SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-128
District Docket No. XIV-2015-0098E

IN THE MATTER OF	:
FREDDY JACOBS	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 15, 2017

Decided: October 10, 2017

Hillary K. 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, following respondent's guilty plea in the United States District Court, Southern District of New York (SDNY), to one count of conspiracy to commit immigration fraud, contrary to 18 U.S.C. §1546(a) and 18 U.S.C. §371. The OAE seeks disbarment.

For the reasons stated below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey and New York bars in 1988. He has no history of discipline in New Jersey.

On December 3, 2014, based on his guilty plea in the SDNY, respondent was disbarred in New York, effective July 2, 2013. On February 5, 2015, the Second Circuit Court of Appeals disbarred respondent, based on his discipline in New York.

On July 20, 2015, respondent was temporarily suspended in New Jersey, following his guilty plea in the SDNY. In re Jacobs, 222 N.J. 30 (2015).

On June 24, 2013, the Grand Jury for the SDNY returned a superseding indictment, charging respondent with conspiracy to commit immigration fraud, contrary to 18 U.S.C. §1546(a) and 18 U.S.C. §371 (count one), and immigration fraud, contrary to 18 U.S.C. §1546(a) and (2) (count two). On July 2, 2013, respondent pleaded guilty to count one before the Honorable Robert P. Patterson, Jr., U.S.D.J.

During his allocution, respondent admitted that, while working on asylum applications in Manhattan, New York, from 2008 through December 2012, he came to believe with a "high probability" that the applications were "false." Despite that belief, respondent did not investigate the truth or falsity of

the applications, and continued to work on them. He admitted that he worked in concert with others at his law firm, and that some of the "false" applications were submitted to the immigration court.

On October 18, 2013, Judge Patterson sentenced respondent to twenty-four months of imprisonment, and two years of supervised release, but did not impose any fine or restitution. Respondent was ordered, however, to forfeit $78,200, representing legal fees in twenty-five fraudulent cases.

During sentencing, respondent's counsel classified the conspiracy as "limited," maintaining that respondent's clients lied in approximately twenty-five applications. Respondent, however, admitted that he had engaged in the fraudulent conduct between twenty-five and one hundred times (Ex.C,p.44).[1] Respondent's counsel noted, in mitigation, that respondent would lose his law license and sole means of support. He added that respondent was naive and had been manipulated by his "young, attractive office staff."

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[1] The Assistant United States Attorney agreed to use the low end of the range of the number of fraudulent applications for calculating the fee forfeiture. "Ex.C" refers to the sentencing transcript of October 18, 2013.

The OAE recommended that respondent be disbarred, asserting that cases of immigration fraud or the falsification of immigration documents have resulted in discipline ranging from long-term suspensions to disbarment. In support of its recommendation, the OAE cited In re Biederman, 134 N.J. 217 (1993) (eighteen-month suspension for attorney convicted of assisting ten Philippine nationals to enter the United States with fraudulent U.S. passports; Biederman did not procure phony passports and was not engaged in the practice of law when he assisted the Philippine immigrants); In re Salamanca, 204 N.J. 590 (2011) (two-year suspension for attorney who, as owner of a restaurant, submitted approximately four falsified applications for alien employment, misrepresenting, under penalty of perjury, that certain employment conditions were in place); In re Brumer, 122 N.J. 294 (1991) (three-year suspension for attorney who filed false labor certifications for foreign nationals seeking to obtain permanent resident visas and then advised clients to hide from Immigration and Naturalization Services (INS) investigators); In re Silverblatt, 142 N.J. 635 (1995) (three-year suspension for attorney who obtained employment authorization for ten aliens by falsely stating on immigration forms that the aliens were seeking political asylum); In re Vargas, 170 N.J. 255 (2002) (three-year suspension for attorney

who falsified INS notices of approval from prior clients by altering the name on the documents and submitting the false documents to the INS); and In re Saint-Preux, 197 N.J. 26 (2008) (disbarment for attorney who falsified hundreds of immigration notices of approval from prior clients by altering the names on the documents and submitting the false documents to INS to illegally obtain residency status for the new clients; the attorney tried to blame his criminal conduct on his paralegal, and showed no remorse).

In the OAE's view, similar to Saint-Preux, respondent filed falsified forms under an amnesty program, potentially providing an important benefit to hundreds who did not qualify. As in Saint-Preux, respondent's conduct, which involved his practice of law and, in the government's view, hundreds of clients, warrants disbarment. Respondent's sentence of two years of incarceration is twice as long as the one-year sentence in Salamanca, albeit shorter than the almost five-year sentence meted out in Saint-Preux.

In aggravation, the OAE argued, like Saint-Preux, respondent blamed others for his actions, and did not appear to take responsibility for them. Respondent sought to shift blame to his law office staff, in particular, his layperson paralegal, while Saint-Preux deflected his conduct by claiming that other

members of the bar were allegedly committing the same crimes. In addition, the OAE argued, as in Saint-Preux, respondent's conduct "implicate[d] national security concerns and involve[d] extraordinarily reckless conduct . . ." in the context of immigration cases.

