Disciplinary Review Board
Docket No. DRB 90-068

IN THE MATTER OF :
EDWARD G. REISDORF, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 20, 1990

Decided: October 5, 1990

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

Respondent appeared pro se.

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

This matter is before the Board on a Motion For Final Discipline Based Upon a Criminal Conviction filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-6(c)(2)(i). Respondent was convicted of willful failure to supply information to the Internal Revenue Service, in violation of 26 U.S.C.A. 7203.

The government's version of the underlying facts, as read into the record at the plea hearing, is as follows:

> . . . in 1977 and 1978, [respondent] promoted seven separate literary tax shelters involving books purchased by him from Robin Moore which were purportedly co-authored by Robin Moore. In 1977, he sold five such books to investors: Trinity Implosion, Rhodesia, Diamonds and Blood, The Death Disciple, and Rotunda (a two-book promotion), and Our Missile's Missing and Aloha (another two-book promotion). In 1978, he promoted two further Moore-related tax shelters: Elsa: Operation Leprechaun and Super Rex (a two-book promotion) and

The Last Coming. Except for Diamonds and Blood, which was co-authored by Moore, it would appear that these books were not actually authored by Robin Moore, although the government does not claim that [respondent] was aware that Mr. Moore was not the co-author of the books. His name was utilized in order to lend plausibility to the basis at which the books were valued. None of the books earned royalties sufficient to permit the taxpayers to pay off the indebtedness incurred in connection with the purchase of the rights to the books.

In 1980, Elizabeth McDaniels, an I.R.S. Revenue Agent, began an investigation of the Robin Moore tax shelters that had been promoted by [respondent]. She served a summons upon [respondent], returnable on November 4, 1980, which required that [respondent] turn over 'all records relative to income and expenses regarding purchases and sales of copyrights during the years 1977, 1978 and 1979.' Although [respondent] did turn over many documents to Ms. McDaniels, there were two specific types of documents that he failed to produce, and this failure to disclose these documents is the gist of the information against [respondent], which alleges that he willfully failed to supply information to the Secretary.

The first type of document which [respondent] failed to provide was a side agreement by which what were purported to be "recourse" notes had been rendered illusory. In order to understand why these side agreements were material to Ms. McDaniels' examination, it is necessary to review the manner in which the tax shelters worked.

A taxpayer who purchases the rights to receive royalties from a manuscript owns property held for the production of income which may be depreciated. The amount of the taxpayer's depreciation depends upon the taxpayer's basis in the property, that is, the amount that he has paid for the property. As a general rule, the taxpayer's basis includes both the cash and the credit portion of the price. Crane v. Commissioner, 331 U.S. 1 (1947). When the credit portion of the price consists of a non-recourse note, however, the

IRS will scrutinize carefully the fair market value of the property in order to determine the bona fide nature of the note: if the income from the property is unlikely to satisfy the non-recourse note, the IRS will not recognize the portion of the taxpayer's basis represented by the non-recourse note.

A series of independent appraisers would testify that [respondent] purchased and sold these manuscripts at prices far exceeding their fair market values. [Respondent] resold rights to the books to a series of investors who paid a small portion of the purchase price in cash and delivered short-term promissory notes for the balance of their downpayments and long-term recourse notes for the balance of the purchase price. Because the stated value of the books was substantially in excess of their fair market value, the fact that the notes were recourse notes could be expected to assist in justifying the taxpayers' basis.

However, a number of investors who purchased rights in literary tax shelters would testify that [respondent] provided them with written assurances that notes would not have to be paid if the books did not earn sufficient income to pay off the notes. These agreements made the recourse notes illusory. For example, in the Elsa and Super Rex promotion, [respondent] provided two investors with a collateral agreement that stated that their recourse notes would be forgiven if the notes given by [respondent] as part of his purchase of the manuscripts was [sic] forgiven. These collateral agreements were not disclosed to revenue Agent McDaniels in response to the summons, although they would have aided Agent McDaniels' examination.

