SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-039
District Docket No. XIV-2005-0358E

IN THE MATTER OF

ERIC ALAN KLEIN

AN ATTORNEY AT LAW

Decision

Argued: April 20, 2017

Decided: July 21, 2017

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

Respondent waived appearance for oral argument.

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. On July 8, 2005, respondent was convicted, after a jury trial in the United States District Court for the Southern District of New York, of three counts of felony wire fraud, in violation of 18 U.S.C. §§ 371 and 1343. Thereafter, on December

29, 2016, the Supreme Court of New York, Appellate Division, First Judicial Department, having determined that respondent had committed "serious crimes," issued an opinion disbarring him, nunc pro tunc to March 7, 2006. As set forth below, respondent's conduct violated the equivalents of New Jersey RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE recommends respondent's disbarment. Respondent did not file substantive opposition to the OAE's motion for reciprocal discipline. Rather, he requested a stay of these disciplinary proceedings, citing pending collateral attacks he has filed in respect of his conviction. On March 7, 2017, Office of Board Counsel informed respondent that the motion for reciprocal discipline would not be stayed because, pursuant to R. 1:20-13, his direct appeals of his conviction had been concluded.

For the reasons set forth below, we determine to grant the OAE's motion for final discipline and recommend respondent's disbarment.

Respondent earned admission to the New York bar in 1984 and the New Jersey bar in 1987. He has no history of discipline in New Jersey, but has been temporarily suspended since July 27, 2005, based on his federal felony convictions underlying this motion for reciprocal discipline. In re Klein, 184 N.J. 292 (2005).

In 2005, respondent was indicted by the grand jury for the United States District Court, Southern District of New York, for charges including three counts of wire fraud, in violation of 18 U.S.C. §§ 371 and 1343. Beginning on June 27, 2005, respondent was tried before a jury and convicted of those federal felonies.[1]

Between 1996 and April 2003, respondent and his co-conspirator, Lloyd Probber, engaged in an "advanced fee scheme," illegally obtaining hundreds of thousands of dollars from individuals and businesses by fraud.[2] They used bogus companies named Pan Global Financial Network, Capital Gain Systems, and International Developing Enterprises Agency (collectively, "Pan

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[1] Prior to the trial, the government dismissed additional counts of the indictment against respondent.

[2] According to the Federal Bureau of Investigation's website, in an "advanced fee scheme," a victim pays money to someone in anticipation of receiving something of greater value, such as a loan, contract, investment, or gift, and then receives little or nothing in return. https://www.fbi.gov/scams-and-safety/common-fraud-schemes/advance-fee-schemes.

Global") to dupe clients into paying thousands of dollars in "advanced fees" in exchange for a promise of collateral that could be used to borrow much larger sums of money from well-known financial institutions. Instead of collateral, however, the clients received worthless documents called "Notices of Availability" in return for their advanced fees. These documents were not legitimate financial instruments, and never have been accepted by banks as collateral for financing. Respondent and Probber knew, when they accepted the advanced fees, that Pan Global would never provide the service promised to the clients. The government's allegations during respondent's trial focused on twenty-one individuals and businesses that Pan Global had defrauded via its scheme.

At the time respondent began his working relationship with Probber, he knew that Probber was a convicted federal felon. To that end, the following stipulation was read to the jury at the start of respondent's trial:

> [I]n 1981, Lloyd Probber pleaded guilty to various counts of mail fraud in connection with two schemes. One to obtain insurance benefits by fraud and one to divert money from his commodities trading clients' accounts. Probber was sentenced to eighteen months' imprisonment for these offenses . . . .
> In June 1991, Lloyd Probber was convicted after a jury trial of various counts of wire

fraud, mail fraud, making false statements to his probation officer, and making false statements on applications for bank credit cards. That conviction arose out of Probber's operation of an advanced fee scheme through which he obtained upfront money for people in exchange for bank guarantees, and then did not provide the bank guarantees . . . After that conviction, Probber was sentenced to 55 months' imprisonment . . . .

In January 1995, Probber was released from prison and was placed on supervised release which is similar to probation. Soon thereafter, he hired [respondent] as his attorney on the legal malpractice claim that Probber was considering filing against the lawyer who represented him in the 1991 conviction described above . . . .

