SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-319
District Docket No. XIV-2012-0210E

IN THE MATTER OF	:
ROBERT E. ROTHMAN	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 16, 2017

Decided: February 14, 2018

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Raymond S. Londa appeared on behalf of respondent.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c), following respondent's conviction in the United States District Court for the District of New Jersey (USDC) of one count of violating the Sherman Act, 15 U.S.C. §1.

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

Respondent was admitted to the New Jersey bar in 1977 and the New York bar in 1980. He has no prior final discipline in New Jersey.

Effective May 10, 2012, the Court temporarily suspended respondent as a result of his conviction in this matter. In re Rothman, 210 N.J. 155 (2012). He remains suspended to date.

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

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

The Information alleged that, through a partnership, respondent purchased tax liens from municipalities located in New Jersey.[1] Various other individuals and entities not named

[1] This case arises out of the same criminal conspiracy as two companion cases, In re May, 230 N.J. 56 (2017) and In re Stein, 230 N.J. 57 (2017), discussed in more detail below.

as defendants also participated with respondent as co-conspirators in the charged offense, performing acts and making statements in furtherance of a bid-rigging scheme.

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

Pursuant to a competitive bidding process, bidders will bid on the interest rate that the property owner will pay if and when the tax lien is redeemed. Bidding begins at the statutory maximum (eighteen percent) and may be driven down in the bidding process to zero. Typically, the winning bidder has the right to collect interest at the winning rate, as well as the original lien amount and penalties. If the taxes, interest, and penalties remain unpaid, the winning bidder may foreclose on the property owner's right of redemption, and take title to the property.

The Information charged that, from approximately the spring 2000 until February 2009, respondent and the co-conspirators engaged in a scheme to suppress and eliminate competition in the bidding process by submitting non-competitive and collusive bids at public auctions for tax liens in various New Jersey municipalities. Respondent and the co-conspirators' combination and conspiracy were in unreasonable restraint of interstate trade and commerce, a violation of 15 U.S.C. §1.

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

> a. attended meetings and engaged in discussions or conversations regarding bids for tax liens being auctioned by municipalities within the District of New Jersey;
> b. agreed during those meetings and discussions not to compete at certain tax lien auctions by allocating which tax liens each would bid on or refrain from bidding;
> c. submitted bids in accordance with the agreements reached; and
> d. purchased tax liens pursuant to those agreements at collusive and non-competitive interest rates.
>
> [OAEbEx.A¶11.][2]

[2] OAEb refers to the OAE's August 31, 2017 brief in support of the motion for final discipline.

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

On March 27, 2012, respondent pleaded guilty before the Honorable Dennis M. Cavanaugh, U.S.D.J. At the plea hearing, the U.S. Attorney elicited from respondent the same basic facts, as set forth in the Information, regarding the events underlying the charge. The judge accepted respondent's plea and found him guilty of the Sherman Act violation.

On May 26, 2016, the Honorable Susan D. Wigenton, U.S.D.J., sentenced respondent to a one-year term of probation, a $20,000 fine, and a $100 special assessment.[3] Special conditions were also made a part of respondent's probationary term: (1) self-employment and business disclosure restrictions; and (2) a restriction prohibiting employment and/or capital ventures that involve the investment of tax liens during the probationary term.

[3] The record does not explain the almost five-year lapse between respondent's plea hearing and sentencing.

The term of probation represented a downward departure, based partly on respondent's "extensive" cooperation with government investigators, over a period of years, during which he met with the government for more than ten proffer sessions, spent "countless hours" helping the government, and produced documents on which the government relied to secure convictions for several other individuals involved in the bid-rigging scheme. In addition, the court noted that respondent was "one of the first, and certainly the first in the North Jersey aspect of these tax auctions, that you came first in terms of doing the civil settlement." Respondent expressed deep remorse for his criminal actions, and apologized to the victims, the court, and his family for his criminal wrongdoing.

The OAE urged us to impose "at least" a three-year suspension, citing two cases in which a three-year suspension was imposed retroactively to the attorneys' temporary suspensions in New Jersey. See In re Abrams, 186 N.J. 588 (2006) and In re Mueller, 218 N.J. 3 (2014), discussed below.

Although the OAE brief is silent about whether the suspension should be imposed prospectively or retroactively, at oral argument, OAE counsel recommended a suspension retroactive

to 2012.[4] Respondent's counsel agreed with the OAE's recommendation.

