SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-342
District Docket No. XIV-2007-0656E

IN THE MATTER OF	
MICHAEL D. SINKO	
AN ATTORNEY AT LAW	

Decision

Argued: January 19, 2012

Decided: March 27, 2012

Maureen G. Bauman appeared on behalf of the Office of Attorney Ethics.

Steven R. Cohen 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), based on respondent's conviction for money laundering (18 U.S.C. §1956(a)(3)(B)) and conspiracy to commit money laundering (18 U.S.C. §1956(h)), in violation of RPC 8.4(b) (criminal act that reflects adversely 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 urges us to recommend respondent's disbarment. For the reasons expressed below, we agree with the OAE that disbarment is required.

Respondent was admitted to the New Jersey bar in 1977. He is also a member of the Pennsylvania bar. At the relevant time, he maintained a law office in Cherry Hill, New Jersey. Although he has no history of discipline, he was temporarily suspended, on May 15, 2009, pending the final resolution of these proceedings. In re Sinko, 198 N.J. 639 (2009).

On January 23, 2012, the Supreme Court of Pennsylvania suspended respondent "on consent" for four years, retroactive to September 26, 2009. Office of Disciplinary Counsel v. Sinko, ____ A.2d ____ (2012).

The conduct that gave rise to respondent's conviction is as follows:

On November 13, 2007, respondent and co-defendants Craig Scher and James Bell, Jr. were indicted on various charges, including money laundering and conspiracy to commit money laundering. According to the indictment, Scher was the regional president of NOVA Savings Bank (NSB), Bell was a real estate developer and owner of Ocean Development, LLC in New Jersey, and respondent was outside counsel for NSB. He owned and operated Hand Development, LLC, an entity formed to develop a tract of

land into a six-unit condominium project in Wildwood, New Jersey.

The pre-sentence investigation report,[1] parts of which respondent quoted in his brief to us, established that the Federal Bureau of Investigation (the FBI) was investigating Scher and Bell for accepting "bribes/kickbacks" from unqualified bank loan applicants to grant them loans and lines of credit. The co-defendants had agreed to help launder $100,000 in cash for John Palmer, who they believed was a businessman going through a bitterly contested divorce. Palmer was actually John Roberts, an undercover FBI agent.

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[1] In In re Nedick, 122 N.J. 96, 103 (1991), the Court, in adopting our decision in its entirety and incorporating it into its order as an appendix, confirmed the propriety of considering more than a guilty plea in a motion for final discipline. As we noted in our decision,

> [t]he Board is also aware that its review is not limited to the four corners of the plea of guilty in recommending the appropriate discipline to be imposed. All relevant documents that will assist in creating the "full picture" are considered. These include the pre-sentence report, the plea agreement, and the sentencing court's record.

See also In re Spina, 121 N.J. 378, 379 (1990) (ethics authorities and the Court may be required to review "any transcripts of a trial or a plea and sentencing proceeding, pre-sentence report, and any other relevant documents in order to obtain the full picture").

Palmer represented that he wanted to purchase an oceanfront condominium for his girlfriend, wanted to hide the ownership of the condominium, and was willing to pay the required "bribe/kickback" to obtain a loan from NSB to purchase the condominium.

In the summer of 2005, respondent, Scher, and Bell discussed with Palmer the possibility of Palmer's purchasing a condominium from respondent, as a way to launder funds that Palmer had purportedly fraudulently obtained from his employer. U.S. v Sinko, 394 Fed. Appx. 843, 844-45 (2010). Respondent owned the condominium project, which was financed by NSB. Ibid.

Palmer informed respondent that a portion of the payments made to purchase the condominium was money stolen from his employer and that he did not want the payments reported on the sales agreement. The two discussed possible ways to keep the payments off the record, including adding addenda to the sales agreement to reflect cash payments to respondent, as the seller of the condominium. Ibid. According to the indictment, the co-conspirators agreed to falsely represent on the agreement of sale that the purchase price was $100,000, less than the actual price, thereby hiding $100,000 in cash.

On September 29, 2005, Palmer gave respondent a $15,000 cash payment as the first payment of the $100,000 to be

laundered. Respondent produced an addendum to the sales agreement to reflect Palmer's first installment. U.S. v Sinko, 394 Fed. Appx. at 845.

In an October 3, 2005 telephone conversation with respondent, Palmer reiterated the need for discretion in handling the cash payments. He explained his scheme "to submit false invoices to his employer and the resulting checks were mailed from his employer to a post office box in New Jersey." Palmer told respondent that he needed to launder the resulting funds into a more usable form. Respondent did not object to the source of the funds. On November 8, 2005, he accepted a second $15,000 cash payment from Palmer. Ibid.

