APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Knight v. Ambach

83 A.D.2d 973 · Decided September 10, 1981

SUMMARY

The court reviewed a Board of Regents determination suspending a certified public accountant’s license after his federal conviction for supplementing the salaries of government employees. It held that the penalty was not arbitrary or disproportionate to the offense, confirmed the determination, and dismissed the petition.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Mahoney, P. J.; Kane, J.; Casey, J.; Mikoll, J.; Yesawich, Jr., J.
JURISDICTION	New York
DECIDED	September 10, 1981
DISPOSITION	dismissed
PROCEDURAL POSTURE	Article 78 proceeding brought in the Appellate Division under New York Education Law § 6510(5) to review the Board of Regents' disciplinary determination suspending petitioner's certified public accountant license.
STANDARD OF REVIEW	Whether the administrative penalty was arbitrary, improper, or so disproportionate to the offense as to be shocking to one's sense of fairness.
PRECEDENTIAL VALUE	published appellate decision
PARTIES	Knight v. Ambach

TOPICS

judicial review of agency action · administrative law · appellate procedure · standard of review

PRACTICE AREAS

administrative law · professional discipline · appellate procedure

QUESTIONS PRESENTED

1. Whether the Board of Regents acted arbitrarily or improperly by imposing a more severe license suspension than the penalty recommended by the hearing panel.
2. Whether the two-year suspension, with the last year stayed, was so disproportionate to petitioner's crime in relation to his profession as to be shocking to one's sense of fairness.

HOLDINGS

1. The Board of Regents' imposition of a more severe penalty than that recommended by the hearing panel did not, by itself, render the determination arbitrary or improper.
2. The suspension was not so disproportionate to petitioner's offense, in light of all the circumstances and the relationship between the crime and his profession, as to be shocking to one's sense of fairness.

KEY QUOTATIONS

> *"we do not find the punishment '"so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness' ""* (83 A.D.2d at 974)

> *"Accordingly, there is no basis for disturbing the board's determination."* (83 A.D.2d at 974)

FACTUAL BACKGROUND

Petitioner, a certified public accountant, pleaded guilty in federal court to intentionally supplementing the salary of a governmental employee in violation of 18 U.S.C. § 209. He admitted giving approximately $3,000 to two Internal Revenue Service employees for official acts involving the valuation of an estate. The Board of Regents suspended his license for two years, with the last year stayed, after disciplinary charges and a hearing.

PROCEDURAL HISTORY

After petitioner pleaded guilty in federal district court to violating 18 U.S.C. § 209 by making payments to Internal Revenue Service employees for official acts, disciplinary charges were brought under the Education Law. Following a hearing, the State Board for Public Accountancy recommended a one-year stayed suspension and probation, but the Board of Regents imposed a two-year suspension with the final year stayed. The Appellate Division confirmed the determination and dismissed the petition.

DISPOSITION

dismissed

CASES CITED

- Matter of Holmstrand v. Board of Regents, 71 A.D.2d 725
- Matter of Kane v. Ambach, 74 A.D.2d 674
- Matter of Pell v. Board of Education, 34 N.Y.2d 222, 233

OPINION

PER CURIAM.

Proceeding, pursuant to CPLR article 78, initiated in this court pursuant to subdivision 5 of section 6510 of the Education Law, to review a determination of the Board of Regents suspending petitioner's license to practice as a certified public accountant for a period of two years with the last year of the suspension stayed.

On May 31, 1979, petitioner was convicted, based upon his plea of guilty in Federal District Court, of the crime of intentionally supplementing the salary of a governmental employee in violation of section 209 of title 18 of the United States Code. Petitioner admitted that he gave approximately $3,000 to two employees of the Internal Revenue Service for the performance of their official acts in connection with valuation of an estate.

Charges were thereafter preferred against petitioner, pursuant to sections 6509 and 6510 of the Education Law, based upon petitioner's conviction and the underlying acts. Following a hearing, the State Board for Public Accountancy determined that the charges had been sustained and recommended that petitioner's license be suspended for one year, that the suspension be stayed and that petitioner be placed on probation for three years.

Ultimately, the Board of Regents imposed a more severe penalty, suspending petitioner's license for two years with the last year of suspension stayed. The sole issue raised in this proceeding relates to the severity of the penalty.

The mere fact that the penalty imposed by the board was more severe than that recommended by the hearing panel does not render the board's determination arbitrary or improper (Matter of Holmstrand v Board of Regents, 71 AD2d 725). Petitioner was permitted to establish in the administrative proceedings all of the mitigating factors that he asserts in this *974proceeding (see Matter of Kane v Ambach, 74 AD2d 674), and in view of the serious nature of petitioner's crime in relation to his profession, we do not find the punishment '"so disproportionate to the offense, in light of all the circumstances, as to be shocking to one's sense of fairness' " (Matter of Pell v Board of Educ., 34 NY2d 222, 233).

Accordingly, there is no basis for disturbing the board's determination. Determination confirmed, and petition dismissed, without costs. Mahoney, P. J., Kane, Casey, Mikoll and Yesawich, Jr., JJ., concur.