SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-235
District Docket No. XIV-2016-0096E

IN THE MATTER OF	:
RACHEL H. NASH	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 14, 2017

Decided: December 27, 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 reciprocal discipline, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14, following respondent's two-year suspension in New York, based on her conduct in several litigation matters. The OAE seeks a suspension of either six months or one year. Respondent does not oppose the motion, but

requests that any suspension terminate on December 21, 2017, the date that the term of her New York suspension concludes.

For the reasons set forth below, we determined to grant the motion for reciprocal discipline and impose a two-year prospective suspension on respondent for her unethical conduct.

Respondent was admitted to the New Jersey bar in 2000 and to the New York bar in 2001. She has no disciplinary history in New Jersey.

After her admission to the New York bar, respondent did not engage in the formal practice of law, until the following year, when she undertook the representation of her family in matters, ultimately leading to the institution of ethics proceedings against her in that state. From 2005 to 2013, respondent served as an administrative law judge for the New York City Environmental Control Board and the Department of Health.

On June 25, 2012, the New York Departmental Disciplinary Committee for the First Judicial Department (Committee) instituted a disciplinary proceeding against respondent, in the form of a petition for collateral estoppel, based on her conduct in three civil actions. Respondent submitted an affidavit in opposition to the petition, claiming, among other things, that "she did not have a full and fair opportunity to litigate the findings at issue."

On July 8, 2013, the Supreme Court of the State of New York, Appellate Division, First Judicial Department (New York Court) entered an order, granting the Committee's petition and, pursuant to the doctrine of collateral estoppel, found respondent guilty of having violated the following provisions of the prior New York Lawyer's Code of Professional Responsibility (DR) and the current New York Rules of Professional Conduct (RPCs):

- DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation);
- DR 1-102(A)(5) (conduct prejudicial to the administration of justice);
- DR 1-102(A)(7) (conduct that adversely reflects upon the lawyer's fitness as a lawyer);
- DR 7-102 (A)(1) (filing a suit, asserting a position, conducting a defense, delaying a trial, or taking other action on behalf of a client, when the lawyer knows, or when it is obvious, that such action would serve merely to harass or maliciously injure another);
- DR 7-102(A)(2) (knowingly advancing a claim or defense that is unwarranted under existing law, and which cannot be supported by a good faith argument for an extension, modification, or reversal of existing law);
- RPC 3.1(a) (engaging in frivolous motion practice by bringing or defending a proceeding, or asserting or controverting an issue, without basis in law and fact);
- RPC 3.1(b)(1) (knowingly advancing a claim or defense that is unwarranted under existing law, and which cannot be supported by a good faith

argument for an extension, modification, or reversal of existing law);

- RPC 3.1(b)(2) (engaging in conduct that has no purpose other than to delay or prolong the resolution of litigation in violation of Rule 3.2, or serves merely to harass or maliciously injure another);

- RPC 3.4(c) (engaging in conduct in disregard of a ruling of a tribunal in the course of a proceeding);

- RPC 8.4(d) (conduct prejudicial to the administration of justice); and

- RPC 8.4(h) (engaging in conduct that adversely reflects upon the lawyer's fitness as a lawyer).[1]

In the order, the New York Court also appointed Rubin Ferziger, Esq., as special referee and directed him to conduct a hearing to "consider evidence in aggravation or mitigation, if any," and to recommend "an appropriate sanction."

Respondent sought re-argument of the New York Court's July 8, 2013 order. Her request was denied.

On April 9, 2014, Ferziger submitted his report, recommending a two-year suspension. In aggravation, he found that respondent had refused to acknowledge her wrongdoing and that she lacked remorse. On October 31, 2014, on motion of the Committee to confirm the referee's findings and recommendation, which respondent

[1] The New York RPCs became effective April 1, 2009.

opposed, Hearing Panel IX of the First Judicial Department (hearing panel) recommended that respondent be suspended for one year.

On November 19, 2015, the New York Court confirmed the hearing panel's determination in respect of aggravation and mitigation but rejected its recommended sanction. The New York Court imposed a two-year suspension on respondent, as recommended by the special referee.

In reaching our determination, we considered the facts set forth in the hearing panel's report, dated October 31, 2014 (hearing panel report).

Respondent, her sister, Esther Nash, and their mother, Dorothy Nash, were the principals of 501 Second Street LLC (501 LLC). 501 LLC owned a property located at 501 Second Street in Brooklyn, New York (Brooklyn property), which included four commercial spaces and seven residential units.[2]

On October 18, 2001, 501 LLC entered into a forty-eight-year triple net lease with Gihon, LLC (Gihon). The lease provided that Gihon would restore the Brooklyn property in which he also was to operate a bar and restaurant.

