SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-246
(Formerly Docket No. DRB 92-230)

IN THE MATTER OF :
:
ARTHUR ABBA GOLDBERG, :
:
AN ATTORNEY AT LAW :

Decision and Recommendation
(Revised)
of the
Disciplinary Review Board

Argued: September 16, 1992

Initial Decision: December 3, 1992

Remanded: May 12, 1993

Revised Decision: February 1, 1995

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

William J. Brennan, III 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 based upon a criminal conviction filed by the Office of Attorney Ethics ("OAE"). R. 1:20-6(c)(2)(i). The Board's initial recommendation for disbarment, dated December 3, 1992, was forwarded to the Court on December 22, 1992. Following oral argument, the Court remanded the matter to the Disciplinary Review Board on May 12, 1993, with the direction that the Board revise its decision in several respects. The Court's order is annexed hereto.

* * *

Arthur Abba Goldberg (respondent) was admitted to the bar in New Jersey in 1965. A Motion for Final Discipline was filed against him by the Office of Attorney Ethics on June 8, 1992. That motion was based upon two separate criminal matters involving respondent. In both matters, respondent was acting as Executive Vice-President and major stockholder of Matthews & Wright, Inc., a New York underwriter. In the earlier matter, on July 14, 1989, following a change in venue from the Territory of Guam (Guam) to the United States District Court for the Central District of California (California), and in accordance with a plea bargain agreement, respondent entered a guilty plea to three counts of mail fraud, in violation of 18 U.S.C.A. §§ 1341, 1343, and 2. Those three counts were originally part of a fifty-two count indictment filed against respondent.

Thereafter, on January 31, 1991, in the United States District Court for the Southern District of Illinois, and in accordance with a separate plea bargain agreement, respondent entered a guilty plea to one charge of conspiracy to defraud the United States in violation of 18 U.S.C.A. § 371.

Following his plea in the California matter, respondent was sentenced to a term of eighteen months imprisonment, with eligibility for parole upon completion of one-third of that sentence, and a five-year probation term thereafter. Additionally, respondent was fined $100,000 on two counts and was ordered to pay $300,000 as partial restitution to Guam.

As to the Illinois matter, on January 31, 1991, respondent was sentenced to an additional term of eighteen months incarceration, to be served concurrently with the term imposed in the California matter. A special assessment of $50 was also ordered. No further penalties were imposed.

Following his sentencing in California, respondent filed an appeal with the United States Court of Appeals for the Ninth Circuit on December 22, 1989. Within that appeal, he challenged the legality of the sentence imposed by the California court. However, as part of the plea agreement in the Southern District of Illinois, respondent agreed to dismiss that portion of the appeal pertaining to custodial issues, while retaining his right of appeal regarding restitution issues. Following review, the Ninth Circuit concluded that the $300,000 ordered as restitution was excessive, vacated the District Court sentencing order and remanded the case for resentencing. Upon resentencing in California on January 27, 1992, respondent was ordered to pay the reduced amount of $127,000 in restitution to Guam.

Guam/California Conviction

It is undisputed that, in July 1989, respondent entered a guilty plea to Counts 10, 11 and 27 of the fifty-two count indictment filed against respondent and one Frederick Llewellyn Mann on December 16, 1987. At the time respondent entered his guilty plea, he filed a Rule 11(c) statement articulating the factual basis for his plea. That document is annexed as Exhibit B

to the Motion of the Office of Attorney Ethics. In paragraph two of that document, respondent stated "I admit that I committed fraud by mail in causing an improper transfer of $30,000 referred in Count 10 and in causing an improper transfer of $27,500 referred to in Count 11, and in causing the mailing in Count 27 in furtherance of the transfers referred to above as they relate to the Program Development Fund (hereinafter sometimes referred to as PDF)." Also within that factual statement, respondent stated:

> 7. . . . I admit that the $30,000 disbursement was improper and was not for an appropriate purpose. I accept full responsibility for this act. I further admit that I knowingly caused matter to be delivered by mail and by the U. S. Postal Service in furtherance of the $30,000 disbursement. This offense occurred between April-May, 1986.
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> 8. Count 11 of the Indictment (mail fraud) charges that I caused the improper disbursement of funds amounting to $27,500 to Alpha Communications Ltd. (Anthony M. Romano). I admit that the $27,500 disbursement was improper and was not for an appropriate purpose. I accept full responsibility for the act. I further admit that I knowingly caused matter to be delivered by mail and by the U.S. Postal Service in furtherance of the $27,500 disbursement. This offense occurred between January - February, 1986.
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> 9. Count 27 of the indictment (mail fraud) charges that I caused a letter to be mailed to the Guam Economic Development Authority on October 26, 1986 in furtherance of the aforesaid PDF mail fraud which deprived Guam of certain funds (totaling $57,500--Counts 10 and 11) deposited in the PDF. I admit the foregoing insofar as it relates to said unlawful disbursements from the PDF and acknowledge that in sending the letter described in Count 27, I caused a loss to Guam in the amount of $57,500. I accept full responsibility for this act. I further admit that I knowingly caused matter to be delivered

> by mail and by the U.S. Postal Service in furtherance of such total disbursements of $57,500. This offense occurred on October 26, 1986.
>
> 10. On the basis of all of the foregoing, and with respect to Counts 10, 11 and 27, I admit that I acted (i) with reckless indifference as to my right to cause the foregoing improper disbursements from the PDF, (ii) with reckless indifference as to the truth or falsity of the representation in said mailings, and (iii) with reckless indifference as to Guam's legal and financial interests in said Fund with respect to the foregoing, thereby causing Guam to lose $57,500. I therefore committed mail fraud.

At the initial sentencing of the case, the judge stated:

> I have read as I have said earlier many portions of the Grand Jury transcripts, and affidavits which have been filed, and depositions which have been filed, and I think from it all, it is very clear that although the defendant has only pleaded guilty to three counts of mail fraud, that there has been a conspiracy here of considerable magnitude, which involved a lot of money, and has deprived a lot of people of some value.
>
> I find myself unable to put a finger on how much, but I think it is undoubtedly a tremendous amount. It's a serious offense.
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> (Exhibit E to OAE Motion, Transcript of Sentencing on September 25, 1989 at 37.)

Following review of respondent's appeal of the restitution ordered at sentencing, the United States Court of Appeals for the Ninth Circuit issued a Memorandum, filed August 13, 1991. The factual background of the Guam/California case was articulated in that Memorandum by the Ninth Circuit as follows:

> Goldberg was an Executive Vice-President and a major stockholder of Matthews & Wright, Inc. Matthews &

Wright entered into a contract with the Guam Economic Development Authority ("GEDA") for the underwriting of $300 million worth of bonds. Under the contract, Matthews & Wright was required to deposit $4.5 million of the proceeds of the sale of the bonds into a trust fund (the Program Development Fund ("PDF")) to pay the costs of financing multi-family housing on Guam.

According to the United States attorney, Goldberg, as well as others at Matthews & Wright, was actually engaged in a scheme of fraud. As a result of this alleged fraudulent scheme, the GEDA's plan to help finance housing collapsed. In order to preclude the Internal Revenue Service from attempting to collect taxes from the bondholders, the GEDA agreed to a settlement that included payment of a large portion of the PDF to the IRS. Matthews & Wright agreed in a stipulation in a civil suit brought by Guam to release any claim it had to the monies still remaining in the PDF. After all payments were made, Guam's resulting profit from the GEDA issue was over $1.2 million.

Goldberg pleaded guilty to 3 counts of mail fraud involving disbursements from the PDF. At Goldberg's sentencing hearing, the judge sentenced him to pay a fine of $100,000 and to be imprisoned for eighteen months. He also ordered Goldberg to pay restitution to Guam in the sum of $300,000, pursuant to the Victim and Witness Protection Act (VWPA), 18 U.S.C. §§ 3663, 3664 (1986).

[Memorandum at 2 to 3. Exhibit I to OAE Motion and Brief]

* * *

In analyzing respondent's acts, the Court noted:

Although the fraudulent scheme described in the indictment involved Matthews & Wright's entire underwriting of the bond issuance (footnote omitted), Goldberg's guilty plea related only to three counts alleging that he had made improper disbursements from the PDF. Goldberg 'has steadfastly denied any wrongdoing in connection with the bond issuance.' But for Goldberg's fraud, the PDF residuary, which properly belonged to Gaum, would have been larger. Thus, the acts of conviction cost Guam money and restitution is proper (emphasis added).

