SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-119
District Docket No. XIV-06-017E

IN THE MATTER OF	:
LOEL H. SEITEL	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 19, 2008

Decided: October 2, 2008

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 came before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's guilty plea, in the United States District Court for the Southern District of Florida ("the district court"), to conspiracy to make a false statement in the course of the investigation of a money-laundering scheme, in violation of 18

U.S.C.A. §371 and §1001. The OAE recommends discipline ranging from a three-year suspension to disbarment. We voted to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1991. He has no prior final discipline. On July 27, 2007, he was temporarily suspended, as a result of this conviction. In re Seitel, 192 N.J. 215 (2007). He remains suspended to date.

On or about August 9, 2006, respondent and his New Jersey law partner, Marc F. Desiderio, were named in a superseding indictment in the district court. Respondent was charged with conspiracy to commit money-laundering (18 U.S.C.A. 1956(h)); money-laundering concealment (18 U.S.C.A. 1956(a)(1)(B)(I)); conspiracy to obstruct justice (18 U.S.C.A. 371); making a false statement to U.S. government authorities (18 U.S.C.A. §1001), and two counts of obstructing justice (18 U.S.C.A. 1503).

On July 19, 2007, respondent appeared in the district court and pled guilty to paragraph 4 of the third count of the indictment, charging him with conspiracy to make a false statement, violations 18 U.S.C.A. §371 and §1001.[1]

[1] 18 U.S.C.A. §371, titled "Conspiracy to commit offense or to defraud United States," states:

(Footnote cont'd on next page)

Paragraph 4 of count three states:

> It was a further purpose and object of the conspiracy to, in a matter within the jurisdiction of agencies of the United States, knowingly and willfully make, and cause to be made, false fraudulent, and fictitious statements to the Federal Bureau of Investigation and the Internal Revenue Service, in violation of Title 18 United States Code, Section 1001.
>
> [OAEbEx.A.][2]

In the plea agreement, the parties agreed that,

(Footnote cont'd)

If two or more persons conspire either to commit any offense against the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to affect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years or both.

18 U.S.C.A. §1001, titled "Statements or entries generally," states, in relevant part:
(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully –

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years.

[2] "OAEb" refers to the OAE brief in support of the motion for final discipline.

> [f]or purposes of this plea agreement the sole object of the conspiracy charged in Count 2 of this superseding indictment is contained in paragraph 4, which charges the defendant with conspiring in a matter within the jurisdiction of agencies of the United States to knowingly and willfully make false, fraudulent and fictitious statements to the Internal Revenue Service, the Federal Bureau of Investigation and in violation of Title 18, United States Code, Section 1001.
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> [OAEbEx.B¶1.]

On July 19, 2007, respondent, respondent's counsel, an Assistant United States Attorney, and a Senior Trial Attorney, U.S. Department of Justice, signed a two-page document titled **FACTUAL BASIS FOR PLEA TO COUNT 3**. That document, which was incorporated into the plea agreement, reads, in its entirety:

> If this matter were to proceed to trial the government would prove the following beyond a reasonable doubt as to the defendant's guilt on Count 3 of the superseding indictment, that is, from about April 2003 until in about March 2004, [respondent] conspired with Jeffrey Tobin, Marc F. Desiderio and others to violate Title 18, United States Code, Section 1001. The government's evidence would prove the offense as follows:
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> Beginning in about April 2003, a federal grand jury in Fort Lauderdale began investigating the criminal activities of Jeffrey Tobin and Joseph Russo, Jr. and other persons. For the past several years, Tobin's organization had been operating a substantial marijuana distribution organization that involved purchasing thousands of pounds of Mexican Marijuana in either California or Arizona and then transporting the drugs to the New Jersey area for distribution in

> New Jersey, New York, Pennsylvania and other states. [Respondent] and Marc Desiderio met Tobin in about 1994. At that time, Tobin advised [respondent] and Desiderio that he was a loanshark who operated in the New Jersey area. [Respondent] and Desiderio assisted Tobin by renting three houses in the Englewood Cliffs, New Jersey area. They also purchased certain real estate on behalf of Tobin in the South Miami, Florida area. They were provided with cash proceeds as reimbursement for the leased residences and $500,000 in cash proceeds as collateral for their purchase of the piece of real estate. [Respondent] and Desiderio were told these cash proceeds were from Tobin's loanshark business. In reality, the cash proceeds provided were derived from Tobin's marijuana distribution business.
>
> After learning of the investigation being conducted by the Internal Revenue Service and the Federal Bureau of Investigation, [respondent], Marc Desiderio, Jeffrey Tobin and others agreed to provide false and misleading information to the government concerning the nature of the relationship that [respondent] and Desiderio had with Tobin.
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> [OAEbEx.D.][3]

At sentencing, Assistant U.S. Attorney J. Brian McCormick cautioned the court not to be swayed by respondent's attempts to diminish his role in the criminal enterprise:

> Your Honor, we're not really questioning all the accolades that [respondent] got from his friends.