In November 1995, Probber was charged with violating his supervised release . . . [he] was accused of committing crimes of wire fraud and mail fraud while on supervised release by using a company called Capital Gains Systems Inc. to charge people up front or advanced fees for fraudulent bank guarantees . . . In December 1995, a court in this district found Probber guilty of that violation and sentenced him to an additional two years' imprisonment.

In April, May and July of 1996, [respondent] wrote checks to a law firm called O'Dwyer & Schmoker to pay that firm to work on reducing Probber's sentence . . .

From September 1996 to March 1997, [respondent] represented Probber during his appeal of that violation and sentence. But [respondent] did not ultimately file an appeal brief for Probber. Rather, another lawyer filed Probber's appeal in that case.

> In October and November 1996 and July 1999, [respondent] wrote letters to the United States Attorney's Office requesting that documents taken from Probber during his prior prosecutions be returned to him.
>
> While Lloyd Probber was in prison for his violation of supervised release, he had at least 45 telephone conversations of two minutes or more with [respondent]. Probber was released from prison in August 1997.
>
> [OAEaEx.B.][3]

As part of the scheme, Pan Global would advertise its "services" on the internet, in financial publications, and through targeted mailings. When individuals or businesses would reply to an advertisement, respondent, Probber, or other employees of Pan Global would inform them that, to participate in Pan Global's financing programs, they must first pay an enrollment fee, usually in the amount of $5,000. Pan Global misrepresented that the advanced enrollment fee would be refunded at the close of the client's first transaction; that Pan Global would assist the client in obtaining collateral necessary to obtain financing for the client's project; and that Pan Global had previously assisted its clients in closing numerous financing transactions.

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[3] "OAEa" refers to the appendix to the OAE's brief, dated January 26, 2017.

The OAE argued that respondent leveraged his status as a lawyer to provide "a veneer of respectability and legality" to the criminal scheme and to lure clients into the scheme. Respondent drafted legal opinions, which were included in Pan Global's marketing materials, that identified respondent as Pan Global's "legal advisor" and its "custodian of funds, escrow agent, and fiduciary." In those materials, respondent misrepresented that he had analyzed Pan Global's services; that Pan Global would provide a refund, for any reason, within thirty days from the date of enrollment, a policy he described as "the highest standard of business ethics;" and that Pan Global complied with "all regulations and is a service that may be of value to certain financial professionals." A short biography was also included in the materials, which stated:

> Eric A. Klein has been practicing law for approximately 15 years. He was formerly employed for four years by the United States Court of Appeals for the Second Circuit, is a Wall Street attorney, has been lead defense counsel in multidistrict securities litigation, is the author of a book on constitutional law and the Bill of Rights, commemorating the bicentennial of the Constitution, published by the University Press of America.
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> [OAEaEx.Bp46.]

Pursuant to the scheme, clients deposited their "advanced fees" into respondent's attorney escrow account. He accompanied Probber to client meetings, and would provide written or verbal assurances to induce the clients to sign up for services. Respondent then drafted and revised one-sided contracts and escrow agreements to insulate Pan Global, himself, and Probber from liability. Ultimately, respondent distributed hundreds of thousands of dollars from his escrow account to Probber, who then paid him for his "services."

During client meetings and telephone conferences, respondent routinely identified himself as an attorney, claimed that he had evaluated Pan Global's financing programs, and misrepresented that Pan Global had a history of success with no problems or complaints. He also assured clients that he would act as their "fiduciary," promising that their advanced fees would be escrowed in his attorney trust account and returned upon either the closing of their first transaction or in the event that Pan Global's services failed to secure financing. In truth, the OAE noted, respondent knew that Pan Global's services were worthless, and that no client had ever obtained financing using their programs. He was also well aware of complaints of

fraud from Pan Global clients, commencing almost from the inception of his relationship with Probber and Pan Global.

After prospective clients agreed to use Pan Global's services, respondent or Probber directed them to wire advanced fees to various accounts that they controlled. These accounts included respondent's escrow account at HSBC Bank, to which respondent allowed Probber access, and an account at J.P. Morgan Chase Bank, jointly maintained by them. Once the advanced fees had been secured, Pan Global would provide the clients with Notices of Availability, which were of no value and could not be used as collateral to secure financing. In most cases, the Notices of Availability were documents that Probber had forged by modifying legitimate advertising materials produced by a well-known financial institution.