After execution of the lease, 501 LLC refused to deliver possession of the Brooklyn property to Gihon. Gihon withheld

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[2] Esther Nash had resided at the Brooklyn property "for many years."

rent and refused to perform its obligations under the lease until 501 LLC delivered possession of the property. Consequently, 501 LLC gave notice of default to Gihon, informing Gihon that its security deposit would be forfeited until the default was cured.

On January 25, 2002, Gihon sued 501 LLC for breach of contract and sought declaratory relief, in the form of a "Yellowstone injunction,"[3] enjoining 501 LLC from terminating the lease and directing 501 LLC to deliver possession of the property to Gihon (the breach of contract action). On February 15, 2002, upon 501 LLC's default, the trial court granted Gihon declaratory relief and imposed a Yellowstone injunction on 501 LLC.

501 LLC did not comply with the Yellowstone injunction. Thus, on June 14, 2002, the trial court ordered that 501 LLC grant Gihon possession of the property upon payment of $20,000 in rent. 501 LLC did not comply with the order. Gihon, thus, filed a motion to hold 501 LLC in contempt.

On March 13, 2003, following a hearing, the trial court found 501 LLC in contempt of the June 14, 2002 order, directed 501 LLC to return to Gihon the rent it had paid, and assessed a $100 fine

[3] A Yellowstone injunction blocks a landlord from terminating a lease.

for each day that 501 LLC failed to deliver possession of the property to Gihon. 501 LLC did not comply with the order. Thus, on November 13, 2003, the trial court entered a $44,200 judgment against 501 LLC. Of that amount, $22,000 represented 220 days of $100 fines, and $20,000 represented Gihon's rent, which 501 LLC had been ordered to return to Gihon.[4]

On December 10, 2003, a restraining notice, in the amount of $44,200, was issued to 501 LLC. Consequently, the Brooklyn property was scheduled for sheriff's sale.

On December 26, 2003, respondent recorded a deed, dated October 10, 2003, conveying the Brooklyn property from 501 LLC to 501 Second Street Holding Corp. (501 Holding Corp.), which was owned and controlled by the Nashes. Respondent had prepared the deed and transfer documents and notarized her mother's signature on the deed.[5]

On March 24, 2004, respondent commenced an action, on behalf of 501 Holding Corp., to prevent the sheriff's sale (the sheriff's sale action). On April 16, 2004, the trial court denied 501 Holding Corp.'s attempt to prevent the sheriff's sale, noting that the

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[4] Neither the petition nor the hearing panel report accounts for the remaining $2,200.

[5] Respondent struck from the acknowledgment the words that identified Dorothy Nash as a "principal of 501 Second Street LLC."

order to show cause was deficient as to form and substance. Moreover, according to the court, the order to show cause was "yet the latest thinly veiled attempt by [the Nashes] to frustrate the operation of law and the orders of this court." The court, which suggested that the deed was back-dated, stated that "[t]his last minute transfer between identical entities is nothing more than a shell game intended to further frustrate the orders of this court."[6] The court imposed a $7,500 sanction on 501 LLC "for the instant willful and unprincipled attempt to further frustrate the orders of this court."

On September 8, 2004, Gihon filed an action against 501 LLC and the Nashes individually to set aside, as a fraudulent conveyance, the deed from 501 LLC to 501 Holding Corp., to recover its $120,000 security deposit, and to receive an award of punitive damages (the fraudulent conveyance action). In November 2006, Gihon filed a motion for summary judgment, asking the court to: (1) find the conveyance from 501 LLC to the Holding Corp. to be a fraudulent transfer; (2) set aside the deed; (3) enter judgment in favor of Gihon in the sum of the security deposit; and (4) award Gihon punitive damages and attorneys' fees.

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[6] On April 16, 2004, the trial court referred the matter to the district attorney for an investigation into whether respondent had backdated the deed.

On December 28, 2007, the trial court granted Gihon's summary judgment motion, holding that the transfer was a fraudulent conveyance, made "with actual intent to hinder, delay or defraud [Gihon]," within the meaning of New York's Debtor Creditor Law, and awarded attorneys' fees to Gihon.