On April 23, 2009, respondent was convicted of one count of conspiracy to commit money laundering and one count of money laundering. He was sentenced to thirty months' incarceration and three years of supervised release. He appealed the reasonableness of his sentence, not his conviction, which was affirmed. U.S. v Sinko, 394 Fed. Appx. 843 at 844.

On appeal, one of respondent's arguments in support of a lesser sentence was that he had played a minor role in the offense. However, the federal court of appeals agreed with the district court's finding that respondent's involvement "far exceeds, as a factual matter, a minor role." Id. at 847. The

court pointed out that respondent discussed with Palmer possible methods to launder the stolen funds, accepted two payments from Palmer to be laundered, and prepared the necessary paperwork to hide the payments.

Moreover, the court emphasized that respondent did not dispute that, in representing NSB as a banking lawyer, he was in a position of trust with NSB. Instead, he argued that he did not use his position of trust to facilitate the commission of the offense. Ibid. The court concluded that NSB was connected to the transaction in two ways: 1) it financed respondent's condominium development project and 2) Palmer was to receive a loan from NSB, in exchange for bribes to respondent's co-defendants. Respondent's concealment from NSB "of his involvement in the condominium complex and his preparation of the documents needed to conceal Palmer's cash payments support the District Court's finding that [respondent's] position of trust with [NSB] assisted in facilitating the money laundering scheme . . . ." Id. at 848.

By letter dated May 1, 2009, respondent notified the OAE of his criminal conviction.

In respondent's brief to us, he argued, among other things, that he was naive and had no idea that he was involved in a scheme to launder money or that Palmer was involved in any

illegal activity. To bolster that argument, he cited a portion of the pre-sentence report that referred to a transcript of his and Palmer's October 3, 2005 telephone conversation, in which he told Palmer that he did not recall where Palmer had obtained the funds for the transaction. Respondent asserted that he believed only that Palmer was trying to hide money because of his divorce, that Palmer did not want his soon to be ex-wife to know that he had cash, and that his co-defendant never told him that laundering money was involved.

Respondent, however, emphasized only a portion of the transcript of his conversation with Palmer. He omitted the damning portions of their conversation, during which Palmer explained to him how he was skimming money from the company he worked for and that the company did not "have any employees, we don't really do any work at all," although every "couple of weeks," a check was mailed to a post office box in New Jersey. Palmer told respondent: "it's been a pretty damn good scam to be honest with you."

During that conversation, Palmer added that, as the person controlling all of the internal audits, he was able to "short circuit anybody taking a look at anything that's been going on." He stated further that, at that point in time, "it's just time to, to see if I can, can wash that through a place and, you

know, get it back into more usable form." Upon hearing Palmer's description of the scam, respondent replied: "It's another reason why the fewer the people that know the better."

Respondent also argued that he was acquitted of one count of money laundering. He reasoned that the acquittal, therefore, supported his claim that, prior to the October 3, 2005 telephone call, he had no idea that he was involved in a money laundering scheme. However, he conceded that the jury could have inferred that, after that call, he should have known that it was money laundering and that he should have moved faster to cancel the deal, after Palmer told him that he was "scamming" his employer. He admitted that he should not have taken the second payment from Palmer.

He tried to minimize the significance of his involvement, maintaining that he was not acting as an attorney in the transaction, but as the seller of a condominium unit.

Respondent noted that he had spent twenty-one months in a Brooklyn, New York prison and the remaining five months in a half-way house in Philadelphia. He began home-confinement on August 2, 2011, which ended on October 31, 2011. He is currently serving a three-year period of supervised release under the U.S. Probation Office.

Respondent was not ordered to make restitution, but asked us to consider the financial loss that he suffered from the real estate project. When the real estate market soured, he had to sell the units for substantially less and lost approximately $200,000 on the project.

Respondent offered mitigating factors for our consideration: 1) his offense did not involve his law practice; 2) at the time of his sentencing, he had practiced law for thirty-two years, with an unblemished record; 3) he had an excellent reputation in the legal and general community; 4) the sentencing judge received sixty letters on his behalf, most of which he included in his submission to us; and 5) he had been active in community service.

Respondent asked us to balance this one mistake against his life's work. In arguing for discipline less than disbarment, respondent cited a number of cases where lengthy suspensions were imposed, instead of disbarment, some of which were cases involving the obstruction of justice: In re Tambone, 176 N.J. 566 (2003) (three-year suspension for witness tampering); In re Samay, 175 N.J. 438 (2003) (three-year suspension for attorney, who was removed as a municipal court judge, who abused his judicial power to further his own interests); In re Comerford, 171 N.J. 28 (2002) (three-year suspension for conviction of

five counts of forgery and five counts of tampering with records); In re Kushner, 101 N.J. 397 (1986) (retroactive three-year suspension for conviction of false swearing, a fourth degree crime); In re Rosen, 88 N.J. 1 (1981) (three-year suspension for attempted subornation of perjury); In re Khoudary, 167 N.J. 593 (2001) (two-year suspension for structuring monetary transaction to avoid reporting requirements); In re DeMiro, 182 N.J. 248 (2005) (eighteen-month suspension for conspiracy to obstruct justice); and In re DeSantis, 171 N.J. 142 (2002) (one-year suspension for obstruction of justice).

