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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-385
District Docket No. XIV-04-459E

IN THE MATTER OF
CHARLES BRIAN DALY
AN ATTORNEY AT LAW

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Decision

Argued: February 21, 2008

Decided: April 22, 2008

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter came before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), based on respondent's guilty plea to an information charging him with conspiracy to submit false statements, a violation of 18 U.S.C.A. §371. The OAE recommends that respondent be suspended

for a two- to three-year period. Respondent agrees with the recommendation. We determine, however, that an eighteen-month suspension, retroactive to February 23, 2005, the effective date of respondent's temporary suspension in New Jersey, is the appropriate discipline in this case.

Respondent was admitted to the New Jersey bar in 1971. At the relevant time, he maintained a law practice in Union, New Jersey.

In January 2006, we determined to reprimand respondent for lack of diligence and failure to communicate with a client whom he represented on drug charges in New York. In the Matter of Charles Brian Daly, DRB 06-130 (January 26, 2006). That matter is pending with the Court.

On February 23, 2005, respondent was temporarily suspended, after his guilty plea to the information that is the subject of this motion. The suspension remains in effect. In re Daly, 182 N.J. 422 (2005).

The New Jersey Lawyers' Fund for Client Protection report shows that respondent was twice on the list of ineligible attorneys for failure to pay the annual assessment: from September 21, 1998 to January 5, 1999, and from September 25, 2000 to January 4, 2001.

We now turn to the facts of this matter.

Respondent was one of the closing attorneys involved in a mortgage fraud scheme. In essence, he was retained by real estate investors to prepare closing documents containing false information.

According to the information, the object of the conspiracy was to buy and sell residential properties by, among other means, submitting settlement statements containing materially false information, designed to influence the lender to fund the purchase. Two real estate investors, identified in the information as G.H. and J.K., bought and sold real property and acted as agents for others in the purchase and sale of real property. G.H. and J.K. located homes in Essex County and elsewhere and negotiated actual sale prices with the sellers. They hired real estate appraisers to issue appraisals that falsely inflated the value of the homes by thousands of dollars and then recruited individuals to act as "straw buyers." The "straw buyers" were listed on the deeds, mortgages and/or settlement statements and incurred little or none of the expenses associated with ownership, such as closing costs. On occasion, the "straw buyers" obtained mortgage loans by using fraudulent identification documents in other individuals' names. Mortgage loans were obtained for the inflated price, not the actual price.

As part of the conspiracy, G.H. and J.K. paid mortgage brokers to assist the "straw buyers" to obtain mortgage loans by means of providing false information about their income and assets.

G.H. and J.K. retained respondent to act as the closing attorney in some transactions. Respondent's responsibilities included preparing the documents necessary to close the transactions, including the deed, title, and settlement statements, as well as disbursing the loan proceeds after the lenders wire-transferred them to his attorney trust account.

Respondent prepared settlement statements that contained material misrepresentations as to the actual sales price of the properties, the amount deposited by the "straw buyer" prior to the closing, the amount of money brought by the buyer to the closing, and the disbursements made at the closing to the sellers, to the real estate and mortgage brokers, and to himself.

The information specifically charged that, in two transactions, respondent submitted to a lender settlement statements that contained materially false information concerning the cash paid by the borrower; in another transaction, he submitted to a lender a settlement statement that contained materially false information about the sale price; and, in a fourth transaction, he submitted to a lender a

settlement statement containing materially false information about the disbursements made at the closing.

The transcript of respondent's plea described respondent's involvement in the conspiracy:

BY MR. BUCH [Assistant U. S. Attorney]:

Q Mr. Daly, in or around December, 2003 did an individual named G.H. ask you to act as a closing attorney in connection with the property located at 136 Stueben Street in East Orange, New Jersey in exchange for money?

A Yes.

Q On or about December 30th, 2003 did you prepare documents for the closing of 136 Steuben Street including, among others, a HUD-1 Uniform Settlement Statement, which I'll refer to hereinafter as the settlement statement?