In May 2003, the FBI interviewed respondent three times in connection with its investigation of Pan Global. Respondent recounted that he first met Probber after he had been convicted at trial and released from prison, and had placed an advertisement seeking an attorney to prosecute a malpractice action against his trial counsel. Respondent replied to the advertisement, met Probber, and began to represent him, including in respect of his violation of supervised release.

Respondent admitted that he knew that Probber previously had been convicted for providing notices of availability in return for advanced fees, and characterized the notices of availability as "bull----," "worthless," and "crap."

Respondent told the FBI that, after Probber's release from prison following his violation of supervised release, he asked respondent "to help him insulate himself from criminal liability in the future," and inquired whether "providing his services to financial consultants like accountants or lawyers or financial brokers would insulate him from criminal liability." Respondent advised him that such a structure would be a "good idea," because it would "create a barrier between Probber and the actual individual who paid the advanced fee for the notices of availability." Respondent admitted that he attended Pan Global client meetings at Probber's request, and made sure Probber complied with his contracts, while advising him to "make the paperwork stronger" and not to "guarantee anything."

Respondent told the FBI that "he wasn't comfortable with the notices of availability because they were worthless documents, and because they were on bank letterhead but weren't authored by banks." Nevertheless, respondent admitted that he had secured banking product letters from both HSBC Bank and

Merrill Lynch, which Probber then modified for use in connection with the Pan Global scheme. He further admitted that Pan Global had received complaints, and that Probber held him out as "the person who would put up the money for collateral" with respect to Pan Global's funding programs. Respondent acknowledged that he had controlled the escrow account into which clients' funds were wired, and had eventually closed the account in response to a transaction that resulted in the criminal prosecution of Probber's partner in another venture. Respondent conceded that he had wired $217,968.33 from his escrow account to the partner charged in that prosecution.

Respondent also told the FBI that, even after Probber had been arrested, in April 2003, in connection with the Pan Global scheme, he continued to use his escrow account to "house monies from Pan Global." Moreover, respondent posted $100,000 to secure Probber's release on bail, and admitted that, once released, Probber continued to operate the same Pan Global programs that had resulted in his arrest, while respondent continued to accept clients' advanced fees in his escrow account. Respondent further admitted that, during their relationship, Probber paid him monthly, and that "half of his income was related to Pan Global." Respondent also conceded that, despite working with

Probber since 1995, he had never seen him actually close a deal, that his programs "weren't worth anything," and that Probber was "zero for a hundred." Respondent acknowledged that Probber was telling clients that he was the "legal advisor" to Pan Global, but claimed "he didn't know what that meant." He admitted, however, that when he met Pan Global clients, he called himself the "escrow agent."

In 2003, the Securities and Exchange Commission (SEC) also deposed respondent regarding his involvement with Probber and Pan Global. During that deposition, respondent admitted that, despite his issuance of legal opinions and his involvement in the "business," he had conducted no due diligence into the legitimacy of Pan Global's programs, but, rather, had "trusted Probber" not to do anything illegal, given his checkered past.[4] He also conceded that he did not want to know if Probber

[4] Respondent's deposition testimony before the SEC was read into the record during his criminal trial, but was not transcribed as part of the trial record before us. Respondent was represented by counsel during his trial, who raised no objection to the government's introduction of portions of that testimony or to the government's characterization of the portions of respondent's SEC testimony cited herein. Because there are adequate safeguards for the accuracy of respondent's SEC testimony used by the government, portions are referenced herein.

actually was closing any deals, and did not want to have "anything to do with" telephone calls from clients.

Respondent testified, under oath, during his trial. In summary, he claimed to be one of Probber's victims, maintaining that Probber had targeted and then duped him; opened credit cards in his name; forged his name on checks; and forged documents purporting to be from him. The government conceded that Probber, on occasion, had impersonated respondent in respect of credit cards and documents, but asserted that respondent knew of this misconduct and, nonetheless, continued to participate in the Pan Global scheme.

