

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-145

IN THE MATTER OF :
JOSEPH P. CAPONE :
AN ATTORNEY AT LAW :

Decision

Argued: June 19, 1996

Decided: November 20, 1996

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

Carl D. Poplar appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board on a Motion for Final Discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-13(c)(2), based upon respondent's guilty plea to knowingly making a false statement on a loan application, in violation of 18 U.S.C.A. §§ 1014 and 2.

Respondent was admitted to the bar of the State of New Jersey in 1987. On August 11, 1995, a one-count information was filed against respondent in the United States District Court for the District of New Jersey, charging him with knowingly making a false statement on a loan application, in violation of 18 U.S.C.A. §§ 1014 and 2.

On August 11, 1995, pursuant to a plea agreement, respondent pleaded guilty to the charge. On November 17, 1995, he was sentenced to four months' home confinement, three years' probation and ordered to pay a \$2,000 fine and a \$50 special assessment fee. Respondent was also ordered to make restitution in the amount of \$169,715.

On September 7, 1995, respondent was temporarily suspended, pursuant to R. 1:20-13(b). In re Capone, 142 N.J. 425 (1995). That suspension remains in effect.

In January 1989, respondent contracted with Atlantic Waterfront Developers ("Atlantic") for the purchase of 2606 Atlantic Avenue, Longport, New Jersey, for \$600,000. Shortly thereafter, respondent submitted an application to First Federal Savings and Loan of Rochester ("First Federal") for a \$480,000 mortgage loan. This amount represented eighty percent of the \$600,000 contract price for the property.

In February 1989, respondent negotiated a written agreement with Atlantic to reduce the purchase price to \$475,000. However, respondent did not disclose the price reduction to First Federal. Instead, in order to induce First Fidelity to approve his loan application, respondent continued to submit various documents listing the purchase price as \$600,000. First Fidelity relied on respondent's representations and approved his loan. Respondent ultimately defaulted on the loan.

The OAE recommended that respondent be suspended for two years.

* * *

Respondent's conviction serves as conclusive proof of his guilt in this disciplinary proceeding. R. 1:20-13(c)(1); In re Rosen, 88 N.J. 1, 3 (1981). Respondent has been convicted of knowingly making a false statement on a loan application. Respondent's criminal conviction clearly and convincingly demonstrates that he committed "a criminal act which adversely reflects on [his] honesty, trustworthiness or fitness as a lawyer..." and that he engaged "in conduct involving dishonesty, fraud, deceit or misrepresentation." RPC 8.4(b) and (c). The only remaining issue is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Infinito, 94 N.J. 50, 56 (1983).

That respondent's offense does not relate directly to the practice of law does not negate the need for discipline. In re Addonizio, 95 N.J. 121, 124 (1984). "An attorney is bound even in the absence of the attorney-client relation to a more rigid standard of conduct than required of laymen. To the public he is a lawyer whether he acts in a representative capacity or otherwise." In re Gavel, 22 N.J. 248, 265 (1956).

In In re Labendz, 95 N.J. 273 (1984), the attorney received a one-year suspension for knowingly submitting a client's RESPA statement containing an inflated purchase price so that the buyer could obtain a higher mortgage. In imposing the suspension, the Court noted that this was the attorney's only instance of misconduct, that no one was harmed and that he received no personal benefit from the transaction. See also In re Bateman, 132 N.J. 297 (1983) (attorney suspended for two years after being convicted of mail fraud conspiracy, in violation of 18 U.S.C.A. §§ 371, 3623, and making a false statement on a loan application, in violation of 18 U.S.C.A. §§ 1014 and 2). Respondent's misconduct, however, was more serious than that in Labendz and warrants greater discipline. Although respondent has never been previously

disciplined, his conduct harmed the bank (a loss of approximately \$169,715) and was motivated by self-gain. In addition, respondent was convicted of a crime.

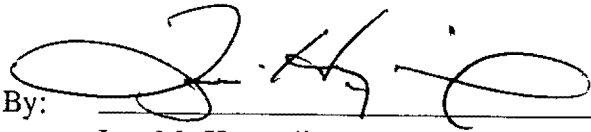
In light of the foregoing, the Board unanimously determined to impose a two-year suspension, retroactive to the date of respondent's temporary suspension on September 7, 1995. Two members did not participate.

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

Dated: _____

11/20/96

By: _____



Lee M. Hymerling
Chair
Disciplinary Review Board

Supreme Court of New Jersey
Disciplinary Review Board

Voting Sheet

IN THE MATTER OF JOSEPH P. CAPONE

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HEARING HELD: June 19, 1996

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	2-year retro	Disbar	Suspension	Reprimand	Admonition	Dismiss	Dis quali- fied	Did Not Partici- pate
HYMERLING	X							
COLE	X							
HUOT	X							
MAUDSLEY	X							
PETERSON	X							
SCHWARTZ	X							
THOMPSON								X
ZAZZALI								X

Robyn M. Hill 12/20/96
ROBYN M. HILL
CHIEF COUNSEL