

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-190

IN THE MATTER OF :
ALLAN F. MEYER, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: July 21, 1993

Decided: August 1, 1994

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

Respondent waived appearance for oral argument.

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 Reciprocal Discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's suspension from the practice of law in the State of Florida for a period of three years, effective February 4, 1993.

Respondent was admitted to the practice of law in New Jersey in 1969 and in Florida in 1974. On March 15, 1989, respondent was indicted by a Federal Grand Jury in the Southern District of Florida. The nine-count indictment charged respondent with conspiracy, making false statements with respect to documents required by ERISA (Employee Retirement Income Security Act of 1974, 29 U.S.C.A. §1001-1045), embezzlement from an employee benefit plan, and mail fraud (Exhibit A to OAE's brief).

On December 6, 1989, following a three-week jury trial, respondent was convicted of counts one and two of the indictment and was acquitted of the other seven counts. In particular, respondent was found guilty of conspiracy to make false statements with regard to documents required by ERISA (count 1), in violation of 18 U.S.C.A. 371, and making false statements regarding documents required by ERISA (count 2), in violation of 18 U.S.C.A. 1027. Respondent was found not guilty of embezzlement (count 3), and mail fraud (counts 4-9) (Exhibit B to OAE's brief). On February 26, 1990, respondent was sentenced to a one-year term of imprisonment (Exhibit C to OAE's brief).

Respondent's conviction was affirmed by the United States Court of Appeals for the Eleventh Circuit on August 13, 1991. The United States Supreme Court denied his petition for certiorari on March 9, 1992. Respondent began serving his one-year sentence on or about February 28, 1992.

Respondent's criminal conviction resulted from dealings with Joseph J. Higgins, a convicted felon and disbarred New Jersey lawyer. In re Higgins, 110 N.J. 690 (1988). Higgins was president and owner of the Omni Funding Group, Inc. ("Omni"). Omni served as a mortgage broker for a pension fund belonging to the Mid-Jersey Trucking Industry, Local 701. Higgins was a fiduciary of the pension fund by virtue of his ownership of Omni, the fund's mortgage broker. Under Title 1 of ERISA (29 U.S.C.A. §1023-24), a fiduciary of a pension fund cannot execute transactions in which he or she is a party-in-interest. In essence, ERISA regulations

protected the integrity of the union pension fund by forbidding Higgins to authorize a loan to himself. Respondent circumvented these ERISA regulations to enable Higgins to obtain a loan from the pension fund.

Respondent was part owner of a citrus grove that he wanted to sell to Higgins. Under the name Glades Citrus Co., Inc., respondent borrowed \$1,075,000 from the pension fund. Higgins, as president and owner of Omni, authorized the loan. Respondent, again under the name Glades Citrus Co., Inc., used the money to purchase the entire citrus grove including his own interest. Respondent then transferred ownership of the citrus grove to Higgins via a quit claim deed and allowed Higgins to make monthly mortgage payments through Glades Citrus Co.

As to disciplinary proceedings in the State of Florida, respondent entered into a consent judgment, agreeing to a three-year suspension (Exhibit D to OAE's brief). The consent judgment was approved in a referee's report, dated January 11, 1993 (Exhibit E to OAE's brief). On February 4, 1993, the Supreme Court of Florida issued an order suspending respondent for three years (Exhibit F to OAE's brief).

Pursuant to R. 1:20-6(b), respondent was temporarily suspended in New Jersey on February 2, 1990. In re Meyer, 118 N.J. 429 (1990). The temporary suspension remains in effect as of this date. The OAE requested that reciprocal discipline be imposed and at respondent receive a three-year suspension in New Jersey.

* * *

At its July 21, 1993 meeting, the Board decided to carry this matter to September 8, 1993, in order to determine whether respondent had been temporarily suspended in Florida, prior to the imposition of his three-year suspension. Upon inquiry, the Board was informed that respondent had in fact been temporarily suspended on April 11, 1990.

CONCLUSION AND RECOMMENDATION

Upon review of the full record, the Board recommends that the OAE's motion be granted and that respondent be reciprocally disciplined in New Jersey for a period equal to his suspension in Florida. Respondent has not disputed the factual findings of the Supreme Court of Florida. Hence, the Board adopts those findings. In re Pavilonis, 98 N.J. 36, 40 (1984); In re Tumini, 952 N.J. 18, 21 (1979); In re Kaufman, 81 N.J. 300, 302 (1979). The Florida Court found that, by reason of respondent's federal convictions, he had violated R. 3-4.2 (violation of the Rules of Professional Conduct is cause for discipline) and R. 3-4.4 (the commission of a crime is cause for discipline) of the Rules of Discipline. He also violated R. 4-8.4(a) (a lawyer shall not violate the Rules of Professional Conduct) and R. 4-8.4(b) (a lawyer shall not commit a criminal act) of the Rules of Professional Conduct.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-7(d), which directs that:

(d) The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

- (1) the disciplinary order of the foreign jurisdiction was not entered;
- (2) the disciplinary order of the foreign jurisdiction does not apply to the respondent;
- (3) the disciplinary order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (4) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (5) the misconduct established warrants substantially different discipline [emphasis added].

Respondent has not demonstrated that any of the exceptions contemplated in R. 1:20-7(d) (1) through (5) apply. The discipline accorded in New Jersey should, therefore, correspond to that imposed in Florida. In re Pavilonis, supra, 98 N.J. at 41; In re Tumini, supra, 952 N.J. at 22; In re Kaufman, supra, 81 N.J. at 303. Moreover, respondent has not advanced any mitigating factors that have not already been considered by the Florida Court.

Respondent was convicted of conspiracy to make false statements and making false statements with respect to documents required by ERISA. Both of these crimes are felonies under federal

law. Respondent's conviction clearly and convincingly demonstrates that he has committed criminal acts that reflect adversely on his "honesty, trustworthiness or fitness as a lawyer in other respects." RPC 8.4(b).

A seven-member majority of the Board, therefore, recommends that respondent be suspended from the practice of law in New Jersey for a period of three years, retroactive to February 4, 1993, the date of his three-year suspension in Florida. In addition, the Board recommends that respondent's reinstatement in New Jersey be conditioned on his prior reinstatement in Florida. Two members dissented, voting to disbar respondent.

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

Dated: _____

7/1/1994

By: _____



Raymond R. Trombadore
Chair
Disciplinary Review Board