SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 08-331 and 08-332
District Docket Nos. XIV-2007-0774E, XIV-2006-0009E, and XIV-2006-0010E

IN THE MATTERS OF	:
GARY J. LESSER	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 19, 2009

Decided: May 5, 2009

Janice L. Richter appeared on behalf of the Office of Attorney Ethics.

George T. Daggett appeared on behalf of respondent.

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

These matters came before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE") (DRB 08-331) and on a recommendation for disbarment filed by Special

Master Bernard A. Kuttner (DRB 08-332). For the reasons expressed below, we also recommend disbarment.

The motion for final discipline in DRB 08-331 was filed after respondent entered a guilty plea to an information charging him with wire fraud and money laundering. The complaint in DRB 08-332 charged respondent with engaging in a conflict of interest, a violation of RPC 1.7(a) and RPC 1.9(a); making a false statement of material fact or law to a third person and failing to disclose a material fact to a third person where necessary to avoid assisting a criminal or fraudulent act, a violation of RPC 4.1(a); engaging in the unauthorized practice of law, a violation of RPC 5.5(a)(1) and N.J.S.A. 2C:21-22; committing a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, a violation of RPC 8.4(b); engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, a violation of RPC 8.4(c); and practicing law while suspended, a violation of R. 1:20-20(b)(1),(3), and (4), more properly, a violation of RPC 5.5(a)(1).

Respondent was admitted to the New Jersey bar in 1969. He has had several encounters with the disciplinary system. In 1989, he received a private reprimand for removing his legal fees and disbursements in connection with a real estate sale without his

client's prior consent. On October 26, 1993, he was temporarily suspended, by consent, pending the conclusion of ethics proceedings against him. In re Lesser, 134 N.J. 220 (1993).

In 1995, respondent was suspended for three months for lack of diligence, failure to communicate with a client, commingling, failure to notify a client of the receipt of funds, failure to promptly disburse those funds, and failure to comply with recordkeeping requirements. In re Lesser, 139 N.J. 233 (1995). In that case, after accepting multiple collection cases from a client, respondent refused to comply with the client's attempts to find out the status of those cases, deposited some of the funds that he had collected into his business account, instead of his trust account, did not notify the client that he had received funds, did not disburse the funds to the client, and refused to open a client file in some of those cases that had balances that he determined were too small to warrant such recordkeeping.

Also in 1995, respondent was suspended for one year, for gross neglect, lack of diligence, failure to communicate, conduct involving dishonesty, fraud, deceit, or misrepresentation, and failure to cooperate with the ethics authorities. In re Lesser, 140 N.J. 41 (1995). He allowed a client's appeal to be dismissed

for failure to file a brief, misled the client to believe that the appeal was pending, and failed to file an answer to the ethics complaint or to appear at the hearing.

Respondent was again suspended for one year, in 1996, for commingling, gross neglect, lack of diligence, failure to communicate with a client, failure to cooperate with the ethics authorities, and failure to comply with recordkeeping requirements. In re Lesser, 144 N.J. 160 (1996). In that case, respondent used his trust account as a personal account, paying more than $250,000 from his trust account to a contractor for work performed on his residence and office; he also recklessly or willfully disregarded his recordkeeping responsibilities. In a second matter, although respondent filed a personal injury complaint, he failed to serve the defendant with it, failed to inform his client of the status of the matter, and failed to cooperate with the disciplinary authorities.

In 1997, the Court determined that, because respondent's infractions occurred at the same time as other serious misconduct for which he had been suspended, no additional discipline was warranted for gross neglect, lack of diligence, failure to communicate, and misrepresentation of the status of a lawsuit to a client. In re Lesser, 147 N.J. 592 (1997).

A. DRB 08-331

An information filed in the United States District Court for the Eastern District of Pennsylvania ("USDC"), on December 18, 2007, alleged that respondent devised a scheme to defraud CIT Small Business Lending Corporation ("CIT"), a private lender, and the United States Small Business Administration ("SBA"), which had guaranteed the loan. The information charged respondent with wire fraud, a violation of 18 U.S.C. §1343; money laundering, a violation of 18 U.S.C. §1957; and aiding and abetting, a violation of 18 U.S.C. §2.