The court's determination on intent was based on the following factors: (1) there was a lack of consideration, (2) the parties had a close relationship, (3) the transfer was made when the March 13, 2003 contempt order was in effect, (4) the transfer was used to hinder and delay enforcement of the November 13, 2003 judgment, and (5) the identical parties continued to enjoy the ownership of the Brooklyn property under a different name. The court stated that, "[u]nder the circumstances presented here, and in the context of this litigation, it is clear beyond peradventure that this purported conveyance was made with actual intent to hinder, delay or defraud plaintiff and is fraudulent as to plaintiff." Because the transfer rendered 501 LLC insolvent, the conveyance was fraudulent, under New York law, and, because the transfer was made in an action in which Gihon was seeking money damages, the actions of 501 LLC to prevent Gihon from enforcing at least four contempt judgments also were fraudulent, under the same law.

On October 12, 2010, the Second Judicial Department of the New York Court affirmed the December 28, 2007 order granting Gihon summary judgment in the fraudulent conveyance action. On December 28, 2010, a $203,280 judgment was entered against 501 LLC in that matter.

Thereafter, Gihon served a subpoena duces tecum upon 501 LLC, as judgment debtor, to appear for deposition by its members, and another subpoena on respondent to appear individually as a witness for supplementary post-judgment proceedings. The subpoenas included language restraining the judgment debtor from transferring any property. Respondent neither complied with the subpoenas nor appeared for the deposition.

Gihon filed another order to show cause, this time seeking to hold respondent in contempt for failing to comply with the subpoenas. On July 19, 2011, the trial court granted Gihon's motion and held respondent in civil contempt. The court noted that respondent had failed to move to either quash the subpoenas or seek other relief. The court further noted that the judgment against 501 LLC remained unpaid.

The order set a deadline of September 19, 2011 for respondent to purge the contempt, by either paying the judgment or complying with

the subpoenas. Respondent "subsequently and timely purged the contempt."[7]

Meanwhile, on June 9, 2004, after the court had dismissed 501 LLC's sheriff's sale action, Dorothy Nash, on behalf of 501 Holding Corp., obtained a $1 million credit-line mortgage, encumbering the Brooklyn property with an assignment of rents. 501 Holding Corp. drew down $675,000 and subsequently defaulted on the credit-line.

Sometime in 2006, Norma Vigo, the credit-line mortgagee, instituted a foreclosure action. Respondent, as counsel for 501 Holding Corp., moved to dismiss the complaint. The court denied the motion, and respondent moved for re-argument. On October 2, 2009, the court denied the motion for re-argument and directed 501 Holding Corp. to serve an answer to the complaint within fourteen days.

On November 25, 2009, the court granted respondent's request for an extension of time to file the answer, on the condition that it be served by December 4, 2009. Rather than

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[7] According to the petition, respondent never purged the contempt. In respondent's brief to the Board in this matter, she notes that the petition's assertion that she failed to purge the contempt was incorrect and that the Committee subsequently filed a corrected petition. Attached to respondent's brief is a signed affirmation by Committee attorney Kevin P. Culley in which he confirms that the petition was in error on this point.

serve an answer, respondent moved again for re-argument on the motion to dismiss. Plaintiff cross-moved for default judgment against defendants.

On June 29, 2010, the court denied respondent's motion and granted the cross-motion for a default judgment. Respondent then filed an order to show cause for leave to re-argue the court's denial of the motion to re-argue and the grant of plaintiff's cross-motion for default judgment. The court declined to sign the order to show cause. Undaunted, respondent filed a fourth motion for leave to re-argue and to renew the prior motions.

On October 22, 2010, the court denied the motion to re-argue and renew the prior motions on the ground that it was "utterly without merit." Respondent was ordered to pay a $1,000 sanction to plaintiff's attorney and an additional $500 sanction to the New York Lawyers' Fund for Client Protection (CPF).

At some point, either 501 LLC or 501 Holding Corp. filed an appeal in one of the three litigated matters. Gihon filed a motion to strike respondent's brief and appendix. On June 21, 2010, the New York Court's Second Judicial Department sanctioned respondent $500, payable to the New York CPF, on the ground that the statements contained in respondent's affirmation in opposition to the motion "were made to harass or maliciously injure another." Respondent's offending statements were:

> I request your Honors' [sic] immediately refer Attorney Goldman to the Grievance Committee for investigation into whether 79 year old Attorney Goldman's false material statements are due to an impaired mental or physical condition or made with intent to deceive. Attorney Goldman has represented that he is 79 years old. Attorney Goldman may be medicated due to his Cancer.
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> [Ex.D12.][8]

On February 10, 2014, the hearing before the referee took place. Respondent presented no character witnesses. Instead, she offered, in mitigation, five letters, dated between 1999 and 2010. The letters were from a former employer and friends and colleagues, recommending respondent for employment, as an arbitrator for FINRA,[9] and for a White House fellowship. Respondent also presented printouts from web pages and copies of bar association notices and publications, indicating that she was an active law school alumna and a member of the Brooklyn Bar Association, the New York County Lawyers' Association, and the New York City Bar.