A Yes.

Q In connection with this closing, did G.H. ask you to prepare a settlement statement that falsely indicated that the contract sales price of the property was \$167,000 when the actual price negotiated between the buyer and seller was \$116,500?

A That's correct.

Q. Did . . . you agree with G.H.'s request to prepare a settlement statement falsely indicating that the sale price of 136 Stueben was \$167,000 and submit that settlement statement to Flagstar Bank when the actual sale price for the seller was \$116,500?

A Yes.

Q Did you submit this false settlement statement to Flagstar knowing that it could influence the willingness of Flagstar to make this loan?

A Yes.

Q In or about January, 2004 did G.H. ask you to act as the closing attorney in connection with a property located at 78 Mission Street in Montclair, New Jersey in exchange for money?

A Yes.

Q In connection with this closing did G.H. ask you to prepare a settlement statement falsely indicating . . . the disbursements that you made in connection with the closing of 78 Mission Street?

A Yes.

Q Did you agree with G.H.'s request to prepare a settlement statement falsely indicating the disbursements that you made at closing in connection with 78 Mission Street and submit that settlement statement to Flagstar?

A Yes.

Q Among other things, did you falsely indicate on the 78 Mission Street settlement statement that you submitted to Flagstar that you disbursed \$75,791.84 to pay the buyer's closing costs?

. . . .

A That's correct.

Q Number 11, did you falsely indicate on the 78 Mission Street settlement statement that you submitted to Flagstar that you

disbursed \$2,355 to yourself when, in fact, you disbursed \$5,915 to yourself?

A That's correct.

Q Did you submit this false settlement statement to Flagstar knowing that it could influence the willingness of Flagstar to make this loan?

A Yes.

Q Do you accept a representation that Flagstar's accounts are insured by the Federal Deposit Insurance Corporation?

A Yes.

Q From in or about December, 2003 through in or about March, 2004 did you agree with G.H., J.K., and others to submit false settlement statements to Flagstar knowing that it could influence the willingness of Flagstar to make these loans?

A Yes.

...

THE COURT: Okay, so how do you plead in response to this information, guilty or not guilty?

MR. DALY: Guilty.

[OAEbEx.C30-8 to 33-16.]¹

¹ OAEb refers to the OAE's brief and appendix in support of its motion.

At the May 30, 2007 sentencing hearing, the parties agreed that the monetary losses attributed to respondent were between \$120,000 and \$200,000.

At sentencing, respondent's counsel, who had known him for approximately thirty years, addressed the court as follows:

This arrest and this conviction in this case has absolutely devastated him in a number of ways, emotionally and financially, and has added to the stress that he already has. I mean he doesn't talk about it a lot. He's a very proud man, as his letter says. He did not talk about his wife's illness to us much even though obviously she was in very ill condition for many years when he worked in our office.

And so added to the stress of taking care of his wife, being a sole practitioner, working very hard representing indigents not making a lot of money, and this incident occurred, as I said, a total aberration. I think to a certain extent he was taken in by other people who have been sentenced already, but he certainly is not denying his wrongdoing. He accepted responsibility and stepped up to the plate from the beginning to cooperate with the government. Obviously, as a result of this, he has lost his law license and is probably never going to get it back, and that has devastated him in a number of ways not only financial.

[OAEbEx.D12-21 to Ex.D13-14.]

Respondent also spoke at his sentencing:

I really messed up. I hurt a lot of people. I would hope the Court would understand that my behavior was an aberration. I brought

disgrace to my family and my profession. My judgment was unbelievably bad. I hope the Court understands that until my exhibition of absolute utter stupidity, I always led an honorable life, and I always worked very hard and very diligently for my clients. . . . Words can't express my remorse and the damage I've done to innocent people. I have nothing else.

[OAEbEx.D14-1 to 13.]