* * *

Following our review, we determine to grant the OAE's motion. Respondent's criminal conviction for violating the Sherman Act establishes that he has committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(b).

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

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[4] In its brief to us, the OAE noted that respondent had failed to promptly inform that office of his conviction, but declined to urge that failure as an aggravating factor.

Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

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

In July 2017, the Court imposed retroactive, three-year suspensions on respondent's two attorney co-conspirators, Isadore H. May and Robert W. Stein, both of whom also entered guilty pleas to a Sherman Act violation before Judge Cavanaugh, for their involvement in this tax sale bid-rigging scheme. Judge

Wigenton sentenced May and Stein about one month prior to respondent. At respondent's sentencing, she indicated her desire to be consistent "in the sentencings that I impose, that is why I indicated at the outset I don't find any reason to treat you differently, whether that be more harshly or to treat you more leniently," presumably a reference to May and Stein, and, perhaps, to other co-conspirators as well.

In addition, as the OAE urged in its brief, In re Mueller, supra, 218 N.J. 3, and In re Abrams, supra, 186 N.J. 588, support the imposition of a three-year suspension here, as in May and Stein, supra.

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

Mueller conspired and agreed with Allen Weiss, a real estate developer, and other co-conspirators, to defraud a group of physicians/investors who were lured into investing $1,000,000 to convert existing properties into medical offices. The doctors

were falsely promised returns of between twenty and thirty percent on their investments. Mueller held the investment funds for the project in his trust account. Id. at 3.

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

Specifically, when the investors began to question the project and the use of their funds, Mueller, Weiss, and others misrepresented to them that the funds were safe. To entice additional investors to the scheme, Weiss directed Mueller to create a false lien and note, containing names of guarantors who had not actually signed the note. In front of a potential investor, Mueller notarized the bogus document, after which the investor parted with $150,000. Id. at 5. Mueller also prepared a letter to another investor, stating that he held $834,000 in his trust account on account of the project, when the account held only $164 in project funds. He also faxed a false trust account

statement to another investor showing $612,000 in the account, when the actual balance was only $8,900. Ibid.

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

In Abrams, supra, the attorney also received a three-year suspension, retroactive to his temporary suspension in New Jersey. Abrams pleaded guilty to two counts of wire fraud for his participation in a scheme to defraud Thermadyne Holdings Corporation in connection with its purchase of Woodland Cryogenics, Inc., in which he was part owner, vice-president, secretary and, at times, general counsel. He was sentenced to a four-month term of incarceration, and three years of supervised release. In order to artificially inflate the value of the company's assets, Abrams instructed his accounts receivable administrator to overstate Woodland's accounts receivable. In the Matter of Andrew C. Abrams, DRB 06-027 (April 28, 2006) (slip op. at 2-3).

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

Abrams committed wire fraud when he faxed a document from Philadelphia to Thermadyne, in Missouri. The facsimile grossly overstated the "collectability" of Woodland's other accounts receivable to Thermadyne in the final stages of the negotiations.

That information caused Thermadyne to pay $1.508 million to purchase Woodland's assets, via wire-transfer from New York to Philadelphia. Id. at 5.

In aggravation, Abrams was a primary participant in the scheme to defraud Thermadyne out of $200,000, and was motivated by self-gain. Id. at 8. In mitigation, he had an unblemished ethics history in New Jersey, cooperated fully with the federal government, and repaid Thermadyne. Ibid.

Here, respondent's conduct, engaging in a fraudulent scheme with his co-conspirators to rig the bidding process in municipal tax lien auctions in New Jersey, is identical to that of his co-conspirators, May and Stein, and similar to that of the attorneys in Mueller and Abrams, all of whom received

retroactive three-year suspensions for their fraudulent acts, committed for personal gain. In addition, like Mueller and Abrams, in mitigation, respondent cooperated with the government and expressed remorse for his actions.

Consistent with the three-year, retroactive suspensions imposed in Mueller and Abrams, and respondent's co-conspirators in May and Stein, we determine to impose a three-year suspension, retroactive to May 10, 2012, the effective date of respondent's temporary suspension.

Vice-Chair Baugh and Member Zmirich 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert E. Rothman
Docket No. DRB 17-319

Argued: November 16, 2017

Decided: February 14, 2018

Disposition: Three-year Retroactive Suspension

Members	Three-year Retroactive Suspension	Did not participate
Frost	X	
Baugh		X
Boyer	X	
Clark	X	
Gallipoli	X	
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich		X
Total:	7	2

Ellen A. Brodsky
Chief Counsel