

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-411

IN THE MATTER OF :
:
PATRICIA LYNN HASBROUCK, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 9, 1994

Decided: July 1, 1994

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Steven S. Weinstein 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 based upon a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). Respondent stipulated that he violated RPC 8.4(b) (commission of a criminal act that reflects adversely on her honesty, trustworthiness or fitness as an attorney) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the practice of law in New Jersey in 1981. She has been in private practice in Washington, Warren County.

An unspecified number of years ago, respondent began suffering from migraine headaches. Her father, a physician, prescribed pain-killing medication for her. Gradually, respondent started taking

the medication more frequently. In 1986, she began taking sheets from her father's prescription pads and forging prescriptions for the drug. At first, respondent had the prescriptions filled only at local pharmacies so the prescription would not be questioned. As she needed to have the prescriptions filled more frequently, she traveled greater distances. When respondent's father retired, his office supplies, including prescription pads, were stored at respondent's home. Respondent wrote prescriptions for herself, not only in her own name, but also in the names of her husband and her sister.

On April 12, 1993, respondent was apprehended attempting to have a prescription filled in her sister's name. The pharmacist had called the telephone number on the prescription for verification and learned that respondent's father had been retired for over one year. The pharmacist telephoned the police. Respondent was arrested on that date for violation of N.J.S.A. 2C:21-1a(3), uttering a forged prescription, and violation of N.J.S.A. 2C:35-13, obtaining a controlled dangerous substance by fraud.

Respondent was admitted to the Pre-Trial Intervention program (PTI) by order dated August 2, 1993. Respondent entered Clear Brook Manor on April 17, 1993, completed the prescribed twenty-eight day program for substance abuse and was discharged on May 15, 1993.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

Although respondent did not plead guilty and was not found guilty of a crime or disorderly persons offense, she stipulated that her conduct had violated RPC 8.4(b) and RPC 8.4(c). The sole issue is, thus, the appropriate measure of discipline.

Respondent's illegal activity was not related to the practice of law. See In re Kinnear, 105 N.J. 391, 395 (1987). Nonetheless, good moral character is a basic condition for membership in the bar. In re Gavel, 22 N.J. 248, 266 (1956). Any misbehavior, private or professional, that reveals lack of good character and integrity essential for an attorney, constitutes a basis for discipline. In re LaDuca, 62 N.J. 133, 140 (1973). That respondent's activity did not arise from a lawyer-client relationship, that her behavior was not related to the practice of law, or that this offense was not committed in her professional capacity is immaterial. In re Suchanoff, 93 N.J. 226, 230 (1983); In re Franklin, 71 N.J. 425, 429 (1976).

The OAE argued that respondent should be suspended for a period of six months, based upon the Court's ruling in In re Adubato, 106 N.J. 655 (1987). In Adubato, the attorney was guilty of a violation of N.J.S.A. 24:21-22a(3), attempt to obtain a

controlled dangerous substance by fraud. Like respondent, Adubato suffered from migraine headaches for which two physicians prescribed dilaudid. He became addicted to dilaudid. When he no longer had a valid prescription, he resorted to misrepresentation and fraud to obtain the drug. Although his misconduct was confined to one attempt to obtain dilaudid, he was suspended for a period of six months. Adubato, however, had a history of drug abuse, including a previous conditional discharge for possession of marijuana.

More severe discipline was imposed in In re McCarthy, 119 N.J. 437 (1990). McCarthy was guilty of distribution of a controlled dangerous substance, in violation of N.J.S.A. 24:21-19(a)(1), and obtaining a controlled dangerous substance for himself by misrepresentation, fraud, forgery, deception or subterfuge, in violation of N.J.S.A. 24:21-22(a)(3). Between April 1982 and May 1984, McCarthy, a practicing psychiatrist, wrote 108 prescriptions for four patients for controlled dangerous substances, without a valid Drug Enforcement Agency (DEA) registration number. He further stipulated that, between July 1981 and May 1984, he deceptively wrote seventeen prescriptions, using the names of family or friends, in order to obtain controlled dangerous substances for his personal use. The Court deemed the twenty-seven months served, from the date of McCarthy's temporary suspension, to be sufficient discipline.