Respondent testified in narrative form. She claimed that the Independent Judicial Election Qualification Commission for the Second Judicial Department had determined that she was

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[8] The quotation varied slightly in the petition.

[9] Presumably, FINRA refers to the Financial Industry Regulatory Authority.

"qualified" to be a state Supreme Court judge and "highly qualified" to be a Civil Court Judge. Although the Committee had requested that respondent produce her applications to the judicial screening panels, she asserted that, despite her good faith efforts to locate them, she had not been able to do so.

Respondent denied to the referee that she had engaged in frivolous motion practice, acted in contempt, or that she had committed a fraud. She denied that the repeated motions to re-argue were frivolous. Eventually, respondent conceded that she "may have gone - maybe made an extra motion that - that the court felt was unnecessary," but asserted that, in her eyes, "it was our home."

According to the hearing panel, the referee recommended that respondent be suspended for two years, based on her lack of contrition and remorse. Moreover, he considered, in aggravation, her failure to acknowledge the wrongful nature of her conduct.

The hearing panel adopted the referee's findings, but chose to impose a one-year suspension on respondent. In reaching its decision, the hearing panel noted that the disciplinary proceeding involved frivolous motion practice, failure to abide by court orders or to purge contempt orders, fraudulent conveyance, and making statements to harass or maliciously injure another attorney. The panel also noted that, standing

alone, any single act of such misconduct might call for a public censure. However, when considered together, a public censure would be inadequate.

Moreover, respondent had presented no mitigation evidence of any significance. Her participation in some law school alumni and bar association activities and as a volunteer small claims arbitrator, for an unknown number and period of time, did not amount to "extensive" pro bono activities.

Respondent also presented no character witnesses. The hearing panel considered "not insignificant" that she had not produced copies of her applications to two judicial screening panels, "which would have informed the Referee and [the hearing] Panel of respondent's honesty."

Although the hearing panel was troubled by respondent's lack of remorse, it attributed that attitude to her "knowledge of the law or lack thereof, which bears upon [her] fitness to practice law, rather than pure recalcitrance." Yet, the hearing panel observed, "[i]t cannot be overlooked that the [court] found that respondent had actual intent to defraud a creditor when she engaged in conduct to convey the Premises from 501 LLC to the Holding Corp." Thus, respondent's "multiple offending conduct" warranted discipline greater than a public censure. The hearing panel concluded:

> The Panel has considered that respondent, who was admitted to practice law in 2001, assumed responsibility of representing her family in 2002, approximately one year after her admission to the bar. . . . Respondent had no litigation experience and had not been employed as a practicing attorney when she assumed that responsibility. Respondent's only work experience prior to commencing the representation of her family and during the course of the litigation had been as a law clerk in a personal injury law firm, a temporary position with a real estate attorney, as an ALJ for the New York City Environmental Control Board and later at the Department of Health in Manhattan from January, 2005 through January, 2013. . . . But for the First Department's ruling that respondent is collaterally estopped from contesting the finding of actual intent to defraud, which is equally binding on the Panel, we might be inclined to consider a lesser period of suspension for respondent's conduct in light of her inexperience in civil litigation and the intensely personal nature of the dispute, which unlikely is to recur. Yet, so bound, we cannot reconcile the record with the precedent addressing like conduct.
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> [Ex.D22]

On November 19, 2015, the New York Court confirmed the hearing panel's determination, with respect to aggravation and mitigation, and suspended respondent for two years.

* * *

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
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> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that fall within the ambit of subparagraphs (A) through (E). Thus, we, too, determine to impose a two-year suspension on respondent.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R.

1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Preliminary to our analysis, we note that, during the time frame at issue, that is, 2001 through 2011, the New Jersey RPCs were in effect. Thus, we first determine which New York DRs, if any, correspond to the New Jersey RPCs. Second, we determine whether the New York RPCs violated by respondent, if any, correspond to the New Jersey RPCs.

In respect of the New York DRs, DR-102(A)(4) and (5) correspond, verbatim, to New Jersey RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice). DR-102(A)(7), which deems unethical conduct that adversely reflects upon the lawyer's fitness as a lawyer, does not have a corresponding RPC in New Jersey. Although New Jersey RPC 8.4(b) addresses a lawyer's fitness, it lacks the breadth of New York's DR, as RPC 8.4(b) is limited to "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."