On January 15, 2008, respondent and the United States Attorney filed an agreement with the USDC, wherein respondent consented to plead guilty to the charges contained in the information. That information indicated that respondent's conduct occurred from June 2003 to April 2005. At a January 15, 2008 plea hearing, respondent agreed with the factual recitation offered by the Assistant United States Attorney ("AUSA"). According to that factual recitation, respondent prepared a false application for a $993,000 business loan for Eric Katz, a business owner who did not qualify for the loan. Respondent suggested that Katz create a sham purchase of a family business from Katz' mother. Respondent prepared paperwork to support this

phony transaction. Katz agreed with respondent's suggestion. In furtherance of this fraudulent scheme, Katz incorporated an entity to act as the buyer.

After respondent told Katz that he needed collateral for the loan, Katz asked his sister and brother-in-law for permission to pledge their residence as collateral. They refused. Respondent and Katz then created fictitious power-of-attorney documents, which respondent notarized, purporting to permit Katz to pledge the residence as collateral.

Next, respondent and Katz prepared a false affidavit to create the appearance that Katz had injected $250,000 in cash into the new business, which was a condition of the loan. They prepared a false affidavit of equity injection and provided copies of checks that purportedly had been paid into the business. Katz, however, had not made any of the required payments.

After the lender wired the loan proceeds, Katz used the funds to satisfy private loans, not for the approved purpose of the business loan. For his services, respondent charged Katz an $80,000 fee that was wired to a bank account of an accountant, Michael D'Elia. Respondent arranged the transaction in this manner to avoid any record of a direct payment to himself. D'Elia had assisted in the fraudulent scheme by preparing phony

tax documents for the loan application. When respondent learned that the Federal Bureau of Investigation ("FBI") planned to interview D'Elia, respondent sent a "fax" to D'Elia, instructing him to misrepresent to the FBI the reason for the wire transfer.

In the plea agreement, respondent acknowledged that his instructing a co-defendant to lie to federal investigators warranted an upward adjustment of his sentence. At the time of the plea hearing, Katz' bankruptcy petition was pending.

At the May 22, 2008 sentencing hearing, the AUSA addressed the argument of respondent's counsel concerning the potential disparity in the sentences imposed on Katz and respondent:

> Basically what this defendant [respondent] did was hold himself out as an attorney who could get people — businesses loans that they wouldn't otherwise apply for. And it was this defendant who had the scheme in place, who had the ideas of how to do it, who had the forms and the mechanisms.
>
> He basically was the brains behind — behind the operation where you have — where Mr. Katz was a — an owner of a small business who had inherited it from his father, was a substance abuser, was incapable of running the business, who applied for the loan, who knowingly went along with this defendant's plans to do that and as a result of that has a Federal felony and conviction, but is — used those funds to try to put it into a business.

> As opposed to this defendant who was in the business of not just this loan, but in a series of loans that he had done which were not charged here because they – they didn't occur in this jurisdiction, but this was his business.
>
> [OAEaEx.I9-13 to 10-4].[1]

At the sentencing hearing, respondent's counsel referred to respondent's diagnosis of cyclothymic disorder (a mild form of bipolar disorder that causes emotional ups and downs). In reply, the AUSA offered the following argument:

> [W]hat you have in reality is a long-established history that goes beyond this.
>
> You have an individual who was suspended from the practices [sic] of law 15 years ago for improperly handling money, who hasn't filed a tax return, by his own admission, since 2003. And so I would respectfully disagree, to the extent that there is a disorder, that it's one that should be considered by this Court in sentencing.
>
> You have somebody here that . . . has a long-established history of dishonesty and as he stands before the Court here is responsible for a nearly $1 million fraud that he himself was the architect of.
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> [OAEaEx.I10-19 to 11-12].

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[1] OAEa refers to the appendix of the OAE's September 9, 2008 brief.

The USDC judge sentenced respondent to a thirty-month prison term, to be followed by supervised release for three years. The judge also ordered respondent to make restitution of $933,000. The judge noted that, if not for the lower sentence that had been imposed on respondent's co-defendants, respondent's sentence would have been greater. The judge remarked that respondent pretended that he was a lawyer, after he had been suspended, and engaged in fraudulent schemes to earn commissions for his own enrichment.

The OAE urges us to disbar respondent. Although the OAE acknowledges that attorneys convicted of fraud or lying to government officials usually receive a lengthy suspension, the OAE contends that respondent's misconduct, coupled with similar wrongdoing, which is the subject of DRB 08-332, constitutes continuous criminal acts that warrant disbarment.