During his testimony, respondent admitted that he represented both Probber and Pan Global, over the course of several years, but denied that he was ever an employee or principal of the "company." Moreover, respondent denied any knowing involvement in fraud, and defended his actions as escrow agent, claiming that he never released escrowed fees to Probber without proof of performance under each escrow agreement. Respondent conceded, however, that the only performance necessary for Probber and Pan Global to receive the escrowed funds from him was the issuance of the notice of availability. Respondent also claimed that, as escrow agent, he independently

scrutinized all Pan Global documents, and had even issued refunds to Pan Global clients when warranted by the contractual circumstances. Respondent admitted writing the two legal opinions vouching for Pan Global's financial programs, but maintained that he had done so in good faith, and that Probber had modified some of the language without his authorization, citing various words and phrases that he did not recognize as his work product.

On cross-examination by the government, respondent further conceded that he had regularly billed Probber for work between July 1996 and November 2003. He also admitted that he had written the first legal opinion endorsing the legitimacy of Pan Global's programs, which claimed it followed the highest standards of business ethics "in the world," based solely on discussions he had with Probber while he was incarcerated in Otisville, New York, in connection with a prior advanced fee scheme. Additionally, respondent conceded that, in October 2000, he had billed Probber for revisions to a "notice of availability contract," illustrating his active involvement in the attempt to insulate Probber and Pan Global from liability. Respondent admitted that, at one point, even though he and Probber shared two joint accounts, he advised Probber that "I think that you

have enough corporate names with asset protection in which to hide your assets. So you can do this on your own without using my name."

Despite his prior statements to the FBI, during which he described the notices of availability as "worthless" and "bull----," respondent asserted, while on the stand, that he was not aware that they were worthless until hearing the testimony of victims and experts during his trial. He claimed that, since he knew that Probber was a convicted felon, he had agreed to work with him only if Probber promised "no monkey business," and, therefore, trusted him. He admitted, however, that anyone could walk into a bank and get the same information provided by Pan Global in exchange for its clients' advanced fees, and further conceded that standard client contracts with Pan Global forbade clients from contacting banks directly, subject to forfeiture of their notice of availability and advanced fees. The government asserted that such a clause, which respondent drafted, was intended to insulate the worthlessness of the notice and to protect respondent, Probber, and Pan Global. Respondent eventually admitted that he had billed Probber for work he had done drafting and revising those very contracts and notices of availability.

Respondent further admitted that, even after Probber's arrest in April 2003, and respondent's ensuing disqualification, by a federal court, from representing Probber, due to the federal investigation of his possible involvement in Probber's crimes, as well as respondent's receipt of multiple letters from prior clients characterizing Pan Global as a "scam" and a "fraud" and threatening criminal prosecution, he continued to work with Probber, over a course of years. During that period, he also continued to accept deposits of hundreds of thousands of dollars of client fees in his attorney escrow account, and continued to disburse funds to Probber, who then paid him for his representation of Probber and Pan Global. Respondent also admitted that, before he met Probber, he had filed for bankruptcy twice, in 1993 and again in 1997. Respondent then acknowledged that, after meeting Probber and representing him and Pan Global, he had earned approximately $2 million, which he deposited in a Merrill Lynch brokerage account. Respondent acknowledged that he also represented Pan Global in lawsuits against clients who either owed further fees for their notices of availability, or who had bounced checks for their advanced fees.

The government maintained that respondent knew that the business he and Probber were running was a fraud, and that no client had ever successfully received a loan from the "collateral" supplied in return for their advanced fees. Moreover, numerous clients had demanded a return of the advanced fees they had paid to Pan Global, but respondent and Probber refused to return their funds, and continued to operate their scheme. The government summarized respondent's role as follows:

> You've learned beyond a reasonable doubt that Lloyd Probber, a convicted fraudster, ran an advanced fee scheme called [Pan Global]. You also learned beyond a reasonable doubt that [respondent], knowing that Pan Global and loan programs it offered were a complete sham, assisted Probber by writing legal opinions, twice, vouching for the loan programs, meeting with potential victims to assure them the programs were legitimate, receiving the advanced fee in his escrow account, and distributing the money back out to Probber.
>
> What you've learned is [respondent] is guilty beyond a reasonable doubt of all charges in the indictment.
>
> [OAEaEx.Gp702.]