New York DR 7-102(A)(1) prohibits a lawyer from filing a suit, asserting a position, conducting a defense, delaying a trial, or taking other action on behalf of a client, "when the

lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another." New Jersey RPC 4.4(a) is analogous. That Rule prohibits a lawyer, "[i]n representing a client," from using means that have "no substantial purpose other than to embarrass, delay, or burden a third person."

DR 7-102(A)(2) prohibits a lawyer from knowingly advancing a claim or defense that is unwarranted under existing law, "except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law." New Jersey RPC 3.1 is comparable, as it prohibits a lawyer from bringing or defending a proceeding, or asserting or controverting an issue therein, "unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law."

In respect of the New York RPCs, RPC 3.1(a), (b)(1), and (b)(2) provide, in relevant part:

> (a) A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous. . . .

> (b) A lawyer's conduct is "frivolous" for purposes of this Rule if:
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> (1) the lawyer knowingly advances a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law; [or]
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> (2) the conduct has no reasonable purpose other than to delay or prolong the resolution of litigation, in violation of Rule 3.2, or serves merely to harass or maliciously injure another. . . .

When taken as a whole, New York RPC 3.1(a) and (b)(1) and (2) correspond to New Jersey RPC 3.1, RPC 3.2, and RPC 4.4(a). Although the New Jersey Rules are silent in respect of delaying litigation and seeking to harass or "maliciously injure" another, in our view, they cover such behavior, by analogy. RPC 3.2 requires a lawyer to "make reasonable efforts to expedite litigation" and to "treat with courtesy and consideration all persons involved in the legal process." As stated previously, RPC 4.4(a) prohibits a lawyer, during the course of a legal representation, from using tactics that have "no substantial purpose other than to embarrass, delay, or burden a third person."

Although New York and New Jersey RPC 3.4(c) do not contain the same wording, they are comparable. New York's Rule prohibits a lawyer from, among other things, disregarding a ruling of a tribunal made in the course of a proceeding, but permits the lawyer to take appropriate steps in good faith to test the validity of such rule or ruling. New Jersey RPC 3.4(c) prohibits a lawyer from knowingly disobeying "an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."

New York and New Jersey RPC 8.4(d) are the same, that is, they prohibit an attorney from engaging in conduct prejudicial to the administration of justice. New York RPC 8.4(h), which mirrors DR 1-102(A)(7), does not, as noted above, have a corresponding RPC in this state.

Based on the above comparison, we determined the appropriate measure of discipline to impose on respondent for her violation of New Jersey RPC 3.1, RPC 3.2, RPC 3.4(c), RPC 4.4(a), and RPC 8.4(c) and (d). In our view, there is no reason to deviate from the two-year suspension imposed on respondent in New York.

Respondent has argued that the New York court erred in applying the collateral estoppel doctrine. This is not the forum for litigating that position. We note first that the standard of proof in New York civil and disciplinary actions is the same –

preponderance of the evidence. See, e.g., Alice M. v. Terrance T., 28 N.Y.S.3d 647 (Sup. Ct. N.Y. 2015) (standard of proof in a civil action is "by a preponderance of the credible evidence"), and In re Capoccia, 453 N.E.2d 497, 498 (1983) ("fair preponderance of the evidence" and not the higher standard of clear and convincing evidence applies in determining whether an attorney has committed professional misconduct). Second, New Jersey accepts the disciplinary findings in New York matters, despite arguments that its lower standard violates due process. See, e.g., In the Matter of David Gruen, DRB 13-212 (December 19, 2013), aff'd In re Gruen, 218 N.J. 4 (2014), and In re Allyn, 214 N.J. 108 (2013).

Finally, respondent participated in the New York proceedings, where she asserted her opposition to the application of the collateral estoppel doctrine. She did not prevail. Thus, we accept the New York Court's determination that respondent was collaterally estopped from re-litigating the issue of her misconduct in the civil litigation.[10]

[10] Respondent also objects to the OAE's submission of the transcript from the hearing before the special referee. Inasmuch as the transcript is part of the record in the New York disciplinary proceeding, respondent's objection is without merit.

