



alcohol treatment program, if deemed necessary by the United States Probation Office.

The prosecution version of the facts is set forth in the presentence report:

The defendant pled guilty to a one-count Information charging him with aiding in the presentation of false corporate income tax returns of J.P. Sasso, Incorporated, for the period ending June 30, 1985. This defendant unlawfully assisted Joseph P. Sasso and others to divert \$79,550.66 from the corporate accounts of J.P. Sasso, Inc., during the period of April 5, 1985 to July 23, 1985.

This matter came to the attention of federal law enforcement authorities as part of an ongoing investigation into labor racketeering in the Union County area. Search warrants were executed at several locations and one search warrant included a search of the home of one Joseph P. Sasso. Through analysis of the records of Mr. Sasso's construction company, J.P. Sasso, Inc., it came to the attention of investigating authorities that a large amount of cash had been generated through Mr. Sasso's business account. Mr. Sasso's business account, in the name of J.P. Sasso, Inc., was held at the First Fidelity Bank in Irvington, and later, the National State Bank in South Orange, New Jersey.

It came to the attention of the authorities that on three separate occasions checks were written on the corporate account of J.P. Sasso, Incorporated.

Two of the checks were written to [Oak Tree Road Associates]<sup>1</sup>. The two checks were then deposited into the individual account of John Gillespie. Gillespie was aware that the check amounts were not reported on the corporate income tax. Mr. Gillespie is an attorney and a friend of John Palaia. One check in the amount of \$51,520.66 was endorsed by Joseph P. Sasso and later endorsed by

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<sup>1</sup> Although the presentence report states that the two checks had been written to John Gillespie, at the sentencing proceeding respondent's attorney corrected that statement to reflect that the checks had been made out to Oak Tree Road Associates and endorsed by Sasso and respondent.

Mr. Gillespie and deposited in Mr. Gillespie's individual account on April 5, 1985. On July 8, 1985, a check in the amount of \$10,530 was again written on the corporate account, endorsed by Mr. Sasso and endorsed by Mr. Gillespie and deposited into Mr. Gillespie's account. In order for a check drawn on a corporate account to be deposited in an individual account, it must have the approval of a bank officer. Mr. Palaia, as Vice President of Commercial Loans for the bank, approved the deposit of both corporate checks in an individual account. John Gillespie then wrote out checks drawn on his individual account to cash and gave the cash to Mr. Sasso. He wrote out approximately eight personal checks between April 1985 and July 1985, in amounts of less than \$10,000. He wrote them in amounts of less than \$10,000 so as to avoid Currency Transaction Reporting requirements. He was following the advice of Mr. Palaia. Mr. Palaia personally approved the checks and wrote his initials on the back of each one of them. Mr. Palaia performed this service for those connected with Mr. Sasso and no one else.

On June 14, 1985, the third check in the amount of \$17,500 was drawn on the corporate account of J.P. Sasso, Inc. The check was endorsed by Mr. Sasso and Mr. Gillespie. Mr. Palaia authorized the deposit of the check into Mr. Gillespie's personal account. Mr. Gillespie then withdrew the \$17,500 in two separate Treasurer's checks, one for \$9,675, the other for \$7,825. Both checks were authorized by Mr. Palaia. The \$9,675 check was cashed by Mr. Gillespie, the \$7,825 check was cashed by one John Amato after being endorsed by Mr. Gillespie and then co-endorsed by Amato. The \$17,500 check was split into two separate checks so as to avoid Currency Transaction Reporting requirements. Mr. Amato was a bookkeeper for Mr. Sasso's business. Mr. Palaia advised Mr. Gillespie to split the checks so as to avoid Currency Transaction Reporting requirements. This money was not declared as income on the corporate tax return of J.P. Sasso, Inc. John Palaia and John Gillespie were aware that the money was not being reported on the corporate income tax return.