Following a review of the full record, we determine to grant the OAE's motion for final discipline. 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 guilty plea to wire fraud, money laundering, and aiding and abetting constitutes a violation of RPC 8.4(b) and (c).

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 level of discipline 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).

Here, respondent's misconduct reveals a pattern of ruthless dishonesty: he helped a client apply for a loan of almost one million dollars, purportedly to buy a business, knowing that the loan proceeds would be used for other purposes; he forged power-of-attorney documents so that property could be pledged as collateral, contrary to the wishes of the property owners; he submitted an affidavit misrepresenting that the client had provided $250,000 for the business; he received a percentage of the loan proceeds as his fee; and he directed a co-defendant to lie to federal investigators.

We will discuss the measure of discipline, following a recitation of the facts in DRB 08-332.

B. DRB 08-332

On July 2, 2003, Randi Gawroriski retained respondent to obtain a commercial loan on his behalf to enable him to buy from George Ugarte a hardware business, which Gawroriski planned to operate as "Hoboken Door & Window." The written fee agreement, prepared on respondent's attorney letterhead, provided for a $75,000 fee. At that time (2003), respondent's temporary suspension, imposed in October 1993, remained in effect. Respondent alleged that he was retained not as an attorney, but as a mortgage broker. He admitted, however, that he was not licensed as a mortgage broker, as required by N.J.S.A. 17:11C-3. He claimed that he was not aware of the licensing requirements for mortgage brokers.

Respondent alleged that another attorney, Gerald Poss, represented Gawroriski in the purchase of the business and the loan closing. Respondent had referred Gawroriski to Poss, whom respondent had known for twenty years. Poss was not aware of respondent's suspension. Despite respondent's claim that he had acted in the capacity of a mortgage broker, after the loan

closing took place, he submitted a bill to Poss for legal advice and consultation.

After respondent contacted CIT (the same lender involved in DRB 08-331), he learned that Gawroriski's credit was not sufficient to obtain the loan. According to respondent, "in order to do the transaction, we need somebody with a satisfactory credit history or it couldn't go through. The loan was not going to be able to be obtained." Gawroriski, therefore, asked his then-fiancée, Lauren Ruggiero, and her sister's husband, Derick Percoskie, to assist him. Gawroriski provided respondent with Percoskie's social security number so that respondent could perform a credit check. Percoskie also provided his income tax returns to respondent.

The record contains forty-seven documents, related to the Gawroriski loan, that respondent issued on attorney stationery. Some of these letters indicated that respondent represented Gawroriski, Percoskie, Ruggiero, Hoboken Door & Window, Ugarte, or a combination of them. The recipients of respondent's letters, including CIT representatives, did not know that he had been suspended.

Respondent submitted documents to CIT naming Percoskie as the borrower, the sole stockholder of the entity to be formed to

operate the business, the person who would be devoting all of his time and attention to the business, and a current employee of Rahway Lumber, Inc. However, respondent was aware that Percoskie worked for the post office, that Gawroriski worked for Rahway Lumber, and that Gawroriski was planning to operate the business. Respondent considered Gawroriski as the actual party in interest and Percoskie as the nominal borrower. Despite his claim that he had been retained as a mortgage broker, respondent signed a letter to CIT as "attorney for borrower" because, according to him, "it sound[ed] better." In addition to gathering and submitting the loan documents, respondent incorporated Hoboken Door & Window, Inc., the entity formed to operate the business.

On February 2, 2004, CIT issued a commitment to Percoskie for a $750,000 loan. Percoskie signed a guarantee making him personally liable for the loan. When Gawroriski first approached Percoskie about the loan, Percoskie replied that he did not want to risk any of his own money. Percoskie then met with respondent, who was introduced to him as a lawyer. Percoskie reiterated to respondent his concern about the potential risk to his money, explaining that he was interested in buying a home at that time. According to Percoskie, respondent advised him that

participating in the business loan would have no effect on his ability to obtain a residential mortgage because "there was a separation between business loans and personal home loans." At this meeting, respondent gave Percoskie his attorney business card. Respondent denied having given Percoskie legal advice.

