

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-166
District Docket No. XIV-2011-0306E

IN THE MATTER OF :
: AHMAD DESOKY : Dissent
: AN ATTORNEY AT LAW :
:

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

Respondent pled guilty in the District Court to four counts of criminal contempt or the aiding and abetting of such criminal contempt. A majority of the Board voted to impose a one-year prospective suspension. Two members of the Board voted to make that suspension retroactive to March 1, 2012, the date of respondent's temporary suspension. The predicate facts upon which respondent's criminal conviction is based are not much in dispute; they are recounted sufficiently in the majority opinion and need not be repeated here. For the reasons that follow, I disagree with the majority's determination and vote for disbarment.

At the sentencing hearing before Judge Brown on November 30, 2011, respondent testified that his father asked his opinion, he gave his opinion, and, to the extent things happened, it was respondent's fault. He clearly stated to Judge Brown that his father relied on respondent's judgment, that his father took action based on that judgment, and that was the explanation for why the criminal conduct occurred.

This matter was heard by us on September 15, 2015. Respondent appeared pro se. He stated that his father had been advised by two different attorneys that, after the consent decree had been entered, he could not and should not move his company to another state so as to continue business. He further stated that his father then asked for his opinion and respondent gave his father the same advice.

Q. What about with regard---

A. I was not really acting---I wasn't acting in the capacity as an attorney.

Q. What about when the consent decree came down, and you were asked advice about that?

A. I was asked advice, but I was asked advice more as his son than as an attorney, because he had attorneys. He had two.

Q. And did he go to them to ask his---

A. He did.

Q. ---advice as to---

A. They were the ones.

Q. ---whether he could move the company to a different state?

A. He did.

Q. And what did they tell him?

A. They told him no.

Q. And what did you tell him?

A. I told him no.

Q. You told him no?

A. I told him no.

[T11-5 to 12-6.]¹

Respectfully, this recounting of events by the respondent during his appearance before us is at odds and irreconcilable with his statements before Judge Brown at the time of his sentencing hearing. Respondent was confronted with the apparent contradiction at oral argument before us:

Q. You're sure about that last answer that you told him no? Because I'm reading from a quote from the transcript before Judge Brown.

A. Uh-huh.

Q. And it quotes you as saying the following. "I would go even so far as to say that I wasn't an attorney for the company,

¹ "T" refers to the transcript of the September 15, 2015 oral argument before us.

you know, other than a fact that I was family, and I had a law degree. I was asked for my opinion presumably with regard to the consent decree."

A. Correct.

Q. "I gave my opinion. To the extent that things happened, it's my fault. My father relied on my judgment and took action based on my judgments, and now we're here." Are you sure about that answer?

A. I am very sure.

Q. Okay.

A. I told him no in several different ways.

Q. Well, then how about this statement, presumably under oath before Judge Brown, where it appears you told your father completely to the contrary.

A. I didn't tell him completely to the contrary. He asked me a very specific question. I had told him no several times. He wasn't listening to me. Anyone who has a father will know. When your father stops listening to you, you have no choice. There was no choice.

Q. But---but listen to me carefully here.

A. Uh-huh.

Q. Because you understand this is important--

A. Uh-huh.

Q. ---to the extent that things happened, these are your words.

A. Correct.

Q. "It's my fault. My father relied on my judgment and took action based on my judgments, and now we are here."

Doesn't that suggest to you that you told your father that he could get around the consent judgment, that your father basically acted on that advice, and that's why you are all now before Judge Brown?

A. It sounds like it, sir, but that's not what happened. That's not what happened. I pretty much---

Q. Then was your---

A. ---ended up---

Q. Then was your statement to Judge Brown true or false?

A. It was true in the--in the--in the final reckoning. But for months before he kept asking me and I kept saying no. No. No. It's not going to work. He asked his attorneys. They told him no. It's not the answer he was looking for. He just wanted to do what he wanted to do, and I was -- because of being his son I was kind of pushed into a corner into saying, oh, you know, well, maybe your reading of the consent decree this way is okay. But I told him no several different ways. He would not take no for an answer.

Q. I don't--I don't--I don't want to make this harder for you.

A. Okay.

Q. And I know it truly is. But part of your statement says, "My father relied on my judgment." Now that---

A. He--

Q. - seems to suggest to me very clearly that despite the wrong-the-advice he got from outside counsel, which told him don't do this, you gave him advice, your best judgment---

A. Uh-huh.

Q. -and maybe it was well motivated, and he acted on that by setting up his company out of state to get around this consent judgment, and that's why you are now all in the federal court. Do I misread this English?

A. No, sir. You do not. He--there was no conscious choice to move to out of state. He looked for several facilities in state. The only person he could find that had the capacity that he needed, the space that he needed--there was no intent to move our operation somewhere else. The intent was to contract a third party to do this work for us. And he found a third party. He happened to be over the--the border. You know that Congers is--is not far over the New Jersey border into New York.

It wasn't a conscious choice to move out of state. I never told him to move out of state. I told him several times not to do this. If you're going to do it, do it right. Tell the FDA. Tell them you're going to contract a third party to do it. Get permission to do it. And that was my advice. That was my advice.

[T12-20 to T17-12.]

In sum, before Judge Brown and for whatever reason may have existed at that time, respondent admitted (1) he was asked by his father to give an opinion/judgment as to a method to bypass the consent decree, (2) he gave his judgment/opinion to his

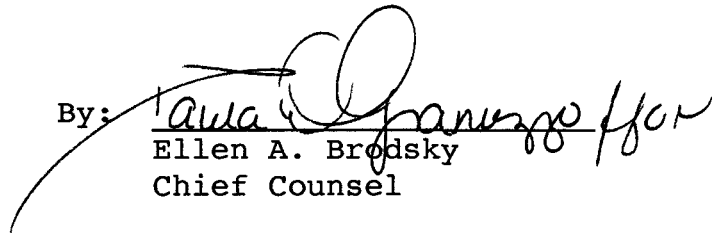
father, (3) his father relied on that opinion/judgment, and (4) such reliance resulted in the criminal charges and respondent being found guilty of those charges by a jury.

Before us, respondent contended by way of defense/mitigation that, despite respondent's advice to the contrary, his father moved the family business to New York to bypass the prohibition of the consent decree. In short, before us respondent disavowed his testimony at the time of his sentencing before Judge Brown.

Respondent cannot have it both ways. Either he was untruthful before Judge Brown or he was untruthful in his presentation before us. Regardless of when he was untruthful, that untruthfulness, taken together with his criminal conviction, warrants disbarment.

Disciplinary Review Board
Maurice J. Gallipoli

By:


Ellen A. Brodsky
Chief Counsel