Because of respondent's significant cooperation with the government and the assistance he rendered during the course of the government's investigation and prosecution of others, the sentencing judge granted the government's motion for a downward departure from the United States Sentencing Guidelines and did not impose a custodial sentence.² The court also considered respondent's remorse and the care he provided to his "long-ailing" wife. The court sentenced respondent to three-years' probation and imposed a \$12,000 fine. The court did not order him to make restitution.

² G.H. pleaded guilty to conspiracy to defraud a financial institution and bank fraud, was sentenced to sixty months on one count and eighty-seven months' incarceration on a second count, to be served concurrently, and was ordered to make restitution of \$1,279,690. J.K. pleaded guilty to the same offense, was sentenced to sixty months on the first count and eighty-four months' imprisonment on a second count, to be served concurrently, and was ordered to pay restitution of more than \$1,231,000.

The OAE recommended a two- to three-year suspension, retroactive to February 23, 2005, the date that respondent was temporarily suspended. The OAE noted that respondent was not the instigator of the scheme, but merely a supporting player. On the other hand, the OAE remarked that respondent's role was not an isolated act, that is, he played a significant role in preparing false documents in at least four separate transactions. The OAE balanced respondent's wrongdoing against his full cooperation with the government.

In support of its recommendation, the OAE cited the following cases: In re Mederos, 191 N.J. 85 (2007) (eighteen-month retroactive suspension for attorney (involved in the same scheme as attorney Jimenez, below) who played a minor role in a mortgage fraud scheme by submitting false loan documents in three transactions, particularly settlement statements that contained materially false information about the financial status of the borrowers; the attorney was paid his rate of \$900 per closing; the attorney pled guilty to participating in a mail-fraud conspiracy and cooperated with the government; he was sentenced to three-years' probation and fined \$2,000); In re Jimenez, 187 N.J. 86 (2006) (eighteen-month retroactive suspension for attorney who played a minor role in a major mortgage fraud scheme and was convicted of mail fraud and conspiracy to commit mail fraud for

preparing false documents, which included false tax returns, false W-2s, false pay-stubs, and false bank statements; the attorney also wrote false information on verification of employment forms and then forged employers' signatures, even resorting to the use of a "light box" to lend authenticity to the forgeries; the attorney was a law student at the time of his criminal offenses); In re Noce, 179 N.J. 531 (2004) (three-year retroactive suspension for attorney who pled guilty to one count of conspiracy to commit mail fraud; the attorney participated in a scheme to defraud the department of Housing and Urban Development (HUD) through the fraudulent procurement of home mortgage loans for unqualified buyers; HUD suffered an actual loss of over \$2,400,000; the attorney performed the title work and acted as the settlement agent in more than fifty closings; the attorney received only his regular closing fee for the transactions, cooperated fully with the government, was sentenced to five years' probation, was confined to his residence for nine months, and was ordered to pay restitution in the amount of \$2,408,614 and pay a \$5,000 fine); In re Capone, 147 N.J. 590 (1997) (two-year retroactive suspension; attorney made misrepresentations to a bank in order to obtain a mortgage loan; he later defaulted on the loan; ultimately, he pleaded guilty to a charge of knowingly making false statements on a loan application; the attorney was

sentenced to four months' home confinement and three years probation, and ordered to pay restitution of \$169,715 and a \$2,000 fine); and In re Bateman, 132 N.J. 297 (1993) (two-year retroactive suspension for attorney convicted of mail-fraud conspiracy and making false statements on a loan application to assist a client in obtaining an inflated appraisal value for real property (\$6.5 million); the intent was to secure \$5,000,000 in financing from a lender to develop certain property that had an estimated value of only \$300,000; the attorney was sentenced to a suspended five-year prison term and three-years' probation, was fined \$15,000, and was ordered to perform three hundred hours of community service).

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

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's guilty plea to conspiracy to submit false statements constituted a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The sanction imposed in disciplinary matters involving the commission of a crime depends on numerous 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, supra, 118 N.J. at 445-46.