Following a full review of the 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); In re Gipson, 103 N.J. 75, 77 (1986).

Respondent's conviction for money laundering (18 U.S.C. § 1953(a)(3)(B)) and conspiracy to commit money laundering (18 U.S.C. §1956(h)) constitutes a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on the attorney's 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).

In essence, respondent asked us to retry his criminal matter and to find that he was just an innocent player in the sting operation. As noted above, respondent's conviction is conclusive evidence of his guilt. Despite his claim of ignorance and/or naiveté, a jury found that he knowingly and voluntarily joined in a conspiracy to launder money. He did not appeal that finding, but only the term of his sentence.

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. Notwithstanding respondent's argument that his conduct did not involve the practice of law, he admitted preparing two addenda to the sales contract to account for the cash payments. Preparing those documents did involve the practice of law, even though it was his condominium that was purportedly for sale.

The discipline imposed in cases involving money laundering and/or conspiracy to commit money laundering is typically disbarment. See, e.g., In re Lesser, 200 N.J. 222 (2009)

(attorney with a significant ethics history was convicted of money laundering and wire fraud and was also guilty of conflict of interest, making material misrepresentations to third persons, failing to disclose a material fact when necessary to avoid assisting in a criminal or fraudulent act, and unauthorized practice of law); In re Desiderio, 197 N.J. 419 (2009) (attorney was involved with individuals operating a substantial marijuana distribution organization; over approximately eight years, he assisted the enterprise by leasing or purchasing property in Florida and New Jersey, thereby enabling the crime's principals to launder funds and to conceal their criminal activity); (Desiderio's co-conspirator was also disbarred); In re Harris, 186 N.J. 44 (2006) (in connection with her representation of a real estate developer who engaged in the practice of "flipping" properties, the attorney was convicted of conspiracy to commit financial facilitation (money laundering), conspiracy to commit theft by deception, and misapplication of entrusted property for, among other things, depositing the proceeds from an illicit real estate transaction into her trust account, and assisting her accomplices in using those proceeds to fund further fraudulent transactions); In re Denker, 147 N.J. 570 (1997) (attorney pled guilty to one count of money laundering for assisting a client to launder $50,000, the proceeds of drug

trafficking, for a $3,500 fee; he did so by converting the cash into various negotiable instruments, each in denominations less than $10,000; this method was chosen to avoid reporting requirements and to conceal the source of the funds; unbeknownst to the attorney, his client was cooperating with law enforcement authorities; he similarly laundered another $50,000 for a purported associate of the client); and In re Mallon, 118 N.J. 663 (1990) (attorney was convicted of one count of conspiracy to defraud the United States and two counts of aiding and abetting the submission of materially false tax returns; the charges evolved from his participation in a conspiracy to hide illegal income from federal tax authorities; he directly participated in the laundering of funds to fabricate two transactions reported on joint tax returns of a couple, a "serious crime of dishonesty;" his crimes were directly related to the practice of law and he used his position as an attorney to further the goals of the conspiracy).

There are some similarities between respondent's case and In re Lunetta, 118 N.J. 443, supra. Lunetta, like respondent had an unblemished professional career, prior to his involvement in a securities scheme. In re Lunetta, 118 N.J. at 446. Lunetta was a well-known, respected attorney who had served as a municipal court judge for three years.

Lunetta, like respondent, was having financial difficulties. He over-extended himself. He had purchased a condominium in Florida and a new home in Morris Township. He started investing in stock options and quickly went into debt. With the stock losses, mortgage payments, the cost of private school for three children and taxes due, he desperately needed money. Rather than discuss his need for money with family and friends, Lunetta asked an acquaintance, Stanley Buglione, for a loan "and hence unintentionally" began his involvement in a scheme. Ibid.

Buglione stated that he could not lend Lunetta money, but proposed that Lunetta participate in a plan to sell $200,000 in bearer bonds. Buglione did not tell Lunetta that the bonds were stolen, but Lunetta realized that they were. He deposited the checks from the sale of the bonds into his trust account and then distributed the funds to himself and his co-conspirators. The conspiracy netted approximately $170,000; Lunetta's share was between $20,000 and $25,000.