During a second meeting, respondent gave Percoskie blank documents, which Percoskie signed. Respondent never suggested that Percoskie retain counsel for the loan transaction. Respondent claimed that Poss represented Percoskie, as well as Gawroriski. Percoskie, however, believed that respondent represented him, denying that he knew that Poss was a lawyer. Notwithstanding respondent's assertion that Poss represented Percoskie, respondent submitted to various individuals at least three letters stating that he represented Percoskie.

The closing took place on March 8, 2004. At that time, Percoskie noticed that he was required to sign documents both individually and as a representative of the business. When he raised concerns about signing individually, respondent told him not to worry. Although Percoskie signed a note for $750,000, he did not read or understand the document.

Also at the closing, respondent instructed Percoskie to issue four checks, totaling $133,841.96, to four companies.

Percoskie replied that he did not want to commit any funds to the transaction. Upon receiving respondent's assurances that the checks would be returned to him, Percoskie issued the checks, giving them to respondent. The checks were returned to Percoskie later the same day. Percoskie did not understand why respondent had instructed him to issue the checks or why he had returned them.

Respondent admitted that he had no intention of presenting these checks for payment. According to respondent, Gawroriski would later pay these amounts with funds received from the loan. Respondent asserted that Gawroriski had brought to the closing "quotations" from various suppliers for inventory and that these checks represented payment for the inventory. Three of the checks matched the amounts on these quotations, or invoices. Those invoices were fraudulent. Indeed, one company, Rudolf Bass, Inc., pointed out that its name was misspelled as "Rudolph Bass, Inc" on the phony invoice.

Respondent denied knowing that the invoices were fictitious, claiming that Gawroriski brought them to the closing. He asserted that these checks were designed to show that the borrower had injected his own cash into the transaction, as required by CIT.

Although Percoskie did not have an account with American Funds, an American Funds statement in Percoskie's name with a $131,228.60 balance was submitted to CIT as part of the loan application. These funds are listed, along with others, on a document itemizing the source of cash to be injected into the business by Percoskie. Percoskie had not given the American Funds statement to respondent. During the investigation, the OAE learned that no American Funds account existed either in Percoskie's name or with the account number listed on the statement. Although Gawroriski had an investment account with American Funds, it bore a different account number.

The hardware business failed less than one year after Gawroriski began operating it. In February 2005, Gawroriski relocated to Florida, leaving unpaid debts behind. Respondent then represented the seller, Ugarte, in the liquidation of the assets of the business, so that Ugarte could lease the space to another business.

When Percoskie learned that the store had closed, he contacted respondent, who advised him that, although he had no assets involved in the transaction, he may have some "exposure." After Percoskie was served with papers from CIT, presumably

seeking to enforce the promissory note, he filed a bankruptcy petition.

According to Percoskie, because respondent led him to believe that respondent was a lawyer, Percoskie assumed that the transaction was proper. He would not have signed the documents if he thought that they were improper or that he was risking any personal assets.

Ruggiero, Gawroriski's fiancée, allowed CIT to hold a second mortgage on her house, as additional collateral for the loan to Gawroriski. According to Ruggiero, she told respondent that she could not lose her home, which was the only asset that she had for her children. Ruggiero asserted that respondent told her that she would not lose her home and that it is too much trouble for banks to "go after the houses." She testified that she believed respondent because he was an attorney. Ruggiero understood that respondent represented her, Percoskie, and Gawroriski in the transaction. Respondent never suggested that Ruggiero consult an attorney. Ruggiero's house was sold at a sheriff's sale.

Respondent denied that Ruggiero had expressed concern about losing her home or that he had assured her that the bank would not foreclose on her home.

Christopher Casale, a credit underwriter for CIT, testified that he had approved the loan to Percoskie. He stated that he would not have approved the loan if he had been aware that Percoskie had never worked in the hardware business, that Percoskie was not going to operate the business, or that another individual experienced in the hardware business was going to operate the store. He also would not have approved the loan if the borrower had not injected cash into the business, because a stake in the venture is a loan requirement. Moreover, Glenn Petillo, CIT's attorney who attended the closing, stated that he would not have proceeded with the transaction if he had known that the checks that Percoskie had issued were not intended as payment for the invoices.

After the closing, respondent submitted a bill to Gawroriski in the amount of $77,715,85. In addition to the services provided in connection with the loan, respondent billed Gawroriski for incorporating Hoboken Door & Window, filing a fictitious name certificate, and obtaining a discharge for a bankruptcy petition that Percoskie had filed years earlier.