The jury returned a guilty verdict against respondent on all three remaining counts of the indictment against him. Probber had entered a guilty plea to his latest scheme, and was sentenced to forty-six months in prison. On October 26, 2006,

the District Court sentenced respondent to fifty-one months' incarceration on each of the three counts, to run concurrently, followed by a three-year concurrent period of supervised release. Respondent was also ordered to pay $819,779 in restitution to the victims. As of the date of sentencing, respondent had made a payment of $625,000 toward that restitution amount.

* * *

Following a review of the record, we determine to grant the OAE's motion for final discipline. 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). Respondent's convictions for three counts of felony wire fraud, in violation of 18 U.S.C. §§ 371 and 1343, constitute violations of RPC 8.4(b). Pursuant to that Rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Moreover, the facts underlying respondent's convictions also evidence that he was engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, a violation of RPC 8.4(c). Hence, the sole issue to be determined 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).

Respondent actively participated in a criminal scheme to defraud Pan Global's clients of fees they paid in return for bogus promises of collateral, by providing false information and assurances to those clients to induce them to do so. Respondent engaged in this misconduct for approximately eight years, defrauding twenty-one victims of more than $819,000. Respondent was disbarred in New York for his convictions of these "serious crimes."

In In re Goldberg, 142 N.J. 557, 567 (1995), the Court enumerated aggravating factors that normally lead to the disbarment of attorneys convicted of crimes:

> Criminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to theft by deception and fraud, ordinarily result in disbarment. We have emphasized that when a criminal conspiracy evidences 'continuing and prolonged rather than episodic, involvement in crime,' is 'motivated by personal greed,' and involved the use of the lawyer's skills 'to assist in the engineering of the criminal scheme,' the offense merits disbarment.'
>
> [citations omitted.]

Applying the Goldberg standard, the Court has imposed lengthy suspensions or disbarment in cases involving criminal fraud or conspiracy to commit fraud. In In re Mueller, 218 N.J. 3 (2014), (three-year retroactive suspension) the attorney made affirmative misrepresentations to aid his co-conspirators to defraud real estate investors by obtaining 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. In the Matter of

Erik W. Mueller, DRB 13-324 (February 12, 2014) (slip op. at 3-4).

Mueller also engaged in lies to lull investors to believe that the purported development project was a secure investment. 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, misrepresenting that he held a balance of $612,461 in his trust account. In addition, he notarized signatures on documents he had not witnessed. Those documents included a false lien and a promissory note on which the grantors' names had been forged. Id. at 4-5.

Although Mueller initially asserted that he believed that the development project was legitimate, later, he clearly learned otherwise, but, nevertheless, lent his name and his position of trust to help defraud investors. Id. at 11-12. 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. Id. at 8.

In In re Abrams, 186 N.J. 588 (2006) (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 receivable. In the Matter of Andrew C. Abrams, DRB 06-027 (April 28, 2006) (slip op. at 3).

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 had not been assumed by Thermadyne under the purchase agreement. Id. at 4-5. Further, Abrams 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. Id. at 5.

We considered, in aggravation, the attorney's role as a primary participant in the scheme to defraud Thermadyne out of $200,000, and his motivation for 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. In the Matter of Philip S. Noce, DRB 03-225 and DRB 03-169 (December 8, 2003) (slip op. at 2). 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, resulting in HUD's loss of more than $2.4 million. The attorney was the settlement agent and closing attorney for unqualified buyers in fifty closings. He knowingly certified false HUD-1 statements and gift transfer certifications. Id. at 5-7. The attorney was paid only his regular fee and cooperated fully with the government investigation. Id. at 9.

In In re Bultmeyer, 224 N.J. 145 (2016), the attorney was disbarred for his knowing and intentional participation in a fraud that resulted in a loss to 179 victims of more than $7 million. He and a partner owned Ameripay, LLC, a payroll company that handled payroll and tax withholding services for numerous public and private entities throughout New Jersey. They also owned Sherbourne Capital Management, Ltd., which purported to be an investment company, and Sherbourne Financial, Ltd. Although Sherbourne was never registered with federal or state regulators

to sell any investments, the attorney and his co-conspirator misappropriated monies entrusted to them by Ameripay's payroll clients, as well as by Sherbourne investors, to conceal the shortfalls in Ameripay's payroll and tax withholding accounts. In the Matter of Paul G. Bultmeyer, DRB 15-056 (September 15, 2015) (slip op. at 3).

