

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-207

IN THE MATTER OF
SCOTT E. KAPLAN
AN ATTORNEY AT LAW

Decision

Argued: June 19, 1997

Decided: February 17, 1998

Richard J. Engelhardt 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 the Board on a Motion for Final Discipline filed by the Office of Attorney Ethics (OAE), based upon respondent's criminal conviction for wire fraud, in violation of 18 U.S.C.A. 1343 and 2.

Respondent was admitted to the bar of the State of New Jersey in 1977. In September 1985 respondent and a co-defendant were the subject of a two-count federal indictment charging them with conspiracy to commit wire fraud and wire fraud. In April 1996 a seventeen-count superseding indictment charged respondent with conspiracy, mail fraud and wire fraud. On July 9, 1996 respondent entered a guilty plea

to count seventeen of the superseding indictment, which charged him with wire fraud, in violation of 18 U.S.C.A. 1343 and 2. At the plea hearing, respondent made the following admissions:

On or about February 28, 1990 respondent conducted a closing of a real estate transaction involving property located at 1070 Province Line Road, North Hanover Township, New Jersey. The funding for the transaction was provided by Meridian Mortgage Corporation ("Meridian"). After the closing, respondent, as attorney for both the buyer and seller and as the closing agent for Meridian, submitted to Meridian a form known as a HUD One Uniform Settlement Statement. On October 17, 1990 respondent became aware that the HUD Statement given to Meridian contained materially false representations and that the buyer and seller of the property had engaged in a scheme to defraud Meridian. On that same date respondent directed a member of his staff to make an interstate telephone call from his office in Bordentown, New Jersey to Meridian in Wayne, Pennsylvania. Because the purpose of the telephone call was to delay or avoid detection of the false representations made to Meridian, respondent's conduct aided and abetted the scheme by others to defraud the mortgage company.

Respondent was sentenced to a five-year period of probation, conditioned on completion of a sixty-day residence in a community correction center, followed by six months of confinement to his residence. Restitution in the amount of \$50,000 was also ordered. On July 12, 1996 respondent was temporarily suspended from the practice

of law by the New Jersey Supreme Court. In re Kaplan, 145 N.J. 215 (1996).

The OAE urged the Board to suspend respondent for a period of two years.

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Following a de novo review of the record, the Board determined to grant the OAE's Motion for Final Discipline.

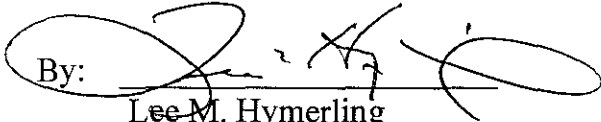
The existence of a conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2)(ii); In re Lunetta, 118 N.J. 443, 445 (1989). The primary purpose of discipline is not to punish the attorney, but to preserve the confidence of the public in the bar. In re Barbour, 109 N.J. 143 (1988). When an attorney commits a crime, he violates his professional duty to uphold and honor the law. In re Bricker, 90 N.J. 6, 11 (1982).

In this case, respondent's criminal act was serious and was directly related to the practice of law. He knowingly assisted his clients in a scheme to defraud a lending institution. His criminal offense should be met with severe discipline. In In re Bateman, 132 N.J. 297 (1993), an attorney was suspended for two years following his conviction for conspiracy to commit mail fraud. There, the attorney made a false statement on a loan application in order to assist a client in obtaining an inflated appraisal value of a property. In In re Gillespie, 124 N.J. 81 (1991), an attorney was suspended for three years following his conviction for willfully aiding and assisting a client in the presentation of false corporate tax returns.

In view of the severity of respondent's criminal offense, which, in the Board's view, is more akin to Gillespie, supra, than to Bateman, supra, the Board unanimously determined to suspend respondent for three years, retroactive to July 12, 1996, the date of his temporary suspension. One member recused himself. Two members did not participate.

The Board also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 2/17/98

By: 
Lee M. Hymerling
Chair
Disciplinary Review Board