[Id. at 4]

The Court further characterized respondent's actions as "embezzlement". Id. at 5. The Court noted that Guam had not received compensation for the money which had been illegally disbursed until the settlement agreement between Guam and Matthews & Wright.

Illinois Matter

In the second matter, respondent was convicted of conspiracy to commit an offense against the United States and to defraud the United States of and concerning its governmental functions and rights, all in violation of 18 U.S.C. § 371. Judgment of Conviction, annexed to the OAE's motion as Exhibit F. The nature of the case was articulated in the document entitled Factual Basis For Plea", Exhibit B to respondent's plea agreement, annexed to the OAE's Motion as Exhibit D, and dated November 1, 1990. The Factual Basis For Plea states, in pertinent part, that respondent, as Executive Vice-President of Matthews & Wright (a securities dealer registered pursuant to the Securities and Exchange Act, 15 U.S.C. 780) directed Matthews & Wright's municipal underwriting activity and was also a director of Matthews & Wright. As such, respondent was involved in project financing for the City of East St. Louis, Illinois. Although the factual background is somewhat complicated and would require a lengthy exposition, paragraph 14 of the Factual Basis For Plea sets out respondent's specific misconduct:

> 14. From on or about November 15, 1985 and continuing thereafter until or about January 1, 1987, one or more employees of MATTHEWS & WRIGHT, including Arthur

> Goldberg, while acting within the scope of their employment, knowingly, willfully and unlawfully, did combine, conspire, confederate and agree with others to impede, impair and interfere with the Internal Revenue Service in its lawful function of auditing tax matters. In furtherance thereof, the following overt acts were committed:
>
> (i) On or about October 8, 1985, ARTHUR GOLDBERG, on behalf of MATTHEWS & WRIGHT, sent through the United States Mail a letter addressed to the City Attorney for the City of East St. Louis suggesting consideration of the issuance of bonds for an athletic facility and/or transportation facility.
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> (ii) officials of the City of St. Louis and of MATTHEWS & WRIGHT failed to file informational returns with the IRS.
>
> (iii) On April 21, 1986 ARTHUR ABBA GOLDBERG spoke to City Attorney Sam Ross by telephone.

As noted, respondent's sentence in this matter was to run concurrent to the eighteen-month sentence imposed in the California matter. No additional fines or restitution were ordered.

* * *

As mentioned previously, this matter was remanded to the Board for a limited purpose by Order dated May 12, 1993. Prior to undertaking any further review of this matter, the Board requested that the parties, and specifically respondent, provide the presentence reports prepared in both the California and Illinois

matters. Those pre-sentence reports were not received until mid-1994.

CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of guilt in disciplinary proceedings. In re Goldberg, 105 N.J. 278, 280 (1987); In re Tuso, 104 N.J. 59, 61 (1981); In re Rosen, 88 N.J. 1,3 (1981). R. 1:20-6(c)(1). Therefore, no independent examination of the underlying facts is necessary to ascertain guilt. In re Bricker, 90 N.J. 6, 10 (1982). The sole issue to be determined is the quantum of discipline to be imposed. In re Goldberg, supra, at 280. Respondent's criminal convictions clearly and convincingly demonstrate that he has engaged, on more than one occasion, in activity that reflects adversely on his honesty, trustworthiness and fitness as a lawyer. Moreover, it is clear that he has engaged in criminal conduct involving dishonesty and fraud, in violation of DR 102(A)(3) and superseding RPC 8.4(b) and (c).

Respondent contends that his conduct was neither knowing nor willful. Rather, he argues that his actions constituted reckless indifference.

Taking the Illinois action first, it is clear from the record that respondent admitted, in his Factual Basis for Plea, that he "knowingly and willfully" conspired to interfere with the Internal Revenue Service, in violation of 18 U.S.C. § 371. To now argue

that his conduct was not intentional, but merely reckless, is inconsistent with his guilty plea and is specious.

Although the Guam/California matter requires more analysis, the result is the same. The pertinent statute, 18 U.S.C.A. § 1341, states:

> Whoever, having devised or intending to devise and scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both. If the violation affects a financial institution, such person shall be fined not more than $1,000,000 or imprisoned not more than 30 years or both. (Emphasis supplied).