The FBI obtained a warrant to search Lunetta's law office. The records were at his home, which he so advised the FBI. He voluntarily retrieved the records and turned them over to the FBI. He then went to the United States Attorney's Office, fully confessed his involvement in the scheme, and fully cooperated

with the government. His testimony led to the conviction of five individuals. He also agreed to postpone his own sentencing, at the request of the government, until the conclusion of other matters requiring his cooperation. He waived indictment and entered a guilty plea.

The Court was satisfied that Lunetta's conduct was aberrational. It also considered that he had an otherwise unblemished record, had fully cooperated with the government, had acknowledged the seriousness of his misconduct, and had accepted full responsibility for his actions.

The Court, however, found that Lunetta's misconduct "seriously detracted from the 'honesty, integrity and dignity that are the hallmarks of the legal profession.'" Lunetta "conspired to receive and sell stolen securities. As the attorney in *In re Goldberg,* 105 [*N.J.* 278, 281 (1987) Lunetta] laundered and shielded funds from known criminal activities. Like Goldberg, he also was not an inexperienced attorney when he engaged in this conspiracy." In re Lunetta, 118 N.J. at 449-50.

Although the Court believed that Lunetta would not repeat the misconduct, it found that "his behavior in furthering a complex criminal scheme so impugned 'the integrity of the legal system that disbarment is the only appropriate means to restore public confidence.'" Id. at 450.

The Court deviated from the ultimate sanction of disbarment in In re David, 181 N.J. 326 (2004). That matter was before us on a motion for reciprocal discipline arising out of New York's fifteen-month suspension. The attorney received the same length of suspension in New Jersey, after admitting his involvement in acts of securities fraud and money laundering.

The attorney cooperated with the government, turned over all of his documentation relating to the fraudulent scheme, entered into a cooperation agreement with the government, and was granted immunity, in exchange for several debriefings with prosecutors and staff from the Securities and Exchange Commission (SEC) and for his testimony at grand jury and trial proceedings. The attorney also paid $10,000 in restitution and $5,000 in penalties to the SEC.

The mitigating factors considered by New York disciplinary authorities were, among others: the attorney's wrongdoing occurred during a brief period, when he was a relatively new attorney; he was inexperienced in business matters; he was a peripheral figure in the criminal scheme from which he derived only a modest benefit; he apparently became involved in the scheme due to threats made against him; he was suffering from depression due to a broken engagement and his father's serious injuries from an automobile accident; he ultimately cooperated

extensively with the government's prosecution of others involved in the scheme, which cooperation was critical to the overall success of the investigation and prosecution leading to the felony convictions of thirty-nine defendants; he was rehabilitated; more than ten years had passed since his misconduct had taken place; and he expressed remorse for his wrongdoing.

In In re Lunetta, 118 N.J. at 448, the Court noted that there is no hard and fast rule that requires a certain penalty for the conviction of a certain crime. It noted, however, that "[c]ertain types of ethical violations are, by their nature, so patently offensive to the elementary standards of a lawyer's professional duty that they per se warrant disbarment," citing In re Conway, 107 N.J. 168, 180 (1987). Although Lunetta presented compelling mitigating factors, the Court found that his conduct warranted disbarment.

The line of cases following Lunetta establish that, absent compelling mitigation, such as the type described in In re David, supra, 181 N.J. 326, disbarment is warranted for money laundering. We find that the mitigation offered by respondent is not comparable to that found in David. He did not admit his guilt or cooperate in the investigation against him. The matter proceeded to trial, where a jury found him guilty of money

laundering and conspiracy to commit money laundering. His claims of ignorance of the law, of what was transpiring, or of his naiveté did not save him from a guilty verdict. Moreover, he did not appeal his conviction; he appealed the severity of his sentence and lost.

We note also that respondent was not a young, inexperienced attorney, like attorney David. At the time of his misconduct, he had been a member of the bar for thirty-two years. Moreover, his financial problems relating to his unprofitable development project do not equate to the depression suffered by David. Finally, he was not threatened to take part in the scam, as was David.

Respondent's conspiracy in a money laundering scam and his willingness to launder Palmer's alleged ill-gotten funds serve to undermine the confidence of the public in the integrity of the bar. We, therefore, recommend that he be disbarred.

Members Clark and Zmirich voted to impose a three-year prospective suspension, based on the limited nature of respondent's involvement. These members found that respondent's conduct was less serious than Denker's or Desiderio's, who laundered money from drug-trafficking operations. Respondent's wrongdoing involved a one-time scheme, while Desiderio's spanned approximately eight years.

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 Michael Sinko
Docket No. DRB 11-342

Argued: January 19, 2012

Decided: March 27, 2012

Disposition: Disbar

Members	Disbar	Three-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Clark		X				
Doremus	X					
Wissinger	X					
Yamner	X					
Zmirich		X				
Total:	6	2				

Julianne K. DeCore
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Chief Counsel