Mr. Palaia was introduced to investors through his dealings with Mr. Sasso and Mr. Gillespie. Through a Mr. James Palermo, Mr. Palaia was introduced to one Vincent Craparotta, a partner of Mr. Palermo's in Beybrook Estates, a housing development in

Dover, New Jersey. Palaia knew that Beybrook Estates needed "seed money" in order to get the project started. Mr. Palaia asked Mr. Craparotta about various lots that were offered through Beybrook Estates. He was interested in them for investment purposes. Mr. Palaia obtained the three lots via a "gentlemen's agreement" with Mr. Craparotta to agree to purchase the lots for a total of \$86,000. At that time, Palaia was not required to put down any cash. One and one-half years later, Mr. Palaia inquired about selling the lots as he was in the process of purchasing a home in Bridgewater, New Jersey. Palaia told Mr. Craparotta that he wanted to sell the options and he needed the money for a down payment for the new home. The two of them then decided that Palaia held the option to purchase. Mr. Craparotta needed a short term loan of \$45,000 in which to pay Palaia. Palaia then wrote an internal bank letter for \$45,000 to his bank, the National State Bank, stating that the loan was for on-site improvements for a company owned by Mr. Craparotta. He submitted the letter to the bank for approval. He later related to investigating agents that the justification for payments of the \$45,000 to the company owned by Mr. Craparotta was false.

Palaia stated that he knew before he wrote the report that he was going to be the recipient of the \$45,000 and that he would use the money at the closing of his newly purchased residence. Palaia was furnished with a photocopy of the Atria Construction Management Corporation check number 1336, dated August 21, 1987, for \$45,000 and he said that it was the check that he had received from Mr. Craparotta. Atria Construction and Management Corporation is owned by Mr. Craparotta.

Government sources indicate that the investigation is an ongoing one at this time. They stated that Mr. Palaia has been cooperative in their investigation. Pursuant to his plea agreement, he agreed to provide the grand jury testimony with regard to any criminal activity with regard to Messrs. Sasso, Palermo and Gillespie.

[Presentence report at 2-4.]

Respondent acknowledged that he knew that what he was doing was wrong. He explained, however, that, in early 1985, he was

suffering the consequences of heavy alcohol abuse, which eventually led to the break-up of the engagement with his present wife and the dissolution of his law partnership. After respondent went into a state of depression, he ultimately obtained counselling with a physician trained in alcohol abuse. For the past five years, respondent has abstained from drinking, except for an occasional glass of wine. As respondent indicated to the sentencing Court:

...there's no question that from the outset, what I did I understand was wrong. I've acknowledged that fact throughout. I voluntarily appeared before two grand juries and at no point invoked the 5th.

While I'd like to think and what I'd like the Court to believe is that what I did do was an aberration reflective of my being out of control five years ago . . . . I fortunately could have [gone] either of two ways at that time, and I fortunately recognized the situation, addressed it, and hope to move on.

[transcript of sentencing, Exhibit D to the OAE's brief, at 19-20.]

Respondent offered no plausible explanation for his illegal conduct. At the sentencing proceeding, the court inquired of respondent's counsel:

The Court: Why did Mr. Gillespie accommodate Mr. Palaia?

[Respondent's Counsel]" I think probably because he was not thinking clearly, because he was in a depressed period of his life, because he was drinking, and someone asked him to do something.

[transcript of sentencing, Exhibit D to the OAE's brief, at 17.]

Respondent derived no personal gain from his wrongful act. After July 1985, when he wrote the last check against the second sum of monies deposited in his personal account, respondent of his

own accord refused to participate in subsequent illegal transactions.

On November 28, 1989, the Court temporarily suspended respondent from the practice of law. The Office of Attorney Ethics is seeking respondent's disbarment.

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At its June 20, 1990 hearing, the Board entertained respondent's cross-motion to remand this matter to the district ethics committee for the purpose of supplementing the record with mitigating evidence showing respondent's state of mind at the time of the illegal conduct. After a careful review of the record, supplemented with oral argument, the Board denied respondent's cross-motion for a remand for a limited evidentiary hearing, but allowed respondent the opportunity to submit "any written affidavits, certifications, documents, reports, or any written evidence regarding the alcohol problems allegedly experienced by respondent, that might be relevant to the issue of mitigation."