In light of the length of time that respondent's transgressions spanned, the repeated incidents and the careful

calculation involved in her fraudulent actions, the Board is of the view that respondent's misconduct falls between that of Aduato and McCarthy. Although the record is not specific, respondent's misconduct extended over years and, although she knew right from wrong, involved the repeated commission of criminal acts. Most significant were respondent's repeated acts of forgery. This misconduct is serious and warrants stern discipline.

In light of these circumstances, the Board believes that a one-year suspension would be appropriate discipline for respondent's misconduct. The Board, however, remains mindful that the purpose of discipline is not punishment of the attorney, but "protection of the public against the attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout 76 N.J. 308, 315 (1978).

The Board sees no useful purpose to be served by imposing an active suspension on this attorney. Several factors persuaded the Board that to suspend her would not well serve the goals of the disciplinary system.

The record reveals that respondent has overcome her addiction. Exhibit H to the stipulation is a report from Clear Brook Inc., regarding respondent's treatment at that facility. Interestingly, the report refers to respondent's alcoholism and prescribed course of treatment to overcome that difficulty. There is no mention of addiction to prescription medication in the report other than the following language: "[s]he was able to share an understanding of

the disease concept of alcoholism and her need for continued abstinence from alcohol, as well as all mood-altering chemicals." However, given that two of the conditions attached to respondent's admission into PTI were random urine-monitoring and continued out-patient treatment, it may be safely concluded that respondent is, in fact, no longer dependent on pain-killing medication. The Board is of the opinion that respondent poses no threat to her clients or to the public.

The Board is aware that respondent's actions were brought about by her addiction to prescription drugs. In In re Zauber, 122 N.J. 87 (1991), the Court considered whether drug addiction can serve as a mitigating factor in a disciplinary case. In Zauber, the attorney was disbarred after his conviction for Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy and solicitation of kickbacks in connection with an employee benefits plan. The attorney also pled guilty to obtaining controlled dangerous substances (pain-killers) by fraud or misrepresentation, on approximately 100 occasions, and to forgery. The attorney contended that his addiction to prescription drugs, cocaine and heroin should be factored into the Court's determination of the appropriate discipline for his participation in a pension-fraud scheme. The Court held that

[a]lthough mitigating factors are relevant to the severity of discipline, drug addiction is generally not such a factor. Moreover, drug addiction, whether to legal or illegal drugs, may not mitigate serious ethical infractions such as misappropriation or crimes involving dishonesty, fraud, deceit, or misrepresentation. [Emphasis supplied]. [Citations omitted].

[Id. at 94.]

This matter is distinguishable from Zauber, however. Although respondent's criminal conduct clearly involved dishonesty, fraud, deceit and misrepresentation, the misconduct in Zauber was much more serious. In addition to his prescription drug crime, Zauber was convicted under RICO of egregious criminal acts, which he sought to mitigate by blaming his addiction. On the other hand, the misconduct for which respondent faces discipline stemmed solely from her attempts to obtain the prescription drugs to which she was addicted. Although serious, her conduct was not nearly as egregious as that exhibited by Zauber. Under these circumstances, the Board believes that her addiction to prescription drugs should be considered as a mitigating factor.

The Board was convinced that to suspend respondent would be counter-productive to her rehabilitation and serve no purpose for the public. The Board also wishes to stress that its recommendation is based on the special and compelling circumstances present in this matter and is in no way intended to forecast similar favorable treatment in all future situations involving drug-addiction.

In light of the foregoing, the Board unanimously recommends that a one-year suspended suspension be imposed. The Board also

recommends that respondent continue out-patient treatment for one year and be subject to periodic testing to confirm that she remains drug-free. Should any of the above conditions not be satisfied, the Board recommends that respondent's one-year suspension go into effect. One member did not participate.

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

Dated: 7/1/94

By: 

Raymond R. Trombadore
Chair

Disciplinary Review Board