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[3] Desiderio's criminal involvement was determined to be more serious than respondent's. Consequently, he received a more severe sentence: forty-one months in prison, followed by two years' probation and a $75,000 fine.

But what we are questioning is the attempt, the veiled attempt to try and push all this off on Mark Desiderio based upon his instance [sic] into the conspiracy, both of them being conspirators with Jeff Tobin.

To appreciate what exactly [respondent] did, and to appreciate the reasonableness of a ten month or whatever the Court seeks to impose sentence, you have to go back to 1994. This didn't start in 2003. In 1994, [respondent] knowingly leased a home up in Englewood Cliffs, New Jersey.

And what he – the knowledge he had at that particular time was that Jeff Tobin was a loan shark. Now, in his papers, [respondent] claims that he was – let me get the right quote, that he was in the dark as to the real criminal activity involved.

It's true he was told, he being [respondent], and Mr. Desiderio were told that the reason for the rental of the home, [respondent's] home, name, was that it was for storing cash for a loan shark organization.

Now, he did that on three different occasions between 1994, and I believe 2001 was probably the last lease that [respondent] signed on behalf of Jeff Tobin.

Now, if he gets credit for only fostering or helping or assisting a loan shark organization, that's hardly a reason to justify a lower sentence for [respondent]. And it isn't over there yet. In 2001, [respondent] and Mr. Desiderio purchases a piece of land for Jeff Tobin.

Took [sic] a large amount of cash, albeit they thought the cash that they took it the deposit, for Mr. Tobin's ownership in the land was from loan shark proceeds, in fact it was really from drug proceeds, is [sic] quite irrelevant to whether or not [respondent] engaged knowingly in this conspiracy.

It wasn't Mr. Desiderio who had a gun to his head when he did all these things. Now, Mr. Desiderio in August went before the – went to the government offices and chose, with knowledge of all the conspirators, that he's going to lie to the government about his relationship with Mr. Tobin.

Now, why the November appearance is so important in terms of showing the reasonableness of the sentence, I'm going to go into now, Your Honor.

On November 18, [respondent] appeared with Peter Rossi, Mr. Desiderio's half – I believe it's adopted son. It was his wife's son. And for that purpose, the government had subpoenaed Mr. Rossi to the Grand Jury.

The government noticed some paperwork that showed that Mr. – demonstrated that [respondent] was engaged in a financial transaction with Jeff Tobin, and we brought ore tenus [sic] before Judge Dimitrouleas a motion to disqualify.

What's important about that is not whether it was a [sic] arms length transaction. Knowing what we know now, [respondent] went before a court of the United States in this district, when he knew full well that he had engaged in not only those particular transactions, but all of the lease transactions.

He had represented himself to be the lessor of certain property that was being used for illegal purposes. Had he been acting like an attorney when he did that, he would have just recused himself immediately.

Rather than do that, he made an argument to the Court that he should remain representing Mr. Rossi. That's what's important about that. And that's why the sentence to be imposed is more than reasonable.

> I'm not going to say beyond that, but the ten month sentence is extremely reasonable because of all of the activities that [respondent] undertook on his own, albeit he did it with Mr. Desiderio.
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> [OAEbEx.E at 31 to 33.]

On September 28, 2007, respondent was sentenced to five months in prison, followed by 150 days' home confinement and two years' probation. He was also fined $30,000. He served his sentence at the Otisville Federal Correction Institution, Otisville, New York, and has been released to home confinement.

The OAE twice wrote to respondent in prison, seeking a copy of his pre-sentence report, which speaks to the issue of his involvement, but is not a part of the record presented to us. The OAE sought to shed light on a discussion, at the plea hearing, about whether respondent had made false statements to a district court judge. Respondent's counsel sought a ruling that the court would not consider paragraphs twenty-nine and thirty-five of the pre-sentence report, when sentencing respondent. Counsel stated:

> Well, let me say specifically with paragraph thirty-five, Judge. I had – that one deals with whether or not he lied to Judge Dimitrouleas. And we have maintained steadfastly throughout these proceedings, including filing a motion to dismiss, that the record reflected that what [respondent] told Judge Dimitrouleas was not untruthful. When [respondent] used the term arms length transaction, it was in the context of [respondent] and Mr. Desiderio buying the

> property from the Netherlands Antilles corporation, the corporation that had owned the property. . . . I would proffer to you that I could have brought in no [sic] number of experts to testify that an arms length transaction is defined basically as a transaction between two unrelated parties.
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> [OAEbEx.E4-5.]

The sentencing judge determined not to use paragraphs twenty-nine and thirty-five for sentencing purposes, but noted that he would not strike the paragraphs from the pre-sentence report. As previously stated, OAE attempts to obtain the pre-sentence report from respondent were unsuccessful. Respondent's recent brief to us made no mention of the pre-sentence report, and sought to blunt his involvement in the criminal matter:

> I should have in some way become more familiar with the underlying transactions among the parties that were also determined wrongdoers and thereafter recognized and properly responded to the unfolding conspiracy which ultimately resulted in my guilty plea. I submit that both the United States Attorney and the Sentencing Judge were aware of the lesser role that I played, but a role nonetheless.
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> [Rb2.] [4]

For his part, respondent requests that he be permitted to resume the practice of law in New Jersey "at some point".