With respect to the second type of documents, the letters from Condor, it is again necessary to place the tax shelters in context. One manner of calculating the depreciation of a literary work is to use the income-forecast method. In this method, the number of books sold in a certain year is divided by the number of books expected to be sold, and this fraction is multiplied by the taxpayer's basis. In one year, it appeared that there were no sales of one of the books, and accordingly, since the fraction

> by which the basis had to be multiplied was zero, no depreciation would have been permitted under the income forecast method.
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> Gerald Rubinsky, Robin Moore and Frederick Sturges would all testify that [respondent] made requests for letters attesting to the sale of the books. Rubinsky made a tape-recording of one such conversation. Rubinsky had sent to [respondent] a letter that stated that 40,150 copies of the book Our Missile's Missing had been shipped to a warehouse, rather than put into distribution. In the tape-recorded conversation with Rubinsky, [respondent] demanded that Rubinsky send him another letter in which a period was placed after the word "shipped" and the reference to a warehouse was deleted. Rubinsky and Moore responded to [respondent's] demand by changing the word "warehouse" to "fulfillment agency." This second letter was used as a basis for calculating depreciation.
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> [Respondent] turned over to revenue Agent McDaniels the "fulfillment agency" letters, and did not provide the original letter he had received from Condor, the letter using the word "warehouse." If the Revenue Agent had been supplied with the original letters, and had known that the books were sitting in a warehouse rather than in the hands of buyers, the Schedule C's [sic] which (respondent) had provided to the investors, claiming depreciation on the basis of books sold, would have been cast into doubt.

Respondent was subsequently charged by information filed in the United States District Court for the District of Connecticut with willful failure to supply tax information to the Internal Revenue Service, in violation of 26 U.S.C.A. 7203. A plea agreement was reached with the government and, on February 2, 1989, respondent entered a guilty plea to the information. On May 4, 1989, respondent was sentenced to three years probation, ordered to perform 300 hours of community service and fined $10,000.

CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of respondent's guilt. Matter of Goldberg, 105 N.J. 278, 280 (1978); Matter of Tuso, 104 N.J. 59, 61 (1986); R. 1:20-6(c)(1). Accordingly, there is no need to make an independent examination of the underlying facts to ascertain guilt. Matter of Conway, 107 N.J. 168, 169 (1987). The extent of final discipline to be imposed is the only issue to be determined. Matter of Goldberg, supra, 105 N.J. at 280; In re Infinito, 94 N.J. 50, 56 (1983).

Respondent has been convicted of willful failure to supply information to the Internal Revenue Service. Respondent's criminal conviction demonstrates that he has committed "... illegal conduct that adversely reflects on his fitness to practice law." DR 1-102(A)(3).[1]

Although an attorney's conviction for the willful failure to provide information to the Internal Revenue Service is a matter of first impression in New Jersey, the Board notes that respondent was convicted under 26 U.S.C.A. 7203, the same statute that charges willful failure to file tax returns. New Jersey has a long line of disciplinary cases where an attorney has been guilty of failure to file tax returns. These cases have uniformly resulted in a term of suspension from the practice of law.

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[1]The Rules of Professional Conduct replaced the Disciplinary Rules, effective September 1984. Respondent's misconduct occurred prior to that date. Therefore, the Disciplinary Rules apply.

> [We] have many times said that the dereliction [failure to file an income tax return] is a serious one on the part of any member of the Bar, no matter what the excuse, and that a period of suspension is required in all such cases.
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> [In re Spritzer, 63 N.J. 532, 533 (1973) (citations omitted).]

See e.g. Matter of Moore, 103 N.J. 702 (1986); In re Fahy, 85 N.J. 698 (1981); See also, Matter of Chester, _____ N.J. _____ (1990); Matter of Willis, 114 N.J. 42 (1989); In re Hughes, 69 N.J. 116 (1976) (six-month suspension in each case).

In mitigation, respondent argued that his misconduct occurred ten years earlier. Indeed, there have been occasions where the Board has considered the lapse of time between an attorney's misconduct and the imposition of discipline to be a mitigating factor. See Matter of Stier, 112 N.J. 22 (1988); Matter of Kotok, 108 N.J. 314 (1987). However, the passage of time has been considered in mitigation where it is the fault of the disciplinary system. Here, respondent pleaded guilty to the charges in February 1989, and was sentenced in May 1989. The Office of Attorney Ethics filed the Motion for Final Discipline on March 7, 1990. No delay can be attributed to the Office of Attorney Ethics, particularly in light of the fact that respondent failed to advise that office of his conviction.

Respondent also argued that there was no loss of revenue to the government because all cases were settled in part as a result of his assistance. In addition, respondent pointed to his good record for the last ten years. The Board has noted that respondent

currently performs only pro bono legal services and earns his living as a real estate developer.

In aggravation, the Board has considered respondent's prior six-month suspension. In June 1979, the Court suspended respondent for, inter alia, overreaching in an estate matter. In re Reisdorf, 80 N.J. 319 (1979).

In the case at bar, respondent engaged in a deliberate scheme of tax fraud. In view of the foregoing, the Board unanimously recommends that respondent be suspended for a period of one year.

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

Dated: 10/5/1990

By: Raymond R. Trombadore
Chair
Disciplinary Review Board