In essence, respondent's misconduct in New York involved contumacious and fraudulent conduct that demanded the dedication of substantial judicial resources over a period of ten years. In 2001, respondent, her sister, and their mother entered into a lease agreement with Gihon and then refused to deliver possession of the property to the tenant. When Gihon instituted the breach of contract action against 501 LLC, in 2002, respondent served as 501 LLC's lawyer. Yet, when the trial court entered the Yellowstone injunction, upon 501 LLC's default, in June 2002, she, as defendant and lawyer, refused to comply with that order. Even after the court entered its March 13, 2003 order, finding 501 LLC in contempt of the June 2002 order, 501 LLC still failed to turn over possession of the property to Gihon, resulting in the accumulation of $22,000 in fines and the entry of a $44,200 judgment against 501 LLC.

In December 2003, when the Brooklyn property was scheduled for sheriff's sale, respondent prepared a deed by which 501 LLC conveyed the property to 501 Holding Corp. and recorded it on December 26. In March 2004, she commenced the sheriff's sale action to block the loss of the property. The trial court denied that attempt, describing the action as a "thinly veiled attempt to frustrate the operation of law and the orders of this court," and imposed a $7,500 sanction on 501 LLC for its "willful and

unprincipled attempt to further frustrate the orders of this court."

In September 2004, Gihon filed the fraudulent conveyance action against 501 LLC and the Nashes. Three years later, the trial court granted Gihon summary judgment on the ground that the transfer of the property from 501 LLC to 501 Holding Corp. was a fraudulent conveyance. A $203,280 judgment was entered against 501 LLC.

Meanwhile, in June 2004, Dorothy Nash obtained the $1 million credit-line mortgage, drew down $675,000, and defaulted on the obligation. In 2006, after the mortgagee instituted the foreclosure action, and 501 Holding Corp.'s motion to dismiss was denied, respondent proceeded to move for re-argument four times in a four-year period, resulting in the imposition of yet more sanctions.

On June 21, 2010, during the course of an appeal in one of the litigated matters, respondent was sanctioned again, in the amount of $500, for making harassing and malicious statements about another party's lawyer, who was apparently suffering from a serious illness.

Finally, sometime in 2011, presumably, Gihon served subpoenas on 501 LLC and respondent, individually, in the fraudulent conveyance action. No one appeared, forcing Gihon to file another

motion to show cause for contempt. On July 19, 2011, the court held respondent in contempt but gave her two months to "purge" it.

When considered in its totality, respondent's conduct is most similar to that of the attorneys in In re Yacavino, 184 N.J. 389 (2005) (six-month suspension), and In re Shearin, 166 N.J. 558 (2001) (one-year suspension).

In Yacavino, the attorney was involved in five lawsuits arising out of family and business disputes between him and his wife's relatives. In the Matter of Vincent M. Yacavino, Docket No. DRB 04-426 (April 21, 2005) (slip op. at 3). Yacavino, who represented himself, was a plaintiff in four of the actions and a defendant in the fifth. Ibid. He was suspended for six months for, among other things, filing frivolous claims, failing to expedite litigation, and engaging in conduct prejudicial to the administration of justice by taxing the court's resources.

Specifically, we concluded that Yacavino had violated RPC 3.1 (prohibiting a lawyer from asserting frivolous claims and defenses) when, in two of the matters, he "repeatedly filed the same claims after the court dismissed them on the merits," and, in the fifth matter, asserted claims that had been dismissed previously in the third and fourth matters. Id. at 31, 33-34. Moreover, by repeatedly raising the same issues that had been adjudicated, among other things, Yacavino had failed to expedite litigation, a

violation of RPC 3.2 (requiring a lawyer to make reasonable efforts to expedite litigation). Id. at 34. Finally, we determined that Yacavino's multiple complaints had "taxed the court's resources" because they re-asserted the same claims that had already been dismissed. Id. at 37-38 – all in violation of RPC 8.4(d). Ibid.

In determining to impose a six-month suspension, we took into account Yacavino's unblemished career of more than forty years and the fact that the ethics charges stemmed from his conduct in "a series of emotionally-charged family lawsuits prompted by his steadfast conviction that his wife's parents and brothers, through various means, intentionally deprived [him] and his immediate family of funds, property, and other assets to which he believed they were entitled." Id. at 48. Indeed, we considered Yacavino's belief "not entirely erroneous," as he was granted summary judgment on some of the claims in two of the lawsuits. Id. at 48-49.

Other mitigating factors included the absence of client harm and Yacavino's increasing frustration "by his perception that the court was denying him critical discovery and, that by not ruling on his motions for discovery, the court deprived him of the opportunity to file interlocutory appeals." Id. at 49. Finally, Yacavino had "lost all perspective concerning the litigation" and

was motivated not by venality but, rather, by his belief that he was right. Ibid.