To show that his behavior was altered by excessive drinking during the relevant time, 1985, respondent offered six certifications or affidavits by persons who were close to him and who witnessed his behavior routinely at that time. These include, among others, his present wife, his law associate, and his secretary for ten years. Attached to his wife's affidavit is a letter from A. Starr Ingram, M.D., a specialist in alcohol family

therapy, who saw respondent late in 1986. Dr. Ingram's diagnosis was "physical and psychological addiction to alcohol."<sup>2</sup>

#### CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of respondent's guilt in disciplinary proceedings. Matter of Goldberg, 105 N.J. 278, 280 (1987); Matter of 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 quantum of discipline to be imposed. Matter of Goldberg, *supra*, 105 N.J. at 280; Matter of Kaufman, 104 N.J. 509, 510 (1986); Matter of Kushner, 101 N.J. 397, 400 (1986); In re Addonizio, 95 N.J. 121, 123-124 (1984); In re Infinito, 94 N.J. 50, 56 (1983); In re Rosen, *supra*, 88 N.J. at 3; In re Mirabelli, 79 N.J. 597, 602 (1979); In re Mischlich, 60 N.J. 590, 593 (1977).

The illegal activity underlying respondent's conviction is not related to the practice of law. See Matter of 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

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<sup>2</sup> Dr. Ingram reports that, although respondent appeared for five visits, he declined further treatment through what is known as a formal intervention program. In her affidavit, respondent's wife explains that ". . . by the time we saw Dr. Ingram, John had determined to 'straighten out' his life, was working diligently at his law practice, and had controlled his alcohol problems."

(1956). Any misbehavior, private or professional, that reveals lack of the good character and integrity essential for an attorney constitutes a basis for discipline. In re LaDuca, 62 N.J. 133, 140 (1973).

The criminal offense for which respondent was convicted is indeed serious. The Court has not hesitated to disbar attorneys who were involved in serious criminal activities — see, e.g., Matter of Mallon, — N.J. — (1990), Matter of Lunetta, 118 N.J. 443 (1989), and Matter of Alosio, 99 N.J. 84 (1985) — or to impose a lengthy term of suspension in instances where disbarment was unwarranted. In In re Silverman, 80 N.J. 489 (1979), the attorney pleaded guilty to one count of obstruction of justice for having filed an answer in a bankruptcy matter, and falsely stating that his client had a lawful right to keep custody of twenty-six tractors and trailers belonging to the bankrupt firm. The Court took into account several mitigating factors in determining the extent of discipline to be meted out. The attorney had been a member of the bar for fifty years; he had cooperated with the ethics proceedings, candidly admitting his guilt and showing contrition; and no litigant or other person had suffered any loss. The Court viewed the attorney's action as an aberration unlikely to be repeated and imposed an eighteen-month suspension.

In Matter of Kushner, 101 N.J. 397 (1986), the Court imposed a three-year suspension on an attorney who pleaded guilty to one count of false swearing. The attorney lied, in a sworn certification to the court, that the signature on a \$40,000



promissory note was not his but, rather, the product of forgery. In mitigation, the Court considered the attorney's unblemished twenty-three year professional record, his reputation and good character, and the absence of harm to any client.

More recently, in Matter of Power, 114 N.J. 540 (1989), the Court suspended for three years an attorney who pleaded guilty to one count of obstruction of justice. The attorney purposely advised a client not to disclose any information to law enforcement authorities regarding a stock fraud investigation, not to protect the client, but motivated by his own fear that he, too, was a target of the investigation. In addition, the attorney assisted a client in filing a false claim with an insurance company, despite harboring a reasonable suspicion that the claim was false.