The special master found that respondent engaged in a conflict of interest, made false statements of material fact to his clients and to a financial institution, engaged in the

unauthorized practice of law, engaged in criminal conduct, and practiced law while suspended. The special master recommended respondent's disbarment, citing his disciplinary history, his "blatant and continuous use" of legal stationery after his suspension, and his misrepresentations.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent flagrantly submitted false documents to obtain a commercial loan for Gawroriski. When he determined that Gawroriski could not qualify for a loan, he "borrowed" Percoskie's good credit standing and submitted documents misrepresenting that Percoskie was the purchaser of the business. He deliberately concealed this critical information from the lender. In respondent's words, he used Gawroriski's experience and Percoskie's credit. He induced Percoskie to sign a $750,000 note, misrepresenting that his assets were not at risk. He also induced Ruggiero to pledge her home as collateral, misrepresenting that her home was not at risk. Both Percoskie and Ruggiero suffered substantial harm – Percoskie filed a bankruptcy petition; Ruggiero lost her home when the lender foreclosed on the mortgage loan.

Moreover, respondent brazenly continued to practice law while he was suspended. Although he claimed that he acted in the role of mortgage broker, respondent issued forty-seven documents on his attorney letterhead, signed at least one letter as "attorney for borrower," introduced himself as an attorney, failed to notify other attorneys involved in the loan that he had been suspended, and performed collateral legal services, such as incorporating the entity that operated the hardware business and filing a fictitious name certificate.

We also find that respondent's representation of Gawroriski, Percoskie, and Ruggiero constituted a conflict of interest. Their interests were adverse, as Gawroriski's goal was to own and operate a hardware business using other people's credit, while Percoskie and Ruggiero did not want to risk their assets. Although respondent denied having represented any of these individuals, respondent clearly performed legal services for Gawroriski and submitted letters identifying himself as Percoskie's lawyer. Moreover, both Percoskie and Ruggiero believed that respondent acted as their attorney.

Respondent engaged in another conflict of interest when, after Gawroriski's business failed, he represented the seller, Ugarte, in

the liquidation of the company's assets. Respondent had represented Gawroriski in the purchase of the business from Ugarte.

The complaint charged that respondent violated RPC 8.4(b) by making material misrepresentations to CIT and participating in a fraudulent transaction. There is ample evidence to support a finding that respondent's participation in the transaction, particularly his multiple misrepresentations to CIT, violated RPC 8.4(b).

In sum, respondent engaged in a conflict of interest, devised and executed a fraudulent transaction, practiced law while suspended, engaged in the unauthorized practice of law, committed a criminal act, and made misrepresentations to CIT.

Attorneys who are convicted of, or plead guilty to, fraud usually receive lengthy suspensions. See, e.g., In re Abrams, 186 N.J. 589 (2006) (attorney suspended for three years after pleading guilty in federal court to two counts of wire fraud; Abrams fraudulently overstated the value of accounts receivable of a company, of which he was part owner, whose assets were bought by another company, and fraudulently paid debts of the sold company with assets of the buyer company, resulting in a loss of $200,000); In re Chianese, 157 N.J. 527 (1999) (three-year suspension for attorney convicted of perjury, theft by

deception, and forgery by submitting a forged document in a civil proceeding that he instituted to collect a brokerage fee); In re Takacs, 147 N.J. 277 (1997) (three-year suspension following guilty plea to two counts of mail fraud for filing false insurance claims in two separate matters, including the attorney's own personal injury case); In re Van Dam, 140 N.J. 78 (1995) (attorney suspended for three years after pleading guilty to obstructing justice and making a false statement to a federally insured institution; Van Dam concealed his law partner's connection to a corporation that had improperly obtained loans exceeding one million dollars and then made a false statement during a deposition to mislead the investigation); and In re Felmeister, 186 N.J. 1 (2006) (eighteen-month suspension imposed on attorney who failed to report that his clients falsely represented to the SBA that they had contributed $700,000 toward the purchase price of a business that they purchased via a loan guaranteed by the SBA and failed to report that the clients had concealed a $700,000 loan from the SBA and the lender; Felmeister also prepared and submitted to a lender a HUD-1 form misrepresenting that his clients had made the required capital injection).