Here, like Yacavino, respondent filed four motions for re-argument, which were deemed "utterly without merit" and which clearly "taxed the court's resources." Yacavino, supra, at 37-38.

In determining to impose a six-month suspension on Yacavino, we considered several mitigating factors. Although, like Yacavino, respondent was involved in an emotionally-charged family matter, the controversy was self-initiated -- respondent and her family decided to rent the property in the first instance. In addition, she did not have the lengthy unblemished record of Yacavino. Finally, unlike respondent, Yacavino did not go so far as to fabricate a document to flaunt the court's authority and evade its orders.

We view respondent's behavior as more akin to that of the attorney in Shearin. In that case, the Delaware Supreme Court imposed a one-year suspension on an attorney for multiple ethics violations committed during the course of several lawsuits filed in a Delaware state court and in a federal bankruptcy court. Specifically, the Delaware court concluded that the attorney had violated RPC 1.2(d) (counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent), RPC 3.1, RPC 3.2, RPC 3.3(a)(1) (knowingly making a false statement of material

fact to a tribunal), RPC 3.3(a)(4) (offering evidence that the lawyer knows to be false), RPC 3.4(b) (falsifying evidence, counseling or assisting a witness to testify falsely), and RPC 4.1(a)(1) (making false statement of material fact or law to a third person). In the Matter of K. Kay Shearin, Docket No. DRB 99-298 (October 27, 2000) (Shearin) (slip op. at 2).

In Shearin, the attorney represented two aligned parties in a dispute over the ownership and governance of certain church properties. In re Shearin, 721 A.2d 157, 158 (Del. 1998). As a result of her conduct in those matters, the Delaware Office of Disciplinary Counsel (ODC) filed with the Delaware Board on Professional Responsibility (Delaware Board) three separate ethics petitions that contained a total of thirty-four counts. Ibid.

The relevant parties in the underlying actions were the attorney's clients (the Conference of African Union First Colored Methodist Protestant Church (Conference) and its prelate, Bishop Jackson) and their adversary, the Mother African Union First Colored Methodist Protestant Church (Church). Ibid. The dispute resulted in the filing of three separate state court actions in Delaware and the filing of a bankruptcy petition in the United States Bankruptcy Court for the District of Delaware. Ibid. In addition, five petitions for certiorari were filed in the United States Supreme Court. Ibid.

In the first state court matter, in 1991, the Church sued the Conference and Jackson in a chancery court when, after the Church's secession from the Conference, Jackson executed a deed that Shearin prepared and recorded and that purportedly transferred ownership of the Church's properties to the Conference. Ibid. In April 1992, the court declared the deed void and entered final judgment against the Conference and Jackson. Ibid.

In February 1993, the court enjoined the Conference from interfering with the Church's title, use, and enjoyment of the properties and entered another final judgment to that effect. Id. at 159. In October 1993, the Supreme Court of Delaware affirmed the February 1993 final judgment, and the United States Supreme Court denied the petition for review. Ibid.

Undeterred by the outcome of the first litigation, on December 13, 1993, Jackson executed a second deed, which Shearin also had prepared, notarized, and recorded, without notice to the Church or the court. Ibid. This deed purportedly transferred ownership interests in the properties to "certain third parties." Ibid. In May 1994, Shearin (at Jackson's direction) then filed an action on behalf of the Conference in a different Delaware chancery court seeking the same relief that had been adjudicated before, that is, the ownership of the properties. Ibid. In July

1995, the court ruled that the deed was void ab initio, dismissed the action, and ruled that Shearin was in contempt of the final judgment entered in the first action. Ibid.

Undaunted, several weeks later, Jackson executed a "Certificate of Restoration, Renewal or Revival of the Certificate of Incorporation of the African Union Methodist Protestant Church and Connection" (certificate). Ibid. Shearin notarized the document and, in June 1995, filed it with the Delaware secretary of state. Ibid. Based upon the certificate, the Conference requested relief from the 1995 judgment and sought a new trial in the first action. Ibid.

The court denied the requested relief on the ground that it was based upon "manufactured evidence," that is, the certificate. Ibid. In addition, the court found that Shearin's assistance in preparing and filing the certificate was willful contempt of the second final judgment. Ibid. The certificate also was declared null and void. Ibid. According to the court, the filing of the certificate was the "latest manifestation of their [Shearin, the Conference, and Jackson['s] contumacious refusal to accept and abide by the determinations of the Orders of the Courts of this State in this action." Id. at 160. The judge referred the order to the ODC for possible disciplinary action against Shearin. Ibid.