The discipline imposed for a pattern of deception in real estate transactions is generally a suspension of at least one year. See, e.g., In re Serrano, 193 N.J. 24 (2007) (eighteen-month retroactive suspension for attorney who pleaded guilty to a federal information charging her with making a false statement to a federal agency; the attorney profited from a scheme to fraudulently induce FHA to insure certain mortgage loans by acting as the closing agent for residential mortgages and preparing fraudulent HUD-1 settlement statements to "qualify unqualified borrowers" for Hud-insured mortgages, knowing HUD would rely on the forms to determine whether to insure the mortgages; the attorney was involved in approximately twenty-five closings, five of which ended in foreclosure; she profited \$20,000 to \$40,000 from the scheme); In re Alum, 162 N.J. 313 (2000) (one-year suspended suspension for attorney who participated in a series of fraudulent real estate transactions in which secondary financing was not disclosed to the primary

lender; the Court held that "[o]rdinarily, acts of dishonesty, such as the falsification of public documents or lending documents, warrant a period of suspension" (id. at 315); the Court suspended the suspension because of the passage of time since the conduct (eleven years), the attorney's unblemished record, and his exemplary community service); In re Newton, 159 N.J. 526 (1999) (one-year suspension for attorney who participated in a scheme to defraud lenders by drafting lease/buyback agreements to avoid secondary financing and to allow the sellers, not the investors, to remain on the premises, leading the lenders to believe that the investors would occupy the subject properties as their primary residences; also, the attorney took at least one false jurat and, in eight transactions, acknowledged documents that contained misrepresentations, including affidavits of title, "Fanny Mae" affidavits, agreements, and RESPA statements); In re Kaplan, 154 N.J. 13 (1998) (two-year retroactive suspension for attorney who pled guilty to one count of wire fraud for making an interstate telephone call in order to conceal misrepresentations made by the buyer and seller of realty, who had engaged in a scheme to defraud a lender); and In re Thomas, 183 N.J. 230 (2005) (three-year suspension for attorney who prepared RESPA statements in two real estate transactions that contained fraudulent information

and participated in a scheme to defraud lenders; prior admonition and one-year suspension). See also In re Mederos, supra, 191 N.J. 85 (eighteen-month suspension for participating in three fraudulent real estate transactions); In re Jimenez, supra, 187 N.J. 86 (eighteen-month suspension for involvement in a major mortgage fraud scheme); and In re Noce, supra, 179 N.J. 531 (three-year suspension for attorney's participation in more than fifty fraudulent real estate transactions).

Respondent's conduct is most similar to that of the attorney in Mederos, who played a minor role in a mortgage fraud scheme. In three transactions, Mederos submitted settlement statements containing false information about the borrowers' financial status. Here, respondent was convicted of submitting false settlement statements in four transactions. Moreover, he cooperated fully with the government in both its investigation and prosecution of others. Because of this significant cooperation, the court did not impose a custodial sentence, but only three-years' probation. Here, as in Mederos, an eighteen-month suspension, retroactive to respondent's temporary suspension on February 23, 2005, sufficiently addresses respondent's misconduct.

Members Lolla, Neuwirth, and Baugh 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
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

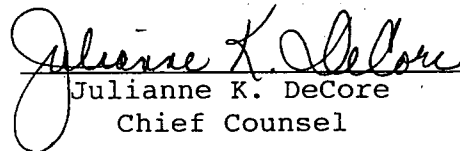
In the Matter of Charles B. Daly
Docket No. DRB 07-385

Argued: February 21, 2008

Decided: April 22, 2008

Disposition: Eighteen-month suspension

Members	Disbar	Eighteen-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh						X
Boylan		X				
Frost		X				
Lolla						X
Neuwirth						X
Stanton		X				
Wissinger		X				
Total:		6				3


Julianne K. DeCore
Chief Counsel