SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-119
District Docket No. XIV-2004-0460E

IN THE MATTER OF	:	
CHRIS C. OLEWUENYI	:	
AN ATTORNEY AT LAW	:	Decision

Argued: October 17, 2013

Decided: October 30, 2013

Hillary Horton 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 came before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13, following respondent's guilty plea in the United States District Court for the District of New Jersey to one count of conspiracy to defraud the United States, a violation of 18

U.S.C. § 371, and his guilty plea in the Superior Court of New Jersey to one count of conspiracy to promote or facilitate the commission of the crime of identity theft, a violation of N.J.S.A. 2C:5-2. The OAE requested the imposition of a three-year suspension. We determine to suspend respondent for two years.

Respondent was admitted to the New Jersey bar in 1998. He also is a member of the New York bar. At the relevant times, he maintained an office for the practice of law in Union, New Jersey.

Respondent has no disciplinary history. However, on September 30, 2005, as the result of his guilty plea, he was temporarily suspended in New Jersey, pending the final resolution of the ethics proceedings against him. In re Olewuenyi, 185 N.J. 165 (2005).

The Federal Crime

A superseding information, filed on August 9, 2005, charged that, from April through December 2003, respondent

> did knowingly and willfully conspire[1] and agree with G.H., J.K. and others to make, and cause to be made, false statements for the purpose of influencing an institution the accounts of which were insured by the Federal Deposit Insurance Corporation, namely Flagstar Bank, FSB, in connection with loans funded by Flagstar, contrary to Title 18, United States Code, Section 1014.
>
> [Ex.A at 4.][2]

According to the superseding information, respondent prepared and submitted false and fraudulent documents to Flagstar Bank, which contained materially false information. First, on April 15, 2003, respondent submitted a settlement statement that misrepresented the disbursements made to the seller, at the closing on a property located in Vauxhall.

---

[1] 18 U.S.C. § 371 provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

[2] "Ex.A" refers to the federal superseding information, filed on August 9, 2005.

Second, he committed the same act, on the same date, with respect to a property located in Newark. Third, he submitted a deed that misrepresented the identity of the seller of a property in East Orange.

On August 9, 2005, respondent appeared before the Honorable John C. Lifland, U.S.D.J., and pleaded guilty to one count of violation of 18 U.S.C. § 371. The facts on which the plea was based involved the third transaction identified in the information. Specifically, respondent testified at the plea proceeding that, in July 2003, Gilbert Hart hired him to be the closing attorney for the East Orange property. Respondent understood that the owner of the property, V.H., was to sell it to P.J. Thus, respondent prepared a HUD-1 and deed containing the names of both V.H. and P.J.

On July 17, 2003, an individual claiming to be P.J. appeared at respondent's office and executed the documents that respondent had prepared. Respondent disbursed the funds that the lender had wired to his trust account. Later, respondent learned that the individual who had claimed to be P.J. was not P.J.

In September 2003, Hart's associate, George Priester, asked respondent to be the closing attorney for a second transaction

involving the same East Orange property. This time, P.J. was selling the property to S.B. Again, respondent prepared a HUD-1 and a deed containing these parties' names.

On September 30, 2003, a different person from the one who had previously claimed to be P.J. appeared at respondent's office and executed the deed. Respondent knew that this individual was not the person who had claimed to be P.J., in July 2003, when the property was purchased from V.H. Nevertheless, he transmitted the deed to Flagstar, knowing that it had "the potential to influence Flagstar's decision to make a loan in connection with the second transaction."

Respondent also testified that, from April through December 2003, he conspired with Hart, Priester, and others to, "among other things, submit false statements to Flagstar Bank in connection with loans funded by Flagstar in Essex County . . . and elsewhere, knowing that these false statements could influence the willingness of Flagstar to make these loans."

Respondent's motion to withdraw his guilty plea was denied. In the memorandum decision denying respondent's motion, Judge Lifland noted that respondent had been paid between $2500 and $10,000 to perform "garden-variety real estate closings," even

though he had represented to Flagstar that he had received between $750 and $850 per closing.

On May 9, 2007, District Judge Anne E. Thompson entered a judgment of conviction of one count of violation of 18 U.S.C. § 371, based on the guilty plea. She sentenced respondent to a thirty-three-month term of imprisonment, the top of the sentencing guideline range, and ordered him to make restitution to Flagstar Bank, in the amount of $131,489.[3] Upon his release from prison, respondent was to be placed on supervised release for three years.

The State Crime

On March 13, 2006, the State of New Jersey filed an indictment charging respondent with second degree identity theft and second degree conspiracy to commit identity theft. In particular, the conspiracy charge claimed that

---

[3] The Government had sought an upward adjustment for "obstruction," for what it claimed was respondent's allegedly perjured testimony, during the hearing on his motion to withdraw the guilty plea. That request was denied.