Presumably, at or about the same time that the Conference sought relief from the 1995 judgment, Shearin filed an action at law in a third Delaware state court based, in part, upon the certificate. Ibid. The complaint was dismissed, and this third court held that the filing of the action was "in direct violation" of the final judgment and other court orders entered in the first chancery action. Ibid. The court sent a copy of its findings to the ODC for possible disciplinary action. Ibid.

At an undetermined time in 1995, Shearin filed a bankruptcy petition on behalf of a client (presumably the Conference or the Bishop), which contained fraudulent claims. Id. at 163. The petition was dismissed on the ground that it had been filed only for the purpose of delaying the state court proceedings. Id. at 164.

The Delaware Board concluded that Shearin had violated RPC 3.1 and RPC 3.2, when she filed the three state court actions and the bankruptcy petition; RPC 1.2(d), when she prepared and filed the two deeds and the certificate, which contained false representations in light of the courts' previous rulings; and a number of additional ethics rules, when she offered the falsified certificate. Id. at 162-164.

In addition to the repeated filing of frivolous claims, Shearin engaged in other misconduct. For example, in the first

action, she had both affirmed and denied to the court that she represented certain clients. Id. at 161-62. As a result of this conduct, the chancery court had sanctioned Shearin under Delaware Chancery Court Rule 11. Id. at 162. In the ethics proceeding, the Delaware Board and the Delaware Supreme Court concluded that this conduct violated RPC 3.3(a)(1). Id. at 161, 165.

Furthermore, in the appeal from the first chancery case, Shearin's brief castigated the trial judge and suggested that the opposing party had bribed him. Accordingly, the Delaware Board concluded that Shearin violated RPC 3.5(c), which, in addition to prohibiting an attorney from "engag[ing] in conduct intended to disrupt a tribunal," prohibits an attorney from engaging "in undignified or discourteous conduct which is degrading to a tribunal." Id. at 162, 165.

Finally, in the bankruptcy matter, Shearin assisted in the filing of a petition that contained fraudulent claims regarding the assets and liabilities of her debtor client. Id. at 163, 165. Thus, Shearin was found to have violated RPC 1.2(d) and RPC 3.1. Ibid.

Based on all of Shearin's actions in all of these matters, the Delaware Board recommended an eighteen-month suspension. Id. at 165. However, the Supreme Court of Delaware imposed a one-year suspension. Id. at 166. On a motion for reciprocal discipline, the

Supreme Court of New Jersey also imposed a one-year suspension. Shearin, supra, 166 N.J. at 558.

Like the attorneys in Yacavino and Shearin, respondent repeatedly filed frivolous claims. In addition, just as the attorney in Shearin had fabricated documents and cast aspersions on the trial judge and opposing counsel, respondent did the same.

Although Shearin received only a one-year suspension, our directive is to impose "identical discipline" unless "it clearly appears that ... the unethical conduct established warrants substantially different discipline." R. 1:20-14(a)(4)(E). There exists no compelling reason for suspending respondent for only a year when her home state found otherwise. Here, the New York Court did not find the mitigation offered by respondent to be worthy of decreasing the measure of discipline. Nor do we.

Respondent behaved outrageously. Although she was inexperienced at the time, her conduct was so out of the bounds of human decency and professionalism that we cannot allow her inexperience to excuse or otherwise mitigate that conduct. Thus, we determined to impose a two-year suspension on respondent for the totality of her misconduct. Finally, respondent has provided no justification to grant her request to impose the discipline

retroactively and we can discern none. Thus, we determine to impose the suspension prospectively.[11]

Members Boyer and Singer voted to impose a one-year suspension. Members Clark and Hoberman 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

[11] Respondent also requested that the record be sealed to protect the privacy and safety of her, her sister, and their mother. Under R. 1:20-9(h), a protective order "to prohibit the disclosure of specific information to protect the interests of a . . . third party or respondent," may be granted only "[i]n exceptional circumstances," on good cause shown. Respondent has failed to establish exceptional circumstances sufficient to establish the good cause required for sealing the record.

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Rachel H. Nash
Docket No. DRB 17-235

Argued: September 14, 2017

Decided: December 27, 2017

Disposition: Two-Year Suspension

Members	Two-Year Suspension	One-Year Suspension	Did not participate
Frost	X		
Baugh	X		
Boyer		X	
Clark			X
Gallipoli	X		
Hoberman			X
Rivera	X		
Singer		X	
Zmirich	X		
Total:	5	2	2

By: Paula Cruz
Ellen A. Brodsky
Chief Counsel