SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-107

IN THE MATTER OF :
BARRY N. BRUMER, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 20, 1990

Decided: October 1, 1990

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

Respondent did not appear.[1]

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

This matter is before the Board based on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics (OAE), following respondent's suspension from the practice of law in the State of Florida for a period of three years retroactive to June 8, 1989, the date of his temporary suspension. R. 1:20-7(b).

Respondent was admitted to the New Jersey bar in 1973. On January 20, 1989, he pleaded guilty to a two-count federal information charging him with knowingly and willfully encouraging and inducing aliens to reside in the United States, in violation of 8 U.S.C.A. 1324(a)(1)(D) and 18 U.S.C.A. 2.

[1] Despite receiving proper notice of the hearing, respondent did not waive appearance for oral argument.

At sentencing on March 23, 1989, respondent was placed on probation for a period of five years, fined $50,000, and ordered to perform 1,000 hours of community service.

The facts surrounding respondent's conduct are set forth in the plea agreement (Exhibit E to the OAE's brief to the Board):

> Attorney, Barry Brumer, has been a member of the Florida Bar since 1980. His principal office since that time has been located at 155 South Miami Avenue. Mr. Brumer specializes in immigration law. A large number of his cases involve the filing of labor certificates. That is the process which allows an alien to receive permanent United States residency by accepting an employment offer that no United States resident is qualified or available to receive. The average fee in the Miami community for labor certificates has ranged between $3,000 and $4,500. Mr. Brumer speaks fluent Portuguese because he lived and worked in Brazil for eight years. Therefore, the majority of his clients are Brazilians. His practice flourished because of the number of Brazilians requiring immigration services in Miami and because his reputation is known in the Brazilian community. Mr. Brumer opened a second office in Naples, Florida in December 1985.
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> He grossed approximately $220,000 in 1987 and $119,000 in 1986. His gross fees for 1985 were $73,411. His net income was less than 50% of the above figures.
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> Prior to the investigation, Mr. Brumer never employed any attorneys. His staff generally included one or a maximum of two secretaries in each office. Mr. Brumer did utilize Mr. Jack Miller (a/k/a Jack Mitagstein) to find employers for those of his clients who needed offers of employment. Mr. Miller managed a small employment service during relevant time periods.
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> Mr. Brumer through Mr. Miller developed two contacts with gas station owners. They were Isaac Miller, who owned E-Z Gas Station, and Joe Melendez, who owned Joe's Service Station. Mr. Brumer gave Mr. Miller blank applications for alien labor certification forms (750A). Mr. Miller used these forms to obtain the signatures of the gas station owners. Mr. Brumer accepted retainer fees from eleven aliens to work at E-Z Gas Station and five for Joe's Service Station knowing that most of the offers to these mechanics could not be fulfilled and rather were made for jobs that did not then exist.

> Mr. Brumer was approached by Raymond Villa, the owner of Elite Undercoating Service. He requested Mr. Brumer to begin labor certificates for eleven aliens who were working as undercoaters for him so as to bring his business into compliance with recent changes in immigration law. Mr. Brumer accepted retainers and fee payments for these cases knowing that the aliens were working for Elite at the time and knowing that it was unlawful for them to work prior to authorization by the Immigration Service. He informed Mr. Villa that the aliens could work during the pendency of their applications knowing such work was contrary to law.
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> The Elite cases were investigated by the Immigration and Naturalization Service (INS). Mr. Brumer was advised in early March 1988 by INS that some of the above-referenced aliens were in Krome Detention Center. He then learned that several other clients of his had been questioned regarding the integrity of his law practice.
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> In March 1988 the word had spread to numerous clients of Mr. Brumer's that Mr. Brumer was under investigation and that his client's cases were not being processed by INS or the Department of Labor. Many of these clients were afraid that they would be detained and/or upset that they would receive no benefits from INS.
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> He advised some of his clients to seek other counsel and further advised them that they had the right not to speak to the investigators. When asked by his clients what they should do if INS wanted to speak to them, he advised many of his clients that they would probably be detained at Krome Detention Center and they may be better off if not found by INS inspectors. He advised them not to go to work or to relocate to avoid detection and detention by INS.
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> [Plea Agreement at 2-4.]

