SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-056
District Docket No. XIV-2010-0261E

IN THE MATTER OF

PAUL G. BULTMEYER

AN ATTORNEY AT LAW

Decision

Argued: May 21, 2015

Decided: September 15, 2015

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se, via telephone.[1]

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

This matter was before us on a motion for final discipline, filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-13, following respondent's guilty plea to an information, charging him with a violation of 18 U.S.C. §1349, conspiracy to commit wire fraud. The motion alleged that respondent's conduct

[1] Respondent was under home confinement at the time of oral argument.

violates RPC 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The OAE recommended respondent's disbarment. For the reasons expressed below, we agree with the OAE's recommendation.

Respondent was admitted to the New Jersey bar in 1972. Although he has no history of discipline, he was temporarily suspended, effective May 27, 2010, based on his guilty plea to the above crime. In re Bultmeyer, 202 N.J. 126 (2010). He remains suspended to date.

On May 19, 2010, respondent, then age seventy, entered a guilty plea before the Honorable Jose L. Linares, U.S.D.J., to an information charging him with a violation of 18 U.S.C. §1349. At the plea hearing, respondent admitted that, from approximately December 2004 to May 2009, he had knowingly and intentionally conspired and agreed with others, including Arthur Piacentini, to commit wire fraud. The plea agreement provided that, if respondent pleaded guilty to a one-count information, the United States Attorney's Office would not initiate further criminal charges against him for defrauding clients during that time period.

The plea agreement contained two stipulations: (1) the offense involved losses totaling more than $7 million but less than $20 million; and (2) the offense involved between 50 and 250 victims.

According to respondent's guilty plea, from December 2004 through May 2009, he and Piacentini owned Ameripay, LLC, a payroll company that handled payroll and tax withholding services for numerous public and private entities throughout New Jersey.[2] Together, they also owned Sherbourne Capital Management, Ltd., which purported to be an investment company, and Sherbourne Financial, Ltd. The criminal information charged that: (1) Sherbourne was never registered with federal or state regulators to sell any investments, and (2) the object of the conspiracy was "to misappropriate monies entrusted to [respondent and Piacentini] by Ameripay's payroll clients, as well as by Sherbourne investors, to conceal the shortfalls in Ameripay's payroll and tax withholding accounts."

Respondent's plea provided that Ameripay representatives (respondent and Piacentini) solicited private and public companies to hire Ameripay to provide payroll services and

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[2] Despite respondent's guilty plea, made under oath, during argument before us, he denied owning Ameripay, claiming that, in 1998, he had transferred his "rights" in Ameripay to Piacentini.

employee tax withholding services. The private and public customers entrusted Ameripay with millions of dollars to pay those obligations.

Respondent and Piacentini agreed to divert millions of dollars to satisfy the payroll obligations of other payroll clients or to make unrelated tax payments on behalf of other clients. Respondent was aware that millions of dollars were being diverted to make the inappropriate payments. He also knew that "Sherbourne sent investor funds to Ameripay, which were then used to satisfy the payroll and tax obligations by Ameripay." Respondent's acts were knowing and willful.

The information provided that, as a further part of the conspiracy, respondent and Piacentini, "after amassing a shortfall in the Ameripay payroll operations due to the inappropriate diversion of funds . . . used Sherbourne to solicit numerous investors in various states by email and telephone." In addition, they "did not reveal that the investor funds would be misappropriated to assist in covering up the shortfall in 'Ameripay's operations due to the inappropriate diversion of funds by defendant Paul Bultmeyer and Arthur Piacentini." Instead, according to the information, investors were falsely informed that (1) respondent and Piacentini "used a diversified strategy to invest the funds received from

investors, including investing in private placement debt, high-grade corporate bonds, preferred stock, and government securities;" and (2) the investors' principal investments would be protected.

The information added that, after receiving funds from Sherbourne investors, respondent and Piacentini then "misappropriated and commingled [those funds] with the money in Ameripay's bank accounts." Those monies were then used to "pay monies due to certain of Ameripay's payroll customers and the Internal Revenue Service;" and to pay "certain Sherbourne investors through the use of interstate wire transfers as purported 'interest' on their investment[s]."

At the sentencing hearing, respondent's counsel attributed Ameripay's deficit to the company's having made "late filings," presumably tax filings, which generated significant penalties and interest charges. He blamed the late filings on "some software errors." The penalties and interest charges grew incrementally over time. According to counsel, Ameripay also had incurred almost $500,000 in legal fees in an intellectual property lawsuit and "[t]here were a series of frauds perpetrated against Ameripay that caused a loss in the range of a few hundred-thousand dollars." The revenues that Ameripay generated were insufficient to cover the shortfall between the clients' escrow accounts, tax accounts, and

amounts due to the Internal Revenue Service (IRS) and "other taxing authorities." Counsel conceded that respondent was aware that there was a growing problem, but claimed that respondent did not know its magnitude.

Counsel asserted that, when the Securities and Exchange Commission (SEC) began investigating Sherbourne, respondent cooperated and accepted responsibility. Counsel acknowledged that respondent knew that the money that Sherbourne "lent" to Ameripay was not used in accordance with information in marketing materials sent to investors. To that point, the court disagreed with counsel's characterization of respondent's role in the conspiracy as a "crime of nonfeasance."

Counsel denied that respondent had been involved in a "Ponzi scheme" or a "Madoff scheme where new investors' money was used to pay off and pay redemptions for old investors." Counsel claimed that the majority of Sherbourne investors "were redeemed until the SEC stepped in and ordered [respondent] not to make redemptions." Counsel admitted, however, that some misrepresentations were made to the investors.

Counsel offered, among other mitigating factors: (1) respondent's age (seventy) and "poor and declining health;" (2) his family circumstances: a forty-six year marriage, two children, and two grandchildren; (3) his lack of previous problems with the

law; (4) his misfortune of teaming up with Piacentini in the mid-nineties and his resultant involvement with Ameripay; (5) his post-arrest cooperation with the SEC, FBI, and court-appointed receiver; (6) the financial consequences to himself and his family, requiring the short sale of his Upper Saddle River home in which he had lived for forty years and his reliance on only social security benefits, of which fifteen percent are escrowed for payment to the SEC as part of a consent judgment; his net worth of almost negative $3 million; and (7) "no significant misappropriation of Ameripay or Sherbourne assets for personal gain."

At the sentencing proceedings, respondent accepted responsibility for his conduct and apologized to the court, to the people he harmed, and to his family. He noted the shame that he brought on himself and his family by not taking any action to prevent the fraud.

The Assistant United States Attorney (AUSA) pointed out that respondent was entrusted with payroll and tax dollars, was aware of the company's deficit four years prior to being caught and was, therefore, guilty of abuse of trust. The AUSA remarked further that, although respondent's conduct was not a typical Ponzi scheme, it was similar in that new money was used to pay old debts, penalties, and late fees. The company made payments that were late, thereby incurring penalties. Losses grew larger every quarter as penalties

increased. Consequently, as more funds were taken to pay penalties, the deficit was "compounded." He stated further that, "in a typical Ponzi scheme, where there are hundreds of victims, frequently people do take money for personal gain, but it didn't happen here." He underscored, however, the fact that significant public harm resulted from respondent's conduct. The AUSA agreed with respondent's counsel that there was not a "significant amount of misappropriation."

The AUSA added that Ameripay took public and private monies to pay off Sherbourne investors, emphasizing that respondent's largest victims were public entities, such as, "Sussex, Dover Education, Kittatinny High School." He stated:

> In a time where there was not enough tax dollars to cover the budget, these folks entrusted tax dollars to [respondent], who didn't turn it over, and now these towns have had to go back out into the public and tell the public, we either need to raise taxes at a time when State aid is being cut, or we have to have a bond where we have to pay interest because we have to raise this money to pay the IRS.
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> This is not just a victimless crime in any sense of the word, and it is not a crime that just affects one victim. When you see Sussex County on the paper, that impacts every resident in that county. . . . because inevitably that loss to the IRS is going to flow down to the people, and that is what is happening in this situation.
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> [Ex.E36-9 to 36-24.][3]

[3] Ex.E refers to the March 18, 2011 sentencing transcript.

The sentencing court considered the mitigating factors as well as respondent's abuse of trust, the loss amount, and the policy goals of sentencing -- to provide an appropriate punishment that protects the public from future similar conduct and that serves as a deterrent. On March 18, 2011, the court sentenced respondent to sixty months' imprisonment, followed by three years of supervised release, and ordered respondent to pay restitution totaling $8,606,413.36 to 179 victims, as well as a $100 assessment. Following respondent's appeal, on May 22, 2012, the United States Court of Appeals, Third Circuit, affirmed the judgment.

The OAE urged us to disbar respondent, pointing out that attorneys guilty of fraud have received lengthy suspensions or have been disbarred. The OAE argued that this case is similar to In re Marino, 217 N.J. 351 (2014), in terms of the staggering loss to the victims and the sentence imposed as a result of the attorney's criminal conviction. Marino pleaded guilty to misprision of a felony. Approximately 392 investors lost more than $309 million. Marino was sentenced to twenty-one months in prison and one year of supervised release and was ordered to make restitution totaling $60 million, jointly and severally with the other defendants.

The OAE also cited _In re Mueller_, 218 _N.J._ 3 (2014) (three-year retroactive suspension for attorney who pleaded guilty to conspiracy to commit wire fraud; attorney conspired to defraud real estate investors by promising large returns on their investments and giving false assurances that their money was safe, even though the attorney had wired their funds to co-conspirators who depleted the funds for personal expenses; the attorney was sentenced to five months' imprisonment, two years' supervised release, and payment of restitution in the amount of $25,500); and _In re Abrams_, 186 _N.J._ 588 (2006) (three-year retroactive suspension for attorney guilty of two counts of wire fraud; attorney 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 the debts of the sold company with the assets of the buyer, resulting in a $200,000 loss; attorney sentenced to four months' imprisonment, three years' supervised release, and payment of a $15,000 fine).

The existence of a criminal conviction is conclusive evidence of respondent's guilt. _R._ 1:20-13(c); _In re Gipson_, 103 _N.J._ 75, 77 (1986). Respondent's guilty plea to a violation of _U.S.C.A._ §1349 constitutes a violation of _RPC_ 8.4(b) and _RPC_ 8.4(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 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 . . . prior trustworthy conduct, and general good conduct." Id. at 445-46. The proper measure of discipline in this case turns on the conduct that formed the basis for respondent's guilty plea.

Respondent actively participated in the diversion of millions of dollars of public and private payroll, tax funds, and investor funds to subsidize the obligations of other clients and to pay Sherbourne investors. He also purposefully provided false information to prospective investors to persuade them to invest monies with an unregistered investment company. Respondent's misconduct spanned a period of at least four-and-one-half years and resulted in substantial harm – particularly to various public entities.

Cases involving criminal fraud or conspiracy to commit fraud have resulted in lengthy suspensions or disbarment.

In In re Mueller, supra, 218 N.J. 3, (three-year retroactive suspension) the attorney made affirmative misrepresentations to aid his co-conspirators to defraud real estate investors to obtain funds from them for a real estate

development project. Mueller wire-transferred the invested funds (approximately $1 million) from his trust account to the co-conspirators. The purpose for which the funds were purportedly earmarked was not fulfilled. The co-conspirators depleted almost all of the funds for personal and other expenses, unrelated to the development project.

Mueller also engaged in lies to lull investors to believe that investing in the purported development project was secure. He authored a letter misrepresenting that he was holding $834,000 in his trust account. He also faxed a false trust account statement to an investor that misrepresented that he held a balance of $612,461 in his trust account. In addition, he notarized documents for which he did not witness the execution. The documents were a false lien and note on which the grantors names had been forged.

Although Mueller's counsel asserted that, initially, Mueller believed that the development project was legitimate, he later clearly learned otherwise and lent his name and his position of trust to help defraud investors. His misconduct spanned an eleven-month period. As noted above, Mueller was sentenced to a five-month term of imprisonment and ordered to pay $25,500 in restitution.

In _In re Abrams_, _supra_, 186 _N.J._ 588 (three-year retroactive suspension), the attorney entered a guilty plea to two counts of wire fraud for his participation in a scheme to defraud Thermadyne Holdings Corporation in connection with its purchase of Woodland Cryogenics, Inc., in which he was part owner, vice-president, secretary and, at times, general counsel. Abrams instructed an administrator to fraudulently overstate Woodland's accounts receivables. After the sale, Abrams continued to work for Thermadyne and used Thermadyne's funds for, among other things, the satisfaction of Woodland's previous debt to the IRS and other Woodland liabilities that were not assumed by Thermadyne under the purchase agreement.

Abrams further committed wire fraud when he faxed a document from Philadelphia to Thermadyne, in Missouri. The facsimile, sent during the final stages of negotiations, grossly overstated to Thermadyne the "collectibility" of Woodland's other accounts receivable. The information induced Thermadyne to purchase Woodland's assets for $1.508 million, which was wire-transferred from New York to Philadelphia.

We considered, in aggravation, (1) the attorney's role as a primary participant in the scheme to defraud Thermadyne out of $200,000; and (2) his motivation of self-gain. In mitigation,

Abrams had no disciplinary history in New Jersey, cooperated fully with the federal government, and repaid Thermadyne.

In In re Noce, 179 N.J. 531 (2004), the attorney received a three-year retroactive suspension based on his conviction of conspiracy to commit mail fraud. The attorney and others participated in a scheme to defraud the Department of Housing and Urban Development (HUD) by assisting in the procurement of home mortgage loans for unqualified buyers, from which HUD suffered losses of more than $2.4 million. The attorney was the settlement agent and closing attorney for unqualified buyers in fifty closings. He knowingly certified HUD-1 statements and gift transfer certifications that contained misrepresentations. The attorney was paid only his regular fee and cooperated fully with the government.

In In re Marino, supra, 217 N.J. 351, the attorney was disbarred for his participation in a fraud that resulted in a loss to 288 investors of over $309 million. He affirmatively assisted his brother and another co-conspirator in the fraud, which involved, among other things, the creation of a false financial history for a failing hedge fund to persuade contributions from potential investors. Marino's participation in the fraud included assisting in the concealment of the fraud perpetrated on investors by administering a fraudulent accounting firm that covered up the fund's significant losses, hiding the fund's true financial

information, and drafting versions of a phony purchase and sale agreement of the non-existent accounting firm.

The sentencing judge found that Marino was aware of the fraud as it was being perpetrated on the investors, that he helped conceal it rather than report it to the authorities, and that the losses could have been either avoided or significantly limited if he had reported the fraudulent activity to law enforcement. The judge pointed out that Marino's actions "left individuals, some 'in the twilight of their life, suddenly destitute.'"

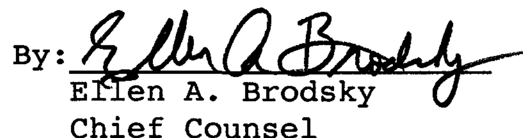
As noted above, Marino was ordered to make restitution of $60 million, jointly and severally with the other defendants involved in the fraud. That amount was the sum that investors had been induced to contribute to the failing hedge fund during the period that Marino admitted knowing about and concealing the fraud.

We find that this case is much more serious than the above suspension cases because the losses in this matter totaled more than seven million dollars (respondent was ordered to pay restitution of $8,606,413) and 179 victims were impacted by the scheme. Although respondent's wrongdoing was not of the magnitude of Marino's, respondent participated in an ongoing fraud, lasting at least four years. It did not stop until the SEC launched an investigation into Sherbourne's/Ameripay's activities. Respondent solicited investments without revealing to the investors that their funds would be used to

conceal the shortfalls in Ameripay's operations. Respondent's role in the improper diversion of Sherbourne and Ameripay's funds had a far-reaching effect. As the AUSA stressed, respondent's misdeeds impacted not only a number of public entities, including towns, but also the residents of those towns, who would be required to cover the shortfalls that were generated by respondent's misconduct. Moreover, respondent not only was aware of the fraud as it was being perpetrated on investors, but also, and more importantly, he actively participated in its perpetration. Thus, respondent's conduct evinces such a defect of character that a period of suspension simply cannot restore the public's trust in him. We, therefore, recommend his disbarment.

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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

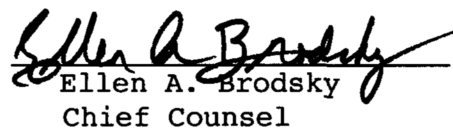
In the Matter of Paul G. Bultmeyer
Docket No. DRB 15-056

Argued: May 21, 2015

Decided: September 15, 2015

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich	X					
Total:	8					



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