Respondent requested that the suspension terminate upon the earlier of three years from his temporary suspension or the expiration of his probation, which, according to his counsel, could occur as early as the summer of 2002.

* * *

Following a review of the full 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 one count of conspiracy to commit bribery 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 of *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 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.

Generally, attorneys who have participated in the bribery of public officials have been disbarred. *See, e.g., In re Jones*, 131 *N.J.* 505 (1993) (attorney disbarred for soliciting bribe for his own personal gain while serving as deputy attorney general); *In re Tusso*, 104 *N.J.* 59 (1986) (attorney disbarred for attempted bribery of school board member to obtain building contract for client).

Indeed, in *In re Hughes*, 90 *N.J.* 32, 38 (1982), the Court announced that, "[w]hile mitigating circumstances might sometimes cause us to order a less drastic sanction than

disbarment in a bribery case, the situation here does not warrant anything less.” In *Hughes*, the attorney pleaded guilty to bribing an Internal Revenue Service (“IRS”) agent and forging public documents. Upon the death of Hughes’ father, with whom he had practiced law, Hughes discovered that, instead of paying transfer inheritance taxes in a client’s estate matter, his father had converted the funds. Although he had no legal obligation to do so, Hughes made installment payments of almost \$40,000 to discharge the estate’s tax liability. While making those payments, Hughes learned of the existence of federal tax liens on real estate owned by his mother that had arisen due to his father’s failure to pay federal taxes. To protect his mother from learning of his father’s wrongdoing, Hughes wanted to satisfy the tax liens, but, because he was continuing to pay the estate taxes, he did not have sufficient resources. When his efforts to arrange either a settlement or a payment schedule with the IRS were not successful, he forged the tax lien releases. Hughes then offered to pay, and subsequently paid, \$1,000 to an investigating IRS agent so that the agent would ignore the forgeries.

In *Hughes*, the Court recognized substantial mitigating factors – the attorney did not personally gain from his wrongdoing and he repaid estate taxes without any legal obligation to do so. Nonetheless, the Court stated that:

these considerations are not sufficient to overcome the presumption that attorneys who bribe public officials are a threat to the public and the legal system. Hughes not only bribed an IRS official but deliberately falsified public documents. These acts severely damage public confidence in the legal system. Moreover, a person willing to resort to such means to accomplish his goals, no matter how beneficent the goals may be, is a danger to the legal system. The combination of these two offenses compels us to conclude that

the public will not be adequately protected by any disposition short of disbarment.

[*Id.* at 39]

Here, we are convinced that respondent has demonstrated sufficient mitigating circumstances to warrant a sanction short of disbarment. In the above cases, the attorneys either orchestrated the bribery or derived a financial benefit from it. Respondent's role in this matter was relatively minor; he acted as an intermediary for the mayor, who instigated the bribery and received the financial gain. Moreover, in *Hughes*, the attorney had not only committed a bribery, but had also pleaded guilty to altering and falsifying county register records and to uttering and publishing as true to the Essex County Register two false and forged certificates of release of federal tax liens. Furthermore, the Court noted that the attorney had created a victim, that is, the purchaser of his mother's property, who believed that the title was free and clear of all encumbrances when, due to the fraud and forgery, there was a \$12,000 tax lien. Although Hughes ultimately satisfied the lien, he jeopardized another's financial position in order to prevent his mother from learning of his father's tax evasion. In contrast, the documents from the criminal proceeding in this matter indicate that there are no "identifiable" victims of the offense, although we note that the general public is victimized by the bribery of public officials.

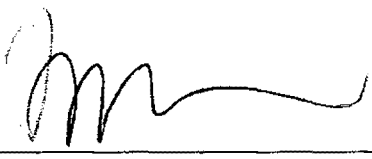
We also considered, in mitigation, that respondent gave substantial assistance to the United States Attorney's Office, including providing information and testifying at the mayor's corruption trial, and that respondent expressed remorse and regret for his actions.

In re Mirabelli, 79 N.J. 597 (1979) is a case where the Court imposed a sanction short of disbarment for conviction of bribery. There, however, the attorney never actually intended to pay the bribe. Instead, concerned that his client would not pay his fee, the attorney misrepresented to him that a \$2,500 payment to the assistant prosecutor would be required to obtain a non-custodial sentence. Although the Court questioned whether the attorney's conduct fell within the bribery statute, it noted that, because the attorney admitted the findings of the District Ethics Committee, the sole issue was the measure of discipline to be imposed.

Although this case is factually distinguishable from *Mirabelli*, we conclude that, consistent with the Court's holding in *Hughes* that mitigation may justify a sanction short of disbarment, a suspension is sufficient discipline for this respondent's criminal offense.

We, thus, unanimously determined that a three-year suspension, retroactive to respondent's February 8, 2000 temporary suspension, adequately addresses the seriousness of respondent's actions and, at the same time, preserves the public's confidence in the disciplinary system. One member recused himself. One member did not participate.

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

By: 

MARY MAUDSLEY
Vice Chair
Disciplinary Review Board

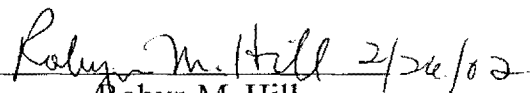
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Joseph S. Caruso
Docket No. DRB 01-343

Decided: February 8, 2002

Disposition: three-year suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-year 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
 Chief Counsel