Disbarment usually results, however, if the attorney participates in egregious or continuous criminal conduct. See, e.g., In re Maguire, 176 N.J. 125 (2002) (attorney was convicted in New York of conspiracy to defraud the United States government, obstruction of justice, and tax fraud; after Maguire's employer, a corporation, was barred from participating in federal contracts, Maguire created a new corporation to fraudulently obtain federal contracts, concealed the new company's connection to the barred company, created and submitted false documents to a jury in response to a subpoena, concealed documents that had been requested by subpoena, and failed to report income that he had received); In re Seltzer, 169 N.J. 590 (2001) (attorney 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; the attorney's criminal activity constituted a pattern of misconduct, not an isolated instance); In re Lurie, 163 N.J. 83 (2000) (attorney convicted of multiple counts of scheming to commit fraud, intentional real estate securities fraud, grand larceny, and one count of offering a false statement for filing); and In re Goldberg, 142 N.J. 557 (1995) (attorney

convicted of two counts of mail fraud and conspiracy to defraud the United States).

Here, we considered several aggravating factors. In addition to the criminal conduct in which he participated, respondent practiced law while suspended. Moreover, his disciplinary history consists of a private reprimand, a three-month suspension, and two one-year suspensions. He has been continuously suspended since October 26, 1993, the date of his temporary suspension by consent.

As to practicing law while suspended, ordinarily, the level of discipline ranges from a lengthy suspension to disbarment, depending on the attorney's level of cooperation with the disciplinary proceedings, the presence of other misconduct, and the attorney's disciplinary history. See, e.g., In re Wheeler, 140 N.J. 321 (1995) (two-year suspension imposed on attorney who practiced law while suspended, made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest situation, and failed to cooperate with disciplinary authorities); In re Beltre, 130 N.J. 437 (1992) (three-year suspension for attorney who appeared in court after having been suspended, misrepresented his status to the judge, failed to

carry out his responsibilities as an escrow agent, lied to us about maintaining a bona fide office, and failed to cooperate with an ethics investigation); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by R. 1:20-20(a), and failed to reply to the OAE's requests for information; Cubberley had a significant disciplinary history); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension for attorney who continued to practice law after being suspended and after the Court expressly denied her request for a stay of her suspension; Kasdan also failed to inform her clients, her adversary and the courts of her suspension, failed to keep complete trust records, failed to advise her adversary of the location and amount of escrow funds, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent clients in bankruptcy cases after he was suspended, did not advise them that he was suspended from practice, charged clients for the

prohibited representation, signed another attorney's name on the petitions without that attorney's consent, and then filed the petitions with the bankruptcy court; in another matter, Olitsky agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; Olitsky also made misrepresentations to the court and was convicted of engaging in the unauthorized practice of law and stalking a woman with whom he had had a romantic relationship); and In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while suspended, displaying gross neglect and lack of diligence, failing to keep clients reasonably informed and to explain matters in order to permit them to make informed decisions about cases, engaging in a pattern of neglect, and failing to designate hourly rate or basis for fee in writing). But see In re Lisa, 158 N.J. 5 (1999) (attorney appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no

venality or personal gain involved; the attorney did not charge his friend for the representation).

Here, after consenting to a temporary suspension in 1993, respondent embarked on a scheme to earn fees by continuing to practice law and by defrauding lenders, borrowers, and the federal government. He took advantage of unsophisticated individuals, resulting in severe financial harm to them: Ruggiero's home was sold at a sheriff's sale and Percoskie filed bankruptcy to discharge the debt that he had acquired at respondent's behest. CIT, the lender in both matters, was induced by respondent's fraud to make the loans. Because the loan that CIT extended to Katz in DRB 08-331 was guaranteed by the SBA, it is likely that the tax-paying public was also harmed by respondent's fraud.

In 1969, the Court issued a license allowing respondent to practice law. Based on the totality of respondent's conduct in both matters before us, we find that he does not possess the moral fitness required of those in the legal profession. For the protection of the public, the Court should permanently relieve respondent of his license. We, thus, recommend his disbarment.

Members Boylan and Lolla did not participate.

We further 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 Matters of Gary J. Lesser
Docket No. DRB 08-331 and DRB 08-332

Argued: February 19, 2009

Decided: May 5, 2009

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:	7					2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel