SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-271
District Docket No. XIV-2012-0211E

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| IN THE MATTER OF | : |
| ROBERT W. STEIN | : |
| AN ATTORNEY AT LAW | : |

Decision

Argued: January 19, 2017

Decided: March 1, 2017

Reid A. Adler appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler appeared on behalf of respondent.

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(c), following respondent's conviction in the United States District Court for the District of New Jersey (USDC) of one count of violating the Sherman Act, 15 U.S.C. §1.

The OAE recommended a three-year suspension. We determine to impose a three-year, retroactive suspension.

Respondent was admitted to the New Jersey bar in 1994. He has no prior discipline. On May 9, 2012, the Supreme Court temporarily suspended respondent as a result of his conviction in this matter. In re Stein, 210 N.J. 149 (2012).

Respondent pleaded guilty to a February 12, 2012 Information charging him with one count of Sherman Act Conspiracy, a violation of 15 U.S.C. §1, which states as follows:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

The Information alleged that respondent, as an owner of "Company 1," served as its president and, in that capacity,

oversaw, bid on, and purchased New Jersey municipal tax liens by way of auctions, for the company.[1]

In addition to respondent, various other individuals and entities, not named as defendants, participated as co-conspirators in the charged offense, performed acts, and made statements in furtherance of a bid-rigging scheme.

As explained in the Information, when the owner of real estate in New Jersey fails to pay property, water, or sewer taxes, the municipality in which it is located may attach a lien. If the lien remains unpaid, it may then be sold at a tax lien auction. At auction, the value of the lien includes the amount of unpaid property taxes, accrued interest, and other applicable costs and penalties. Bidders at these auctions include individuals, companies, and financial institutions.

Pursuant to a competitive bidding process, bidders will bid on the interest rate that the property owner will pay if and when the tax lien is redeemed. Bidding begins at the statutory maximum (eighteen percent) and can be driven down in the bidding process to zero. Typically, the winning bidder has

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[1] This matter arises out of the same criminal conspiracy as a companion case, I/M/O Isadore H. May, Docket No. DRB 16-275, also heard at our January 19, 2017 session.

the right to collect interest at the winning rate, as well as the original lien amount and penalties. If the taxes, interest, and penalties remain unpaid, the winning bidder may also foreclose on the property owner's right of redemption, and take title to the property.

From 1998 until spring 2009, respondent and the co-conspirators engaged in a conspiracy to suppress and eliminate competition in the bidding process by submitting non-competitive and collusive bids at public auctions for tax liens in various New Jersey municipalities. According to the information, respondent's and the co-conspirators' "combination and conspiracy was in unreasonable restraint of interstate trade and commerce," a violation of 15 U.S.C. §1.

In furtherance of the combination and conspiracy to rig bids at tax lien auctions, respondent and the co-conspirators:

> a. attended meetings and engaged in discussions or conversations regarding bids for tax liens being auctioned by municipalities within the District of New Jersey;
>
> b. agreed during those meetings and discussions not to compete at certain tax lien auctions by allocating which tax liens each would bid on or refrain from bidding;
>
> c. submitted bids in accordance with the agreements reached; and

d. purchased tax liens pursuant to those agreements at collusive and non-competitive interest rates.

[OAEbEx.1¶12.][2]

One or more of the co-conspirators used out-of-state funds to purchase tax liens. Out-of-state bidders both participated in and paid for multiple tax liens using out-of-state funds. Therefore, respondent and the co-conspirators were within, and substantially affected, the flow of interstate trade and commerce.

On February 23, 2012, respondent pleaded guilty before the Honorable Dennis M. Cavanaugh, U.S.D.J. After soliciting a factual basis, the judge accepted respondent's plea and found him guilty of the Sherman Act violation.

On April 27, 2016, the Honorable Susan D. Wigenton, U.S.D.J., sentenced respondent to a one-year term of probation, a $20,000 fine, and a $100 special assessment. Special conditions were also made a part of his probationary term: (1) new debt, self-employment, and business disclosure restrictions; and (2) a restriction prohibiting employment

[2] OAEb refers to the OAE's July 29, 2016 brief in support of the motion for final discipline.

and/or capital ventures that involve the investment of tax liens.

At sentencing, respondent's then counsel, Paul H. Zoubek, Esq., informed the court that respondent had also paid $115,000 toward a class action law suit, and relinquished his ownership interest in Crusader Servicing Corporation and Royal Tax Lien Services, "so that it could help fund the $2 million fine that Crusader paid . . . ."

Both respondent and the OAE agree that respondent should receive a three-year suspension. Respondent, however, urged us to impose any suspension retroactively, citing two cases in which suspensions were applied retroactively to the attorneys' temporary suspensions in New Jersey. See In re Abrams, 186 N.J. 588 (2006) and In re Mueller, 218 N.J. 3 (2014), discussed below. The OAE did not take a position on whether the suspension should be prospective or retroactive.

The OAE cited, in aggravation, respondent's failure to promptly report his February 12, 2012 guilty plea, as required by R. 1:20-13(a)(1). Rather, the OAE learned of respondent's plea and conviction two months later, on May 2, 2012. On May 3, 2012, the OAE filed a motion for respondent's temporary suspension, which was granted, effective May 9, 2012.

In an August 17, 2016 brief to us, respondent's ethics counsel, Kim D. Ringler, Esq., requested that we apply the recommended suspension retroactively to either February 23, 2012, the date of respondent's guilty plea, or May 9, 2012, the effective date of his temporary suspension.

According to counsel, respondent was unaware that he had failed to timely inform the OAE in 2012 of the charge against him, having relied at the time on "able counsel," presumably a reference to his criminal defense counsel. Respondent, however, informed the OAE of the conclusion of the criminal matter immediately following his sentencing in February 2016.

In support of a retroactive suspension, counsel offered the same mitigating factors for which respondent received a three-level downward departure at sentencing in federal court: his extensive, comprehensive, truthful, complete, and reliable cooperation with the government; his expressed remorse for his crime; the passage of time since the 2009 misconduct; and his temporary suspension since May 2012.

In further mitigation, counsel urged us to consider respondent's volunteer work for a Delaware Valley hunger relief organization, "Philabundance." Counsel attached a copy of an October 12, 2015 letter from Jaclyn Elwell, the volunteer manager of Philabundance, to the sentencing judge, containing a

compelling description of respondent's dedicated, weekly volunteer work for the organization, amounting to more than 500 hours since April 2012. Elwell described respondent's help as having been "above and beyond what we see from any other volunteer."

* * *

Following a review of the record, we determined to grant the OAE's motion. Respondent's criminal conviction for violating the Sherman Act clearly and convincingly establishes that he has committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(b). Moreover, the facts underlying his conviction evidence that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of RPC 8.4(c).

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be

considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Ibid. (citations omitted).

Fashioning the appropriate penalty involves a consideration of many 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, 118 N.J. 443, 445-46 (1989).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

In In re Mueller, supra, 218 N.J. 3, the attorney received a three-year suspension, retroactive to his temporary suspension

in New Jersey. Mueller pleaded guilty to a federal information charging him with conspiracy to commit wire fraud. He received a five-month term of incarceration, followed by two years of probation, and was ordered to pay $25,500 in restitution. In the Matter of Erik W. Mueller, DRB 13-324 (February 12, 2014) (slip op. at 8).

Mueller conspired and agreed with Allen Weiss, a real estate developer, and other co-conspirators, to defraud a group of physicians/investors, who were lured into investing $1,000,000 to convert existing properties into medical offices. The doctors were falsely promised returns of between twenty and thirty percent on their investments. Mueller held the investment funds for the project in his trust account. Id. at 3.

Over the course of a year thereafter, Mueller, at Weiss' and the co-conspirators' behest, wire-transferred various amounts of the investors' funds to their bank accounts, after which they used those funds for their own purposes, which were unrelated to the development project. Id. at 4. After all of the funds had been depleted, Weiss and his co-conspirators persuaded Mueller to join in their illegal activities. Id. at 6.

Specifically, when the investors began to question the project and the use of their funds, Mueller, Weiss, and others

misrepresented to them that the funds were safe. To entice additional investors, Weiss directed Mueller to create a false lien and note, containing names of guarantors who had not actually signed the note. In front of a potential investor, Mueller notarized the bogus document, after which the investor advanced $150,000. Id. at 5. Mueller also prepared a letter to another investor, stating that he held $834,000 in his trust account for the project, when the account held only $164 in project funds. He also faxed a false trust account statement to another investor showing $612,000 in the account, when the actual balance was only $8,900. Ibid.