Here, too, respondent committed a serious crime. His conduct ran counter to the standard of morality and ethics required of members of the bar. Disciplinary proceedings, however, seek not to punish the attorney, but to protect the public against attorneys 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. 321, 325 (1978). "The severity of the discipline to be imposed must comport with the seriousness of the ethical infraction in light of all the relevant circumstances." In re Nigohosian, 86 N.J. 308, 315 (1982). Mitigating factors are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1982).

In mitigation, a majority of the Board considered that respondent's abuse of alcohol at the relevant times was a contributing factor to his loss of good judgment. Although his dependency on alcohol did not "demonstrate . . . the kind of loss of competency, comprehension, or will that can excuse the misconduct," Matter of Hein, 104 N.J. 297, 303 (1986), it did "blunt the blame-worthiness of his misconduct." Matter of Barbour, 109 N.J. 143, 159 (1988).

The record before the Board persuaded it that respondent has regained control of his life: he overcame his alcohol problems five years ago, has completed the custodial portion of his sentence, shares a loving and stable marriage with his present wife, and enjoys the trust, love, and support of his many friends, family members, and colleagues. To disbar him would be more vindictive than just. Matter of Verdiramo, 96 N.J. 183, 187 (1984).

Furthermore, several other mitigating circumstances convince the Board that a term of suspension is sufficient discipline for respondent's criminal act: (1) respondent's misconduct did not arise from the legal representation of clients; (2) his wrongful actions were not undertaken to derive any personal gain therefrom; (3) prior to the within matter, he enjoyed a blameless record at the bar; (4) approximately eighty letters of recommendation attest to his moral character and good reputation; (5) he participated in numerous civic activities; (6) he cooperated with the criminal justice system by readily conceding his guilt, and assisted the United States Department of Justice's investigation without

asserting his constitutional privilege against self-incrimination and without the benefit of any agreement concerning subsequent prosecution; and (7) more significantly, he renounced his past misconduct shortly after its occurrence: of his own volition, respondent refused to participate in further illegal transactions with Sasso and Palaia prior to being apprehended.

Additionally, respondent has paid dearly for his serious mistakes. He spent 120 days in jail; the publicity generated by his conviction caused him shame and humiliation; his law partnership was dissolved as a result of his alcohol abuse and consequent failure to attend to his professional obligations; and he was forced to face bankruptcy proceedings.

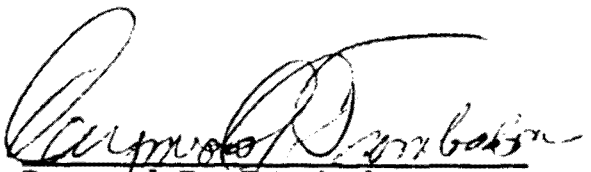
The Board gave no consideration to the OAE's contention that respondent's "involvement with individuals reputed to be connected with organized crime" was to be taken into account in recommending proper discipline (OAE's brief at 9). The Board's review and evaluation of the record cannot include unproven allegations.

In sum, a majority of the Board is satisfied that respondent's criminal offense was a single episode of aberrational conduct, unlikely to be repeated. Respondent's control of his judgment was weakened by excessive use of alcohol at the time of the offense. The Board is not convinced that respondent's conduct was so "immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession." Matter of Templeton, 99 N.J. 365, 376 (1985).

After balancing, on one hand, the seriousness of the offense and the need to maintain public confidence in the bar with, on the other hand, the great weight accorded here to mitigating evidence, the requisite majority of the Board recommends that respondent be suspended for a period of three years, retroactive to November 28, 1989, the date of respondent's temporary suspension. Three members voted for disbarment, believing that respondent, systematically and over a period of time, "laundered" money for an illegitimate purpose, and that, although alcohol abuse may have contributed to his susceptibility to Sasso's illegal entreaties, it did not cause substantial cognitive impairment. Two members did not participate.

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

Dated: 12/3/1990

By:   
Raymond R. Trombadore  
Chair  
Disciplinary Review Board