As a result of his guilty plea, respondent was temporarily suspended from the practice of law in Florida, effective June 8, 1989. In the disciplinary proceedings that ensued, respondent entered into an "Unconditional Guilty Plea and Consent Judgment for Discipline," covering not only the criminal case, but also three other matters in which respondent admitted violations of R.P.C. 1.3 (lack of diligence), R.P.C. 1.4 (lack of communication), and

R.P.C. 8.4(d) (conduct prejudicial to the administration of justice).[2] In those cases, respondent accepted substantial retainers ($3,500, $1,500, and $1,033.20) from clients in immigration matters, whereupon he failed to perform the requested services in behalf of the clients. As final discipline in the ethics matter, the Florida Superior Court issued an order suspending respondent for three years, retroactive to the date of his temporary suspension.

Respondent did not inform the OAE of either his guilty plea (R. 1:20-6(a)) or his suspension in Florida (R. 1:20-7(a)).[3] The OAE learned of respondent's criminal offense when supplied with a copy of respondent's letter to the Clerk of the Court, dated December 27, 1989, requesting clarification on his status on the Ineligible List of the Clients' Security Fund. Thereafter, the Court temporarily suspended respondent on March 20, 1990. The suspension remains in effect to date.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board recommends that the motion be granted and that respondent be reciprocally

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[2] The record does not disclose the extent of the violations of the disciplinary rules.

[3] At the Board hearing, the OAE explained that it did not ". . . hold [the lack of notice] against [respondent], since [respondent had] been practicing in Florida and probably didn't know about our rule." (Board hearing transcript at 2.)

disciplined for a period equal to that of his suspension in Florida, retroactive to June 8, 1989.

As noted above, respondent executed an "Unconditional Guilty Plea and Consent Judgment for Discipline" in the Florida disciplinary proceedings. Hence, respondent did not dispute the factual findings of the Florida ethics authorities, which findings the Board has adopted. Matter of Pavilonis, 98 N.J. 36, 40 (1984); In re Tumini, 95 N.J. 18, 21 (1979); In re Kaufman, 81 N.J. 300, 302 (1979).

Under R. 1:20-7(d), and in the absence of any procedural irregularities in the Florida proceedings, the Board is required to recommend the imposition of identical discipline, unless the misconduct established warrants substantially different discipline. In re Kaufman, supra, 81 N.J. at 303. In the instant case, the Board finds no reason to impose different discipline.

Respondent committed a serious crime, a federal felony that exposed him to a long term of incarceration and a substantial fine. Moreover, his violation was related to the practice of law. In addition, respondent abandoned the interests of three clients from whom he had accepted sizable retainers. The latter misconduct alone would ordinarily call for a period of suspension in New Jersey See, e.g., In re Grabler, 114 N.J. 1 (1989); In re Cutchall, 117 N.J. 677 (1989); In re George, _____ N.J. _____ (1989).

Although there is no precedent in New Jersey for the sort of criminal conduct exhibited by respondent, the Court has generally

imposed long terms of suspension in matters where attorneys have committed serious crimes. See, e.g., Matter of Power, 114 N.J. 540 (1989) (where the attorney was suspended for three years after pleading guilty to obstructing the administration of justice; the attorney admitted that he (1) purposely advised a client not to disclose information to law enforcement authorities about a stock fraud investigation; (2) aided a client in filing a false insurance claim, and (3) forwarded false information to an insurance company); Matter of Kushner, 101 N.J. 397 (1986) (where the attorney falsely testified, in his answer to a civil complaint and in a sworn certification filed with the court, that the signature on a promissory note was not his; guilty plea to count of false swearing merited a three-year suspension); and In re Infinito, 94 N.J. 50 (1983) (where the Court suspended for three years an attorney who was convicted of larceny of property valued at over $500 and of conspiracy to commit larceny).

The Board is of the view that the gravity of respondent's conduct is tantamount to that displayed by the attorneys in the foregoing cases. Accordingly, the Board sees no reason to impose a lesser quantum of discipline than the three-year suspension ordered by the Florida disciplinary authorities. The requisite majority of the Board so recommends. Said suspension should be retroactive to the date of respondent's temporary suspension in

Florida, June 8, 1989. One member would vote for disbarment. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 10/1/1990

By: _____
Raymond R. Trombadore
Chair
Disciplinary Review Board