

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-161

IN THE MATTER OF :
ANDRE L. MCGUIRE, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: July 20, 1994

Decided: October 29, 1994

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

Lewis P. Sengstacke 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"), based upon respondent's criminal conviction, on October 18, 1993, of conspiracy to violate the narcotics laws, contrary to N.J.S.A. 2C:5-2, and the third-degree crime of possession of cocaine, in violation of N.J.S.A. 2C:35-10a(1). On December 3, 1993, the trial court merged the conspiracy charge with the possession of cocaine

charge for purposes of sentencing. Respondent was sentenced to probation for a period of two years and ordered to perform 100 hours of community service.

The relevant facts, as recited in the OAE's brief, were set forth in the presentence report:

On February 26, 1992 the Honorable Judge Brown of the Superior Court of New Jersey signed a search warrant for a one family house located at 40 Longfellow Avenue in Newark, New Jersey. On February 23, 1992 Narcotic Bureau detectives responded to 40 Longfellow Avenue to execute the search warrant of premises. Upon detectives surrounding the house and gaining entry, detectives responded to the second floor where the occupants of the house had run to. Detectives observed a male who was later identified as Claude McGuire climbing into a crawl space located inside a hallway closet. Another officer at this time observed another male jump out of the bathroom window, this male upon the officer responding after him was found to be Bruce Johnson, a Newark Police Officer. At the time of the incident, Mr. Johnson was observed to throw several items to the ground, as he attempted to run across the roof of the house. These items were recovered and found to be 8 clips, of ten vials and each with rubber bands containing CDS or suspected cocaine for a total of 80 vials, all containing blue tops. Mr. Johnson proceeded [sic] across the roof and attempted to jump, when the officers yelled, 'Stop police.' At this time, the officer observed Mr. Johnson to be holding his service weapon in his right hand. The officer yelled again, 'Police' at which time Mr. Johnson turned completely around and stated, 'It's me Bruce. I'm a cop.' The undersigned immediately told Mr. Johnson to place his gun on the roof with him complying immediately. Mr. Johnson then walked back to the officer at which time another detective yelled we got the product, and placed Mr. Johnson under arrest. The following people were found: William Robinson, Joseph Singletary, Tamika Alexander, and Andre McGuire, the owner of the house. In the same room were items considered as drug paraphernalia, along with seven loose vials on the floor. Five of the vials contained red tops and two contained blue tops, along with a plate which contained numerous empty vials and tops and a cardboard sign which indicated house rules to obey when getting high in the house. These items were recovered by the officers and placed

into a large plastic bag to be held as evidence. The occupants of the room were all placed under arrest and advised of their rights. Upon a search of Andre McGuire's bedroom who was also found to be an attorney at law for Newark, New Jersey, was found from an open fire safe three tin foils which when opened proved to contain suspected cocaine in each. Also found in the safe was \$3,521.00 in cash. All items found were taken and submitted as evidence. One officer remembered observing another male run into the closet in the craw [sic] space which he proceeded [sic] to same and after a brief search found Claude Mc Guire in the roof area of the house. He also was placed under arrest. Officers also took the following items to be checked as for their use in possible illegal drug activity, which were submitted as evidence. One computer, printer, name frame, and three typewriters. The vehicle that Mr. Johnson drove to the scene was towed to Dente's Towing Garage due to arrest. Claude Mc Guire and Tamika Alexander were also arrested for open bench warrants.

[OAE's Brief at 1-2]

On May 12, 1992, respondent was temporarily suspended from the practice of law for failure to comply with a fee arbitration determination requiring him to return \$2,500 to his client, Samuel Lee Clark. Respondent's temporary suspension remains in effect.

At the Board hearing, respondent's counsel argued that to suspend respondent would be more punitive than productive, inasmuch as respondent and his family are in dire financial straits and respondent demonstrated a remarkable recovery from the alcohol and drug problems that caused his transgressions in the first place. Counsel also asked that, if the Board is to recommend a suspension, credit be given to respondent for the period served during his temporary suspension since May 12, 1992. Counsel added that respondent has recently returned the \$2,500 fee to his client.

In turn, the OAE asked the Board to recommend a six-month

suspension, relying on In re Peia, 111 N.J. 318 (1988), In re Stanton, 110 N.J. 356 (1988) and In re Pleva, 106 N.J. 637 (1987), where the attorneys' use of drugs was considered as neither innocuous nor casual, warranting a period of suspension for either six or nine months. According to the OAE, this case is distinguishable from the recent cases that resulted in a three-month suspension for possession of cocaine because neither of those attorneys were convicted of a crime. Instead, they either pleaded guilty to a disorderly persons offense or were admitted into a conditional discharge program. See In re Constantine, 131 N.J. 452 (1993); In re Karwell, 131 N.J. 396 (1993); In re Sheppard, 126 N.J. 210 (1991); and In re Nixon, 122 N.J. 290 (1991).

CONCLUSION AND RECOMMENDATION

A conviction in a criminal matter is conclusive evidence of an attorney's guilt in a disciplinary proceeding. In re Goldberg, 105 N.J. 278, 280 (1987); In re Tusso, 104 N.J. 59, 61 (1986); In re Rosen, 88 N.J. 1, 3 (1981); R. 1:20-6(c)(1). No independent examination of the underlying facts is, therefore, necessary to ascertain guilt. In re Bricker, 90 N.J. 6, 10 (1982). The only issue to be determined is the measure of discipline to be imposed. In re Goldberg, supra, 105 N.J. at 280; In re Kaufman, 104 N.J. 509, 510 (1986); In re Kushner, 101 N.J. 397, 400 (1986).

Respondent was convicted of conspiracy to violate the

narcotics law and possession of cocaine, in violation of N.J.S.A. 2C:5-2 and N.J.S.A. 2C:35-10a(1). Respondent's conviction is clear and convincing evidence of his violation of RPC 8.4(b) (conduct that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer). By involving himself with illegal drugs, respondent placed in question his integrity and respect for the law. In re Kaufman, supra, 104 N.J. at 514 (1986). Respondent's misconduct is deserving of a period of suspension. Nevertheless, the Board is not persuaded that respondent's offenses merit a suspension longer than three months. Although the Board is aware that respondent was a frequent drug-user, that factor must be counterbalanced by respondent's ultimate recognition of the necessity to overcome his addiction and his consequent recovery. As attested by the report of Marion J. Fritsch, MA, CAC, CEAP, dated April 26, 1994, respondent "is working very hard to get his life in order. It is our opinion that Mr. McGuire has an excellent chance of ongoing recovery if he continues to practice the principles he is incorporating into his life." After forty-two days of inpatient therapy, following his February 1992 arrest and after participation in the Alcoholics Anonymous and Narcotics Anonymous programs, respondent, in the Board's view, is ready to become a productive member of society and to discharge his professional duties in a responsible fashion.

In light of the foregoing, a five-member majority of the Board recommends that respondent be suspended for a period of three months, with no credit for the suspension already served for an

unrelated matter (fee arbitration matter). One member would have recommended a three-month suspension retroactive to May 12, 1992, the date of respondent's temporary suspension. One member voted for disbarment. Two members did not participate.

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

Dated: 10/29/94

By: *Elizabeth L. Buff*
Elizabeth L. Buff
Vice-Chair
Disciplinary Review Board