SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-075
District Docket No. XIV-05-106E

IN THE MATTER OF	
DANIEL ELLIS	
AN ATTORNEY AT LAW	

Decision

Argued: May 19, 2011

Decided: August 16, 2011

Christina Blunda Kennedy 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), based on respondent's guilty plea to one count of bank fraud (18 U.S.C.A. §1344) and one count of conspiracy to commit bank fraud (18 U.S.C.A. §371) in violation of RPC 8.4(b) (conduct that adversely reflects on an attorney's honesty, trustworthiness or

fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE urged us to recommend respondent's disbarment. We agree with the OAE that respondent must be disbarred.

Respondent was admitted to the New Jersey bar in 1974. He has been disciplined several times. In 1999, he was reprimanded for recordkeeping violations and negligent misappropriation of client funds. In re Ellis, 158 N.J. 255 (1999). The Court ordered that respondent submit quarterly reconciliations of his attorney accounts for two years, practice under the supervision of a proctor, also for two years, and complete ten hours of courses in ethics and trust accounting. The conditions were lifted in 2003.

In 2000, respondent received a reprimand by consent for practicing law, from September 1998 through January 1999, while he was ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. After restoration to the active list, respondent again became ineligible and practiced law during that period. In re Ellis, 165 N.J. 493 (2000).

In 2003, respondent consented to a temporary suspension until the resolution of all ethics grievances against him. In re Ellis, 176 N.J. 268 (2003). He remains suspended to date.

In 2005, respondent received a three-month suspension in a real estate matter for failing to act with diligence, failing to communicate with the client, and failing to cooperate with disciplinary authorities. That matter proceeded as a default. In re Ellis, 183 N.J. 227 (2005).

The conduct that gave rise to respondent's guilty plea was as follows:

In 2002, respondent was employed as a real estate closing attorney for M.S. Financial Services. He was responsible for handling closings and distributing the proceeds of real estate transactions. Six properties for which respondent handled the closing, between April 2002 and December 2002, were at issue in the criminal proceeding from which this disciplinary matter stems. Respondent knew that the closing documents that had been prepared for the transactions had falsely inflated purchase prices. He knew that the mortgage lenders, including Lehman Brothers Bank and Commerce Bank, were funding loans on the basis of these and "other closing documents." Respondent also was

aware that the resulting loan amounts greatly exceeded the actual sale price of the properties.

The loan proceeds were deposited in respondent's trust account. After the actual sale price was paid to the seller, respondent distributed the remaining money to "various individuals." The payments were not reflected in the HUD-1 forms. For his part in the scheme, respondent received approximately $80,400 and a Volkswagen Passat valued at roughly $30,000.

In December 2004, respondent pled guilty to conspiracy to commit bank fraud and bank fraud. The Honorable Jose L. Linares, U.S.D.C., sentenced respondent to prison for two years and ordered him to pay $12,487,227.51 in restitution and $200 special assessment. In addition, respondent was to be placed on probation for three years, following his release. During sentencing, Judge Linares stated:

> It is true that in sentencing someone, I should consider whether or not they have cooperated with the Government, and hence, the application by the Government in this matter for leniency in sentencing this defendant. I look at that carefully because there have been many others in this case, who have also cooperated and the Court is aware of the type of sentences that I have issued and others that are similarly situated to this defendant, but those others

> were not lawyers. I think that does put this defendant a little bit apart from everybody else. He is an officer of the court, who as [respondent's counsel] said, should have known better.
>
> I understand that he was living apparently with some issues, which included an attention deficit disorder based on the report from the doctor that I read, and also the anxiety and depression for which he was under medication, but many people function under those constraints and still do not turn to criminality in their work.
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> [Ex.D at 14-16 to 15-8.].

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

Respondent entered a guilty plea to bank fraud and conspiracy to commit bank fraud. 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). 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 level of discipline 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 445-446 (1989). Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

In urging respondent's disbarment, the OAE pointed to three cases where attorneys were convicted of criminal activities and disbarred. The first, In re Goldberg, 105 N.J. 278 (1987) involved an attorney who pleaded guilty to conspiracy to distribute and possession with intent to distribute phenyl acetone (the main ingredient in speed). Goldberg is not this respondent. The OAE also pointed to In re Desiderio, 197 N.J. 419 (2009), where the attorney was convicted of conspiracy to commit money laundering. Desiderio was assisting individuals in hiding the proceeds of a significant marijuana distribution organization. Desiderio, too, is not this respondent. Finally, the OAE directed us to In re Seltzer, 169 N.J. 590 (2001), where the attorney participated in a scheme to defraud insurance companies over a period of years. Seltzer received cash from insureds to pay others to inflate the value of the insureds' losses. On occasion, Seltzer received additional cash fees from insureds.

Although respondent's misconduct may not be exactly Seltzer's, a strong analogy can be drawn between the two attorneys' actions.

Seltzer used his skills as an attorney to commit insurance fraud. He received bribes to submit falsely inflated claims to insurance companies. Respondent did not report the payments on his income tax returns. His misconduct resulted in losses of over $500,000 to the insurance companies.

Respondent used his skills as an attorney to hide the true value of real estate, by providing false information on closing documents. He induced lenders to fund loans that greatly exceeded the sale price of the properties. His actions resulted in losses to the lenders of over $12,000,000. Respondent's misconduct was at least as serious as that of Seltzer, who received the ultimate discipline – disbarment.

