SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-174

IN THE MATTER OF

ROBERT J. MALLON,

AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 18, 1989

Decided: February 5, 1990

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

The respondent did not appear.[1]

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 Criminal Conviction filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-6(b)(2)(i). Respondent was convicted of one count of conspiracy to defraud the United

[1]Notice of the hearing before the Disciplinary Review Board was provided to respondent at his most recent New Jersey address: Suite 9, 1089 Cedar Avenue, Union, New Jersey 07083. Correspondence from respondent to the Office of Attorney Ethics on July 31, 1989, indicated that, although he would not be available in New Jersey, all mail would be forwarded to him from the stated address. However, mail forwarded to that address by the Disciplinary Review Board was returned. Thereafter, notice of the hearing and a copy of the file were forwarded to respondent's attorney in the underlying criminal matter, as well as to respondent at the Federal Correction Institute in Morgantown, West Virginia, where respondent is currently serving his sentence.

States, in violation of 18 U.S.C.A. § 371 and § 3623, and two counts of aiding and abetting the submission of materially false tax returns, in violation of 26 U.S.C.A. § 7206(1) and 18 U.S.C.A. § 2 and § 3623.

Respondent was admitted to practice law in New Jersey in 1974. Thereafter, in a ten-count federal indictment issued in 1987, respondent was charged with a variety of crimes. These crimes included conspiracy to defraud the United States, aiding and abetting in the submission of materially false tax returns, and obstruction of justice. Following a jury trial, he was convicted on April 8, 1988 on a total of three counts of the indictment, as noted above. Respondent was temporarily suspended on April 29, 1988, as a result of these convictions. On July 1, 1988, respondent received a sentence for each conviction of imprisonment for one year and one day, and a fine of $2,500. Respondent's convictions were affirmed on March 15, 1989, as reflected in United States v. Attanasio, et al, 870 F.2d 809 (2d Cir., 1989). Respondent's subsequent petition for rehearing was denied on May 3, 1989.

The charges against respondent evolved from respondent's participation in a conspiracy to hide illegal income from federal tax authorities. In effect, respondent directly participated in the laundering of funds in order to fabricate two transactions reported on the joint tax returns of Louis and Marie Attanasio in 1983 and 1984. The decision of the Court in United States v.

Attanasio, supra, sets forth the relevant factual scenario, as follows:

> 2. Capital Gains Conspiracy
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> This conspiracy involved two fraudulent transactions reported on the joint tax returns of Louis and Marie Attanasio ("Attanasios") filed for the years 1983-1984. The 1983 return indicated a long-term capital gain of $250,000 from a sale of C & L Tool Company ("C & L") stock, which, according to the return, had been acquired years earlier for $50,000. Similarly, the 1984 return showed a capital gain of $291,000 from a sale of "Injection Molds." The Attanasios reduced their tax liability substantially by treating these transactions as capital gains rather than as ordinary income. The transactions were in fact fabricated, as the following discussion will illustrate.
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> a. The C & L Transaction
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> During the relevant period, Mallon practiced law in New Jersey and performed all the legal work for Donato Sardella, the owner of C & L. Sardella testified that, in 1981, he transferred some of his stock in C & L to an unknown woman named "Maria" [sic], who, Mallon told him, would take C & L public. Sardella received no money for the transfer. When the proposed public offering did not materialize, Sardella signed, at the direction of Mallon, a stock repurchase agreement.
>
> A paper trail was orchestrated by Mallon to create the impression that Sardella paid Louis and Marie Attanasio for the repurchase. Sardella testified that Mallon persuaded him to write checks to Mallon and to the "Robert J. Mallon, Esq. Trust Account" in return for cash. Mallon caused additional funds to be deposited into the trust account. For example, he deposited cash and checks that he had third-parties write to Sardella, which Sardella endorsed. (Sardella did not receive the proceeds of these checks, though he was paid $5,000 for his part, $1,000 of which he

returned to Mallon). LaMagra, a financial consultant purportedly involved in taking C & L public, contributed approximately $100,000 to the trust account. Mallon subsequently withdrew the funds from the trust account by writing checks worth $300,000 to, or for the benefit of, Louis and Marie Attanasio. Subtracting the $50,000 that they allegedly paid for the C & L stock in 1981, the Attanasios reported the proceeds from this spurious stock repurchase as the $250,000 capital gain on their 1983 tax return.

b. The Injection Mold Transaction

Mallon also performed legal services for Richard Niclaus, who was involved in the plastic molding business. At some time in 1984, Mallon asked Niclaus if he had any injection molds to sell. Niclaus replied that he had three "dead molds"--molds for which there was no commercial demand and worth only their weight as scrap, i.e., $100,000. Mallon thereafter presented Niclaus with three bills of sale indicating a sale of the molds from Marie Attanasio to Niclaus for $300,000. Niclaus testified that he did not pay this money, but rather received $2,000 cash.