Thus, on its face, the mail fraud statute requires intent. Indeed, in the Ninth Circuit, which reviewed respondent's case, as well as the Third Circuit, which reviews New Jersey federal actions, both the formation of a scheme to defraud and the use of the mails to further that scheme are essential elements of the crime of mail fraud. See, e.g., United States v. Green, 745 F.2d 1205 (9th Circ., 1984), cert den 106 S. Ct. 259 (1984); United

States v. Bohonus, 628 F.2d 1167, 1171 (9th Circ. 1980), Cert. den. 447 U.S. 928 (1980); United States v. Dreer, 457 F.2d 31 (3rd Cir., 1972); Kronfeld v. First Jersey National Bank, 638 F.Supp. 1454, 1470 (D.C.N.J. 1986).

Similarly, a scheme to defraud requires a specific intent to defraud. See e.g. Kronfeld v. New Jersey National Bank, et al., 638 F. Supp. 1454, 1470 (D.C.N.J. 1986) (where the court noted that the requisite mens rea for mail fraud is a specific intent to defraud).

While is has been held that ". . . reckless disregard for truth or falsity is sufficient to sustain a mail fraud conviction," United States v. Schaflander, 719 F.2d. 1024, 1027 (9th Circ. 1983) cert. den. 470 U.S. 1058 (1985), ". . . (a) specific intent to deceive may be found from a material statement of fact made with reckless disregard of the facts." United States v. Boyer, 694 F.2d 58, 59 (3rd Cir. 1982). In determining that such a charge by the trial court in Boyer was appropriate, the Court of Appeals stated:

> The Court instructed that reckless indifference is the equivalent of intentional misrepresentation 'because you may not recklessly represent something as true which is not true even if you don't know it is due to reckless conduct on your part.' The instruction continued:
>
> > a fraudulent intent is necessary to sustain the charge of a scheme to defraud. An untrue statement or representation which is in fact false only amounts to fraud if the defendant making it either knew the statement to be false and he made it, made the statement with the intent to defraud, or, as I have said, these things were due to recklessness on his part.
> >
> > [Ibid.]

Similarly, given the record in this case, even in the face of respondent's protestations, the Board can legitimately infer specific intent by respondent herein. In this regard, the parallels to In re Spina, 121 N.J. 378 (1990) must be noted. In Spina, the attorney argued to the Court that this Board had exceeded the "four corners" of his guilty plea to "unauthorized borrowing" in concluding that he was a "calculating thief": Spina reasoned that the statute did not require a showing of a specific intent to steal, and that, therefore, the Board's conclusion rested on unproven allegations. Id. at 389.

In determining that the Board's analysis was appropriate, the Court stated:

> Respondent's argument suffers from sterility. When, as here, the proceedings are initiated by a motion for final discipline based on a criminal conviction, the ethics authorities and this Court may be required to review any transcripts of a trial or plea and sentencing proceedings, pre-sentence report, and any other relevant documents in order to obtain the 'full picture.' This Court has held that it is appropriate to consider 'evidence [that] does not dispute the crime but shows mitigating circumstances [relevant to] the issue of whether the nature of the conviction merits discipline and if so, the extent thereof.' *In re Mischlick, 60 N.J. 590, 593, 292 A.2d 23 (1972)*. That principle suggests that it is appropriate as well to examine the totality of circumstances, including the details of the offense, the background of respondent, and the pre-sentence report in reaching an appropriate decision that gives due consideration to the interests of the attorney involved and to the protection of the public.
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> [In re Spina, supra, 121 N.J. at 389]

See, also, In re Skevin, 104 N.J. 476, 485-486 (1986) (where the Court disbarred an attorney for knowing misappropriation of client funds, despite that attorney's denial of knowledge, in the face of clear and convincing evidence that the attorney's actions with regard to the trust account "posed a at least realistic likelihood of invading the accounts of another client"; In re Sommers, 114 N.J. 209 (1989); In re Howard, 121 N.J. 173 (1990).