In mitigation, Mueller was not the instigator of the fraudulent scheme, and benefitted only by receipt of a $20,000 fee; he had no disciplinary history; he cooperated with the federal government; he expressed sincere remorse for his conduct; and he submitted evidence of his good personal traits. Id. at 14.

In In re Abrams, supra, 186 N.J. 588, the attorney also received a three-year suspension, retroactive to his temporary suspension in New Jersey. Abrams pleaded guilty 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. He was sentenced to a four-month term of incarceration and three years of supervised release. In order to artificially inflate the value of the company's assets, Abrams instructed his accounts receivable administrator to fraudulently overstate Woodland's accounts receivable. In the Matter of Andrew C. Abrams, DRB 06-027 (April 28, 2006) (slip op. at 2-3).

After the sale, Abrams continued to work for Thermadyne and used Thermadyne's funds to satisfy Woodland's pre-existing debt to the IRS and other Woodland liabilities not assumed by Thermadyne under the purchase agreement. Id at 4.

Abrams committed wire fraud when he faxed a document from Philadelphia to Thermadyne, in Missouri. The facsimile grossly overstated the "collectability" of Woodland's other accounts receivable to Thermadyne in the final stages of the negotiations. That information caused Thermadyne to wire-transfer, from New York to Philadelphia, $1.508 million to purchase Woodland's assets. Id. at 5.

In aggravation, Abrams was a primary participant in the scheme to defraud Thermadyne out of $200,000, and was motivated by self-gain. Id. at 8. In mitigation, Abrams had an unblemished

ethics history in New Jersey, cooperated fully with the federal government, and repaid Thermadyne. Ibid.

In In re Noce, 179 N.J. 531 (2004), the attorney received a three-year, retroactive suspension after he pleaded guilty to conspiracy to commit mail fraud. In the Matter of Philip S. Noce, DRB 03-225 and DRB 03-169 (December 8, 2003) (slip op. at 2). Noce 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 over $2.4 million. Noce 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. Id. at 5-7. In mitigation, Noce was paid only his regular fee and cooperated fully with the government during its investigation. Id. at 9.

Here, respondent's conduct, engaging in a fraudulent scheme with his co-conspirators to manipulate the bidding process in municipal tax lien sales in New Jersey, is similar to that of the attorneys in Mueller and Abrams, both of whom received retroactive three-year suspensions. In addition, like Mueller and Abrams, respondent's mitigation included substantial

cooperation with the government, the lack of prior discipline, expressed remorse for his actions, and repayment to the victims.

Although the OAE took no position on whether the suspension it seeks should be imposed prospectively or retroactively, we note that it has relied on Mueller and Abrams, both retroactive suspension cases, in support of its request for the imposition of a three-year suspension.

In respect of the aggravating factor urged by the OAE, it is true that respondent did not report his February 2012 guilty plea to the OAE. It is also true that two months was ample time for respondent to do so. He believed, however, that his former counsel was handling that aspect of his criminal matter. Once he was temporarily suspended in this matter, respondent had little reason to notify the OAE of it. Moreover, respondent immediately informed the OAE of his sentence, when it was imposed in 2016.

Because respondent relied on prior counsel to notify the OAE of the pendency of the criminal case, and because he has been temporarily suspended in this matter for more than four years, we determine to impose a three-year suspension, retroactive to May 9, 2012, the effective date of his temporary suspension.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert W. Stein
Docket No. DRB 16-271

Argued: January 19, 2017

Decided: March 1, 2017

Disposition: Three-year retroactive suspension

| ***Members*** | Three-year retroactive suspension | Recused | Did not participate |
|---|---|---|---|
| Frost | X | | |
| Baugh | X | | |
| Boyer | X | | |
| Clark | X | | |
| Gallipoli | X | | |
| Hoberman | X | | |
| Rivera | X | | |
| Singer | X | | |
| Zmirich | X | | |
| Total: | 9 | | |

Ellen A. Brodsky
Chief Counsel