The OAE argued that we should not consider respondent's lack of disciplinary history in New Jersey as a mitigating factor, as it appears that respondent conducted the entirety of his law practice in New York. Hence, the OAE recommended that respondent be disbarred.

* * *

Following a review of the record, we determined to grant the OAE's motion. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that rule, 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). Specifically, the conviction establishes a violation 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." Therefore, the sole issue before us is the extent of discipline to be imposed on respondent for his violation of RPC 8.4(b). R.

1:20-13(c)(2); In re Maqid, 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 the 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).

The following cases provide some guidance in gauging the suitable penalty for respondent's criminal offenses. As previously discussed, in In re Saint-Preux, supra, 197 N.J. 26, the Court disbarred the attorney for falsifying hundreds of immigration notices of approval relating to prior clients by altering the names on the documents and submitting the false documents to the INS to illegally obtain residency status for the new clients. In the Matter of Jonathan Saint-Preux, DRB 07-403 (May 7, 2008) (slip op. at 3-4).

In recommending Saint-Preux's disbarment, we relied on several cases. Specifically, in In re Vargas, supra, 170 N.J. 255, the attorney pleaded guilty to a one-count information charging him with making false statements on immigration and naturalization documents, in violation of 18 U.S.C.A. 1001. He was sentenced to a three-year term of probation, and ordered to perform 200 hours of community service.

In the course of his representation of two individuals who wished to establish permanent residence in the United States, Vargas submitted to INS, two notices of action bearing the individuals' names, when those documents actually had been issued for prior clients.

Initially, Vargas lied to ethics investigators about forging the INS documents, claiming that a paralegal in his office had done so. He later admitted that he had falsified the documents. Vargas was suspended for three years.

Three-year suspensions were also imposed in In re Silverblatt, supra, 142 N.J. 635 (attorney disbarred in New York after he pleaded guilty to one count of a federal indictment charging him with ten counts of willfully and knowingly presenting documents containing false statements of material fact to the INS, a violation of 18 U.S.C.A. 1001; the attorney also had misrepresented to the INS the reasons for changes in

the official alien status of a number of clients, resulting in employment authorization forms issued to those clients) and In re Brumer, supra, 122 N.J. 294, (attorney pleaded guilty to a two-count federal information charging him with knowingly and willfully encouraging and inducing aliens to reside in the United States, violations of 8 U.S.C.A. 1324(a)(1)(D) and 18 U.S.C.A. 2, and was sentenced to five years' probation, fined $50,000, and ordered to perform 1,000 hours of community service). See also In re Biederman, supra, 134 N.J. 217 (eighteen-month suspension for helping ten Philippine nationals to gain entry into the United States using fake passports; Biederman received a five-year term of probation and was ordered to pay a $1,000 fine; in mitigation, we considered that Biederman had enjoyed an illustrious career, spanning three decades).

Here, respondent's conduct was much more egregious than that of Vargas, Silverblatt, and Brumer, who received three-year suspensions. Vargas committed fraud in two client matters, received three years' probation, and 200 hours of community service. Likewise, Silverblatt admitted fraud in ten cases, received two years' probation, and was ordered to pay a $5,000 fine. Finally, in Brumer, a matter of first impression, there was a lack of quantifiable information in respect of the exact

number of matters in which the attorney committed fraud. However, Brumer was sentenced to five years' probation, fined $50,000, and ordered to fulfill 1,000 hours of community service. Here, respondent admitted committing fraud "between 25 and 100 times"[2] and served a two year prison term, making this matter more akin to that of Saint-Preux, who falsified a large volume of documents to leverage an amnesty program and who also served a term of imprisonment.

Unlike respondent, Saint-Preux had an ethics history. In counterbalance, however, respondent claimed that, although he was aware of, or suspected that, the fraud was occurring in his office, he did nothing to stop it. Indeed, he continued to contribute to it. Like Saint-Preux, respondent, too, failed to recognize his wrongdoing by trying to blame his "attractive" office staff, who allegedly took advantage of his purported naiveté. Finally, other than his unblemished ethics history in New Jersey, to which we attach little significance in the

[2] Even at the low end of the range of the number of matters in which respondent engaged in fraudulent conduct, the breadth of his conduct far exceeded that of the attorneys in Vargas and Silverblatt.

context of a practice conducted exclusively in New York, respondent, like Saint-Preux, offers no mitigation.

The breadth and depth of the fraud that respondent perpetrated against the United States government, along with his refusal to take responsibility therefor, beyond entering a guilty plea to the crime, lead us to only one conclusion: respondent should be disbarred.

Member Boyer voted for a two-year suspension, emphasizing that there was no evidence establishing that respondent himself had altered the documents.

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 Freddy Jacobs
Docket No. DRB 17-128

Argued: June 15, 2017

Decided: October 10, 2017

Disposition: Disbar

Members	Disbar	Two-year Suspension	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