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[4] "Rb" refers to respondent's June 9, 2008 letter-brief to us.

Following a review of the record, we determine to grant the OAE's motion for final discipline.

Respondent was convicted of one count of conspiracy to make a false statement in connection with the investigation of a money-laundering conspiracy, violations of 18 U.S.C. §371 and §1001. The conviction stemmed from his participation in a conspiracy to thwart federal investigations into the extent of his association with a large criminal enterprise since 1994.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's criminal conviction of conspiracy to make a false statement constitutes a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The sanction imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46. Discipline is imposed even when the attorney's offense is not

related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

Attorneys who are convicted of federal crimes have received long suspensions or disbarment, depending on factors such as the nature of the crime or crimes, the degree of attorney involvement, and the duration of the criminal behavior. See, e.g., In re Jimenez, 187 N.J. 86 (2004) (eighteen-month suspension for conviction in the United States District Court for the District of New Jersey of conspiracy to commit mail fraud and mail fraud, based upon participation in a falsification scheme to submit fraudulent documents to a bank concerning the financial status of prospective borrowers, with the intention of causing the banks to extend loans to homebuyers who would otherwise not qualify for loans); In re Mederos, 191 N.J. 85 (2002) (eighteen-month suspension for conspiracy to commit mail fraud, in violation of 18 U.S.C.A. §371; the attorney admitted that he had entered into an illegal agreement with others to defraud lending institutions by causing the submission of false loan documents, particularly HUD-1 statements containing materially false information about the financial status of the borrowers); In re Charny, 165 N.J. 561 (2000) (eighteen-month suspension for an attorney who pled guilty to a one-count information filed in the United States

District Court for the Southern District of New York charging him with conspiracy to make false statements to election officials regarding campaign contributions, in violation of 18 U.S.C.A. §371); In re Panepinto, 157 N.J. 458 (1999) (two-year suspension for an attorney who pled guilty in the United States District Court for the District of New Jersey to conspiracy to commit bank fraud, in violation of 18 U.S.C.A. §371; in order to induce a bank to make a mortgage and loan commitment, the attorney made a fraudulent loan to a client, the intent of which was to deceive the lender that the funds were available to the purchaser of real estate); In re Noce, 179 N.J. 531 (2002) (three-year suspension for attorney who pled guilty in the United States District Court for the District of New Jersey to conspiracy to commit mail fraud, in violation of 18 U.S.C.A. §371; for three years, the attorney participated with principals of a mortgage company, a real estate broker, and others in a scheme to defraud HUD through the fraudulent procurement of FHA-insured mortgages for unqualified home buyers; as a result of the fraudulent scheme, HUD suffered an actual loss of over $2.4 million); In re Caruso, 172 N.J. 350 (2002) (three-year suspension for attorney who pled guilty in the United States District Court for the District of New Jersey to one count of conspiracy to travel in interstate commerce to promote and

facilitate bribery, in violation of 18 U.S.C.A. §371; while acting as the municipal prosecutor for the city of Camden, the mayor told the attorney that he intended to reappoint the Camden municipal public defender, contingent on the public defender's $5,000 contribution to a political committee; the attorney agreed to act as the mayor's intermediary and then solicited and received the $5,000); and In re Seltzer, 169 N.J. 590 (2001) (disbarment for attorney who participated in a scheme to defraud insurance companies over a period of years, during which he received cash from insureds to pay others to inflate the value of the insureds' losses; on occasion, he received additional cash fees from insureds; when sentencing respondent, the court stated: "He knew what was going on . . . It's going on for years and he went along with it and he made all that money during that period of time;" the attorney's criminal activity, thus, constituted a pattern of misconduct, not an isolated instance.

We are persuaded that respondent's situation is sufficiently akin to that in Seltzer as to warrant the same sanction. Like Seltzer, respondent aided a criminal enterprise over a period of years (since 1994). Respondent's participation as the lessor of properties in New Jersey and the purchaser of property in Florida enabled the crime's principals to conceal their activities from law enforcement authorities. Once the

criminal scheme was discovered, respondent provided false and misleading information to federal investigators and to a federal court to further thwart their efforts. The magnitude of the criminal plan and the nature of respondent's efforts to conceal the criminal conduct and impede the investigation compel us to recommend that he be disbarred.

We also determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Loel H. Seitel
Docket No. DRB 08-119

Argued: June 19, 2008

Decided: October 2, 2008

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Boylan	X					
Clark	X					
Doremus	X					
Lolla	X					
Stanton	X					
Wissinger	X					
Total:	9					

Julianne K. DeCore
Chief Counsel