> The concept arises in a situation where the party is aware of the highly probable existence of a material fact, but does not satisfy himself that it does not in fact exist. Such cases should be viewed as acting knowingly and not merely as recklessly. The proposition that willful blindness satisfies for a requirement of knowledge is established in our cases. (Citations omitted).
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> [In re Skevin, supra, 104 N.J. at 486]

As in Spina, respondent's argument that he acted with "reckless indifference", rather than knowingly or willfully suffers from sterility. While it may be respondent's view that his convictions were for "aberrational and episodic misconduct, which was not knowing or willful" (Brief of September 3, 1992 at 15), this view does not accurately reflect the full picture presented by the relevant documents in this case. As noted, in the Illinois matter, respondent specifically admitted to an illegal conspiracy that was both knowing and willful. In the Guam/California matter, a review of both the pertinent law and the pertinent facts — those to which respondent admitted together with those provided by the numerous relevant documents in this matter, including, in particular, the specific findings of the Ninth Circuit Court of Appeals that respondent had engaged in fraud and embezzlement —

confirms to the Board that respondent's actions were also knowing and willful.

The calculus for discipline in all disciplinary cases arising from criminal conviction must include both the nature and severity of the crime, whether the crime was related to the practice of law, and mitigating factors, such as evidence of the attorney's good reputation or character. In re Kushner, 101 N.J. 397, 400 (1986). There is no absolute that requires a certain penalty be imposed for a conviction of a certain crime. In re Alosio, 99 N.J. 84, 89 (1985); In re Friedman, 106 N.J. 1, 6 (1987). However, "certain types of ethical violations are, by their very nature, so patently offensive to the elementary standards of a lawyer's professional duty that they per se warrant disbarment." In re Conway, 107 N.J., 168, 180 (1987). It is also clear that, even where it is unlikely that the attorney will repeat his misconduct, certain forms of misbehavior mandate disbarment. In re Lunetta, 118 N.J., 443 (1989) (where the Court found the attorney's behavior in furthering a complex criminal scheme so "impugned the integrity of the legal system that disbarment would be the only appropriate means to restore the public confidence).

Here, respondent's conduct continued from November 1985 through January 1987 in the Illinois matter — a fourteen-month span. The Guam events occurred between January 1986 and April 1986. Thus, it cannot be said that these were isolated incidents or that the misconduct was aberrational or episodic.

Although respondent's conduct did not directly relate to the practice of law, "an attorney is obligated to adhere to the high standards of conduct required of a member of the bar even though his activities did not involve the practice of law." In re Huber, 101 N.J. 1, (1985); In re Suchanoff, 93 N.J. 226, 230-231 (1983).

The Court has not acted on any case identical to this, involving, as it does, both conspiracy to defraud the United States and mail fraud. Guidance can be gained, however, from other similar misconduct. Convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to theft by deception and fraud, have uniformly led to disbarment. In re Rigolisi, 107 N.J. 192 (1987); In re Baldino, 105 N.J. 453 (1987); In re Surgent, 104 N.J. 566 (1986). Furthermore, in In re Huber, 101 N.J. 1 (1985), disbarment resulted for convictions on federal charges of conspiracy, false statements, mail fraud, perjury and racketeering. There, a non-practicing attorney, with a controlling interest in a New Jersey hospital supply house, falsified invoices, inflated manufacturers' costs, and charged "phantom freight" costs for unrendered services, thereby defrauding area hospitals. Similarly, in In re Tumini, 95 N.J. 18 (1983), an attorney was disbarred for, among other things, his involvement in the laundering of funds issued from a municipal redevelopment authority.

Both the Illinois and Gaum/California cases are extremely serious. Individually, each would border on, if not require, disbarment. In one, respondent was involved in a conspiracy to

defraud the United States government. In the other, respondent defrauded the Guam government by embezzling funds intended for other purposes. As noted in the California indictment, respondent was to personally profit from his misconduct, thus leading to the inescapable conclusion that respondent was motivated by greed.

The Board is aware of respondent's past active involvement in community service, as well as his efforts to resettle numerous immigrants from Eastern Europe, together with various character references submitted in his behalf.

Nonetheless, as exemplified by his criminal conduct, respondent made a conscious choice to engage in illegal ventures. In the Board's view, no amount of mitigation could spare respondent from disbarment. The Board, therefore, unanimously recommends that respondent be disbarred. Three members did not participate.

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

Dated: 2/1/95 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board