To be sure, we have been faced with cases more factually on point than Seltzer, where attorneys have been convicted of crimes involving false statements in the procurement of loans. In those cases, lengthy suspensions were imposed. However, as seen below, the present case is readily distinguishable from them. See, e.g., In re Daly, 195 N.J. 12 (2008) (eighteen-month retroactive suspension for attorney who was sentenced to probation after pleading guilty to an information charging him with conspiracy to submit false statements in four real estate transactions; specifically, the attorney prepared settlement

statements containing material misrepresentations about the sale price of the properties, the amount of funds brought by the buyers to the closings, the amount of the deposits, and the disbursements made to the sellers, the real estate and mortgage brokers, and the attorney himself); In re Serrano, 193 N.J. 24 (2007) (eighteen-month retroactive suspension for attorney who received one-year probation after pleading 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 in legal fees from the scheme); In re Mederos, 191 N.J. 85 (2007) (eighteen-month retroactive suspension for attorney who played a minor role in a mortgage fraud scheme by submitting false loan documents in three transactions; in particular, the attorney prepared settlement statements that contained materially false information about the financial

status of the borrowers; the attorney was paid $900 per closing; after pleading guilty to mail-fraud conspiracy, the attorney was sentenced to three-years' probation and fined $2,000; in sentencing the attorney, the court considered his extensive cooperation with the government); 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; the attorney was sentenced to six months in prison after his conviction of mail fraud and conspiracy to commit mail fraud for preparing false documents, including tax returns, W-2s, pay stubs, and bank statements; the attorney also wrote false information on verification of employment forms and 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 Panepinto, 157 N.J. 458 (1999) (two-year retroactive suspension for attorney who received probation after pleading guilty to conspiracy to commit bank fraud in connection with a fraudulent loan from the attorney to his client, the intent of which was to deceive a mortgage company; In re Capone, 147 N.J. 590 (1997), (attorney received a two-year retroactive suspension for making misrepresentations to a bank in order to obtain a mortgage loan,

on which the attorney later defaulted; ultimately, he pleaded guilty to a charge of knowingly making false statements on a loan application and was placed on four months' house arrest); In re Bateman, 132 N.J. 297 (1993) (two-year retroactive suspension following attorney's conviction of mail fraud conspiracy for making false statements on a loan application and thereby assisting a client in obtaining an inflated appraisal value for property; the attorney was sentenced to a suspended five-year prison term, fined $15,000, ordered to perform three hundred hours of community service, and was placed on probation for three years); and In re Noce, 179 N.J. 531 (2004) (three-year retroactive suspension for attorney who pleaded 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 resulting in a loss of over $2,400,000 to HUD; 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, was sentenced to five-years' probation, was confined to his residence for nine months, was ordered to make restitution in the amount of $2,408,614, and was fined $5,000; mitigating factors included his

minor role in the conspiracy, lack of substantial profit from it, and his cooperation, which was so substantial that he received a reduced sentence).

The conduct coming closest to the gravity of respondent's offenses was that of the attorney in In re Noce, supra, 179 N.J. 531. Noce received a three-year retroactive suspension for participating in over fifty fraudulent closings, for which he received cash fees. His actions resulted in a loss to HUD of over $2,400,000. True, Noce participated in far more transactions than respondent, but Noce profited far less and caused far less economic loss to the lender.

The mitigating factors here are also similar to those in Noce. Both attorneys were merely cogs in the criminal enterprise machine. Both cooperated substantially with government authorities. In addition, respondent battles anxiety and depression, and suffers from Attention Deficit Disorder. Thus, the three-year suspension in Noce is still our starting point.

Two factors, however, distinguish this case from Noce, placing it in the same category as Seltzer and calling for disbarment. First, the magnitude of the loss caused by respondent's misconduct cannot be overlooked. The lenders lost over $12,000,000, far more than in Noce or in any of the other

cited cases. Second, respondent's disciplinary history is extensive. At the time of the present misconduct, respondent had already been reprimanded twice and ordered to complete courses in ethics and accounting. He was also later disciplined for misconduct in a real estate matter.

Several other significant factors distinguish this case from other suspension cases involving fraud on a lender. This respondent engaged in a criminal activity solely for his own benefit or the benefit of his co-conspirators; he was not acting on behalf of clients. The profits from this bank fraud did not represent legal fees. Respondent was an employee of M. S. Financial Services, presumably drawing a salary. The more than $100,000 he realized was his "cut" of the excess loan proceeds that resulted from these transactions. The seriousness of his actions is reflected in the nature of the charges to which he pled guilty (conspiracy to commit bank fraud and bank fraud) and the sentence he received (two years in prison, followed by three years' probation).

Despite his prior discipline and mandated course work, it is obvious that respondent cannot or does not "get it." According to respondent's attorney, respondent knew that what was going on "smelled bad," but fear of losing his job overpowered his

professional ethics. To fulfill our duty to protect the public from ethically unfit attorneys and to maintain the integrity of the legal profession, respondent must be disbarred. We unanimously so recommend to the Court.

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
Louis Pashman, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Daniel Ellis
Docket No. DRB 11-075

Argued: May 19, 2011

Decided: August 16, 2011

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Clark	X					
Doremus	X					
Stanton	X					
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	9					

Julianne K. DeCore
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Chief Counsel