> on or about and between . . . September 26, 2003 and September 15, 2004, in the City of Newark, the Township of Irvington and the City of East Orange in the County of Essex and in [sic] Township of Hillside, [sic] Township of Union and the Boro [sic] of Roselle in the county of Union, the Boro [sic] of Hawthorn in the County of Bergen and within the jurisdiction of this Court aforesaid, and within the jurisdiction of this Court, and within the jurisdiction of this Court [sic], with the purpose of promoting or facilitating the commission of the crime of Theft of Identity N.J.S. 2C-:21-17) [the participants] did agree that:
>
> A. One or more of them knowingly would engage in conduct which would constitute the aforesaid crime, or
>
> B. One or more of them knowingly would aid in the planning, solicitation or commission of said crime, that is: Theft of Identity against Denise Stanton, Jacqueline Osei, Dianne Harris, Wanda Munoz, Suliman Jenkins, Judith Mallard, James Mallard, James Kirkland and Seth Anane in various real estate transactions
>
> [Ex.J,Count Three.]

Under N.J.S.A. 2C:5-2(d), a person may not be convicted of conspiracy to commit a crime "unless an overt act in pursuance of such conspiracy is proved to have been done by him or by a person with whom he conspired." According to the indictment, respondent and another attorney, C. Brian Daly, acted as "attorneys for various real estate transactions involving 'straw

buyers' knowing that said persons were not who they purported to be." No specific transaction was identified.

On April 12, 2007, respondent appeared before the Honorable Ned M. Rosenberg, J.S.C., and pleaded guilty to one count of second degree conspiracy to commit identity theft, a violation of N.J.S.A. 2C:5-2. At the plea hearing, respondent testified that, sometime during the month of September 2003, Joyce Kirkland asked him to be the closing attorney for a single transaction involving the purchase of a Newark property by Seth Anane. Respondent was aware, prior to the closing, that the transaction would involve a straw buyer, which he knew was illegal. When the closing took place, the person who appeared as the buyer was not Anane, but, rather, a Richard Haywood.

On June 5, 2007, Judge Rosenberg entered a judgment of conviction of one count of second degree conspiracy to commit identity theft, contrary to N.J.S.A. 2C:5-2. The judge did not find any mitigating factors. In aggravation, the judge found that respondent had taken advantage of a position of trust and that there was a need to deter him and others from breaking the law.

Respondent was sentenced to three years in jail, beginning on June 4, 2007, to run concurrently with the federal sentence.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); and In re Principato, 139 N.J. 456, 460 (1995). Specifically, the conviction establishes a violation of RPC 8.4(b). Pursuant to that rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Hence, the sole issue before us is the extent of discipline to be imposed on respondent for his violation of RPC 8.4(b). R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; 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, supra, 139 N.J. at 460 (citations omitted). Rather, we must take into consideration 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).

In cases where attorneys have been convicted of crimes involving false statements in the procurement of loans, the discipline has varied, depending on the seriousness of the offense. See, e.g., In re Poling, 121 N.J. 392 (1990) (fourteen-month suspension for "time served" imposed on attorney who pleaded guilty to preparing a false financial statement, in violation of N.J.S.A. 2C:21-4(b)(2)); In re Serrano, 193 N.J. 24 (2007) (eighteen-month retroactive suspension for guilty plea to making a false statement to a federal agency, in violation of 18 U.S.C.A. § 1001 and 2, by knowingly preparing materially false HUD-1 forms in order to qualify unqualified borrowers for HUD-insured mortgages); In re Capone, 147 N.J. 590 (1997) (two-year suspension, retroactive to attorney's temporary suspension, for knowingly making false statements on a loan application, in violation of 18 U.S.C.A. §§ 1014 and 2); In re Bateman, 132 N.J. 297 (1993) (two-year retroactive suspension imposed on attorney who pleaded guilty to mail fraud conspiracy arising out of false statements on a loan application, which assisted a client in obtaining an inflated appraisal value for the property); and In re Noce, 179 N.J. 531 (2004) (three-year retroactive suspension

for guilty plea to one count of conspiracy to commit mail fraud, in violation of 18 U.S.C. § 371, arising out of the submission of fraudulent HUD-1 forms; the attorney also notarized a document without witnessing its execution and was involved in a conflict of interest).

Here, the appropriate measure of discipline is best determined by comparing respondent's conduct to that of the attorneys in Serrano and Noce, because the criminal conduct involved in the other cases was limited to a single transaction. Respondent's guilty pleas in state and federal court involved three transactions.

In Noce, the attorney participated in a conspiracy to defraud HUD through the fraudulent procurement of home mortgage loans insured by the FHA. In the Matter of Philip S. Noce, DRB 03-225 and 03-169 (December 16, 2003) (slip op. at 4-5). Noce played what was described as a minor role in the scheme, which took place from April 1995 to January 1998, and involved the submission of fraudulent certifications to HUD, claiming that the purchasers had received checks enabling them to contribute to the purchase price and to qualify for the FHA-insured mortgages. Id. at 5. The "gift checks," however, were "bogus." Ibid. Thus, the

buyers had purchased homes with FHA mortgage loans without providing down payments, as required by HUD. Id. at 6.