In early 1984, approximately $304,000 was deposited to another Mallon trust account. Again, much of this amount originated from LaMagra. $300,000 of this escrow money then was issued by Mallon to Marie Attanasio. All these checks were deposited, negotiated or cashed by Marie and Louis Attanasio, who then reported these proceeds on their 1984 tax return as the $291,000 capital gain.

A Motion for Final Discipline based on a criminal conviction was filed on July 21, 1989 by the Office of Attorney Ethics, seeking respondent's disbarment.

CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of respondent's guilt. Matter of Goldberg, 105 N.J. 278, 280 (1987); Matter of Tuso, 104 N.J. 59, 61 (1986); In re Rosen, 88 N.J. 1, 3 (1981). 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 Board's review is limited to the extent of final discipline to be imposed. Matter of Goldberg, supra, 105 N.J. at 280. Respondent's conspiracy conviction clearly and convincingly shows that he has committed a criminal act which reflects adversely on his honesty and fitness as a lawyer, in violation of RPC 8.4(b). In addition, respondent's criminal conduct involved dishonesty, fraud, deceit and misrepresentation, in violation of RPC 8.4(c).

In determining the appropriate discipline, several factors must be considered. These include the nature and severity of the crime, whether the crime was related to the practice of law, and any mitigating factors, such as evidence of the attorney's good reputation and character. In addition, "each disciplinary proceeding is extremely fact sensitive." Matter of Lunetta, ___ N.J. ___ (1989). The Court has not imposed a hard and fast rule that requires a certain penalty for a conviction of a particular crime. In re Aloisio, 99 N.J. 84, 89 (1985). See also, In re Friedman, 106 N.J. 1, 6 (1987); Matter of Litwin, 104 N.J. 362, 365-366 (1986). However, "certain types of unethical violations are, by their very nature, so patently offensive to the elementary

standards of a lawyer's professional duty that they per se warrant disbarment." Matter of Conway, 107 N.J. 168, 180 (1987). The Court has determined that examples of conduct warranting per se disbarment include knowing misappropriation of client funds, In re Wilson, 81 N.J. 451 (1979), and criminal conduct that directly corrupts the administration of justice. In re Verdiramo, 96 N.J. 183, 186 (1984).

Convictions of conspiracy to commit a variety of crimes have uniformly led to disbarment. Matter of Lunetta, supra; Matter of Rigolosi, 107 N.J. 192 (1987); Matter of Conway, supra; Matter of Baldino, 105 N.J. 453 (1987); Matter of Goldberg, supra; Matter of Surgent, 104 N.J. 566 (1986). In Surgent, supra, 104 N.J. at 570, the Court reiterated that "convictions of New Jersey attorneys on charges of insurance fraud and conspiracy to commit fraud have regularly resulted in the attorney's disbarment." Moreover, "where, as in this case, an attorney's criminal deeds directly involve his law practice, the misconduct is even more egregious in the disciplinary context." Matter of Goldberg, supra, 105 N.J. at 282. Additionally, even where indications are that respondent will not repeat the misconduct, the Court has held that this type of conspiracy mandates disbarment. Matter of Lunetta, supra. In Lunetta, the court found that respondent's "behavior in furthering a complex criminal scheme so impugned the integrity of the legal system that disbarment (was) the only appropriate means to restore public confidence." Matter of Lunetta, supra, slip op. at 7 (citations omitted).

Although respondent's conduct did not involve misappropriation of funds or corruption of the administration of justice, his misconduct was a "serious crime of dishonesty" that warrants disbarment. Matter of Lunetta, supra, slip op. at 6. Respondent was ultimately involved in a criminal conspiracy to deprive the federal government of tax revenues owed. Respondent had substantial experience in the practice of law prior to engaging in the instant criminal activity. His crimes were directly related to the practice of law and respondent clearly used his position as an attorney to further the goals of the conspiracy. Moreover, respondent was motivated by personal financial gain. The Board, therefore, considers respondent's motive to be an aggravating factor in this case. Additionally, the fact that respondent's conduct was not an isolated incident, but rather a pattern of multiple offenses over a period of several years is a further aggravating factor. No mitigating factors were found.

The Board, therefore, unanimously recommends that respondent be disbarred. Three members of the Board did not participate in this matter.

The Board further recommends that respondent be required to reimburse the ethics financial committee for appropriate administrative costs.

Dated: 2/5/1990

Raymond R. Trombadore
Chair
Disciplinary Review Board