Bultmeyer and his co-conspirator 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. He 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." Id. at 4.

For his crimes, the attorney was sentenced to sixty months' imprisonment, followed by three years of supervised release, and ordered to pay $8,606,413.36 in restitution. Id. at 9.

In In re Marino, 217 N.J. 351 (2014), the attorney was disbarred for his participation in a fraud that resulted in a loss to 288 investors of more than $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 used to persuade contributions from potential investors. Marino's participation included assisting in the concealment of the fraud perpetrated on investors by administering a fraudulent accounting firm that concealed 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. In the Matter of Matthew A. Marino, DRB 13-135 (December 10, 2013) (slip op. at 3-8).

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. Id. at 12-13. The judge pointed out that Marino's actions "left individuals, some 'in the twilight of their life, suddenly destitute.'" Id. at 13.

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 of Marino's knowledge and concealment of the fraud. Id. at 13-14.

Here, the record clearly establishes that respondent's misconduct fulfills every aggravating factor set forth in Goldberg. Specifically, his involvement in the Pan Global "advanced fee scheme" was prolonged, spanning eight years. Moreover, his participation continued, undeterred, even after Probber was arrested, in April 2003. Rather than renounce the conspiracy, he ensured that Probber made bail, that clients were solicited and paid their fees, and that the Pan Global scheme did not falter.

Respondent's participation was motivated by personal greed. As he conceded during his trial, he had twice filed for bankruptcy before meeting Probber, who then lined his pockets with approximately $2 million over eight years, representing roughly half of his law firm's revenue during the period of their joint criminal enterprise.

Finally, respondent actively and knowingly assisted in the engineering of the criminal scheme, leveraging his status as an attorney to provide "a veneer of respectability and legality" to the criminal scheme; drafting specious legal opinions that were included in Pan Global's bogus marketing materials; meeting with clients and identifying himself as a "legal advisor" and "escrow agent" to Pan Global; and providing false assurances to clients

that their advanced fees would remain, inviolate, in his escrow account until their financing transactions closed. Alarmingly, he drafted his first legal opinion based solely on information that Probber had provided to him from a prison cell, during their visits at a federal correctional institute in Otisville, New York.

In addition to engaging in such deception, respondent applied his knowledge, as an attorney, to the criminal scheme. He drafted one-sided contracts and escrow agreements that Pan Global foisted on its clients, which respondent specifically tailored to meet Probber's request that he "insulate himself from criminal liability in the future." Once those client funds were deposited into his attorney escrow account, he would disburse those funds to Probber upon the issuance of a Notice of Availability to the client, which respondent himself characterized as "worthless" and "bull----" documents.

Moreover, the compelling mitigating factors present in Mueller, Abrams, or Noce are inapplicable here. In those cases, the attorneys all pleaded guilty to their crimes and cooperated with the government. Mueller's misconduct began with a belief that the development project was legitimate, and lasted only eleven months. Abrams's misconduct involved only $200,000. Noce

was paid only his regular fee in return for sanctioning the fraud in question.

On balance, respondent's misconduct was much more serious than that of the attorneys who received terms of suspension. Pan Global defrauded at least twenty-one victims, and respondent was ordered to pay over $819,000 in restitution. Although his wrongdoing was not of the financial magnitude of the attorneys in Bultmeyer or Marino, the record clearly evidences respondent's knowing participation, as a principal, in a calculated "advanced fee" scheme spanning eight years. The scheme did not end even after Probber was arrested; rather, respondent "held down the fort" until Probber could make bail and resume primary control of the criminal enterprise. Despite the overwhelming evidence against him, respondent refused to take responsibility for his crimes, instead insisting, under oath, that he was merely another of Probber's victims — a defense soundly rejected by the jury, which convicted him on all three charged counts. In our view, respondent's brazen misconduct, and his continuing unwillingness to take responsibility, or show remorse, evidences such defective character that disbarment is required to protect the public and to preserve confidence in the bar.

Member Gallipoli 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Eric A. Klein
Docket No. DRB 17-039

Argued: April 20, 2017

Decided: July 21, 2017

Disposition: Disbar

Members	Disbar	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli			X
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8		1

Ellen A. Brodsky
Chief Counsel