Fifty of the eighty transactions in which Noce participated involved illegitimate gift transfer certifications. Id. at 7. He performed the title work and acted as the settlement agent and closing attorney for the unqualified buyers. Id. at 5. He knowingly certified HUD-1 settlement statements and gift transfer certifications falsely indicating that the buyers' gift check funds were paid to the sellers. Id. at 6. Noce executed those false documents, knowing that HUD would rely on them and that they were necessary for the procurement of the FHA-insured mortgages for the unqualified buyers. Id. at 5. There was no evidence that Noce was paid more than his regular real estate transaction fee in connection with the fraudulent real estate closings. Ibid. HUD suffered a loss of more than $2.4 million. Id. at 7.

Noce's substantial cooperation with the government prompted the government to request a downward departure at sentencing. Id. at 5. Noce was placed on probation for five years, confined to his residence for a period of nine months, fined $5000, and

ordered to make restitution to HUD in the amount of $2,408,614. Id. at 7.[4]

In Serrano, the attorney knowingly prepared materially false HUD-1 forms in order to qualify unqualified borrowers for HUD-insured mortgages. In the Matter of Linda Serrano, DRB 07-061 (June 29, 2007) (slip op. at 2-4). Specifically, the HUD-1s represented that the borrowers had provided Serrano with funds at settlement, such as closing costs. That representation was false. Id. at 5-7.

Serrano received between $20,000 and $40,000 from her illegal conduct in approximately twenty-five closings. Id. at 7, 9. Her lawyer explained that these monies represented her legal fees for all transactions. Id. at 9.

As in Noce, the court granted the government's motion for a downward departure from the sentencing guidelines, based on the substantial assistance that Serrano had provided to the

[4] Noce also had notarized a document without witnessing its execution and had engaged in a conflict of interest when, as the co-owner of a title company, he performed title work and then acted as the settlement agent and closing attorney for the unqualified buyers. In the Matter of Philip S. Noce, DRB 03-225 and 03-169 (December 16, 2003) (slip op. at 3, 9-10).

government. Id. at 8-9. She was sentenced to a one-year term of probation, fined $5000, and ordered to pay a $100 special assessment. Id. at 9. In addition, the court stated that, if Serrano paid the fine, it would "entertain a motion within six months" for an early discharge of probation. Ibid.

Our imposition of an eighteen-month retroactive suspension on Serrano was based on a comparison of her conduct to that of Noce. In making that comparison, we observed that she was involved in approximately half the number of Noce's transactions, which took place over a shorter period of time. Moreover, from the standpoint of sentencing, Noce's conduct was treated much more harshly: a five-year probationary period together with nine months home confinement, as opposed to a one-year probationary period. Although both attorneys were fined $5000, Noce was required to reimburse HUD more than $2 million, whereas Serrano was not required to make any reimbursements. Thus, we did not deem Serrano's criminal conduct as serious as Noce's.

Given these distinctions, we determined that the three-year suspension imposed in Noce was too severe for Serrano. Serrano's full cooperation with the government's investigation, including her willingness to testify against her co-conspirators, persuaded us that an eighteen-month suspension,

retroactive to the date of her temporary suspension in New Jersey, April 6, 2006, was appropriate discipline for her offenses.

Here, a comparison of the facts underlying respondent's criminal activity and his punishment with that of the attorneys in Noce and Serrano leads to the conclusion that a two-year suspension is appropriate, under the circumstances. Although the level of respondent's participation in the criminal activity was less serious than that of Noce and Serrano, we are left to consider the sentences imposed on those attorneys and the nature of their misconduct.

Respondent was sentenced to nearly three years in prison, whereas Serrano and Noce were merely placed on probation. We note that their sentences were minimal because they provided substantial assistance to the government, in the investigation of the criminal enterprise. Here, there is no evidence that respondent did so. Although we do not hold this circumstance against him, in assessing the appropriate measure of discipline, we must be mindful of that factor, as it relates to the discipline imposed on Serrano and Noce.

Further, unlike Serrano and Noce, respondent's misconduct was not limited to the misrepresentation of numbers. It also

involved the criminal offense of identity theft. We determine, thus, to impose a two-year suspension on respondent.

Member Gallipoli voted to disbar respondent. 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: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Chris C. Olewuenyi
Docket No. DRB 13-119

Argued: October 17, 2013

Decided: October 30, 2013

Disposition: Two-year retroactive suspension

Members	Disbar	Two-year Retroactive Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli	X					
Yamner		X				
Zmirich						X
Total:	1	5				1

Isabel Frank
Acting Chief Counsel