SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-222
District Docket No. XIV-2009-0362E

IN THE MATTER OF	
WAYNE D. BOZEMAN	
AN ATTORNEY AT LAW	

Decision

Argued: November 21, 2013

Decided: December 19, 2013

Melissa Czartoryski appeared on behalf of the Office of Attorney Ethics.

Barbara S. Rosenberg, respondent's counsel, waived appearance 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"), pursuant to R. 1:20-13(c), following respondent's guilty plea in the United States District Court for the Eastern District of Pennsylvania

(USDC) to one count of conspiracy to defraud the United States, in violation of 18 U.S.C. §371.

The OAE recommended that respondent be suspended for three years, retroactive to December 16, 2009, the date of his suspension in Pennsylvania for the same offense. Respondent agreed with that recommendation. We determine to impose a three-year suspension, retroactive to February 10, 2012, as explained below.

Respondent was admitted to the New Jersey bar in 2006 and to the Pennsylvania bar in 2005. He has no prior final discipline in New Jersey. On February 10, 2012, however, the Supreme Court temporarily suspended respondent for the criminal conduct underlying this motion. In re Bozeman, 209 N.J. 91 (2012).

On October 3, 2011, the Supreme Court of Pennsylvania suspended respondent for five years, retroactive to December 16, 2009, for the same reason. Office of Disciplinary Counsel v. Bozeman, 2011 Pa. LEXIS 2373 (2011).

On June 17, 2008, a federal grand jury for the Eastern District of Pennsylvania returned an indictment charging respondent and eleven other defendants with various tax

offenses. Specifically, respondent was charged with one count of conspiracy to defraud the United States (18 U.S.C. §371), six counts of income tax evasion (26 U.S.C. §7201), and six counts of subscribing false tax returns (26 U.S.C. §7206(1)).

Respondent initially entered a not guilty plea to all of the charges. On March 13, 2009, two weeks before the scheduled trial, he was permitted to plead guilty to a single charge of conspiracy to defraud the United States. The remaining charges against him were withdrawn.

At respondent's March 13, 2009 plea proceeding, the following exchange took place:

> [RESPONDENT:] WITH THE ASSISTANCE OF MY TAX ATTORNEY, JAY BAGDIS, IN 1999, I CAUSED FUNDS TO GO INTO A COMPANY THAT I HAD FORMED AND THOSE FUNDS THEN WERE TRANSFERRED TO ME PERSONALLY AND I DID NOT PAY PERSONAL INCOME TAX ON THE MONIES THAT WERE TRANSFERRED TO ME AND THAT OCCURRED FROM 1999 THROUGH 2007.
>
> [THE COURT:] VERY WELL. AND IN THAT REGARD, YOU FAILED TO FILE ANY INCOME TAX RETURNS OR PAY ANY TAXES ON THAT MONEY YOURSELF?
>
> [RESPONDENT:] NO TAXES WERE PAID ON THAT MONEY, YOUR HONOR.

[THE COURT:] BY THE CORPORATION OR BY YOURSELF?

[RESPONDENT:] THAT'S CORRECT.

[OAEBEx.F,19-2 to 15.] [1]

Thereafter, respondent was sentenced to a twenty-two month prison term, followed by a three-year period of supervised release. He was also ordered to pay restitution of $137,635, a $2,000 fine, and a $100 special assessment. Respondent began serving his prison term on October 19, 2009.

The facts underlying respondent's criminal conduct have been gleaned from the Joint Petition in Support of Discipline on Consent, contained in respondent's Pennsylvania disciplinary matter.

In 1999, respondent was the principal owner and operator of Keystone Game Supply, Inc. (Keystone), a company specializing in the repair and resale of amusement and gaming-machine components. That same year, respondent's tax attorney, Bagdis, assisted respondent in restructuring his finances, so that

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[1] "OAEB" refers to the July 7, 2011 OAE brief in support of the motion for final discipline.

respondent could evade the payment of federal taxes on his Keystone income. Bagdis and respondent determined to use a separate entity, Advanced Game Concepts (AGC), which ceased operations in 2000, to hide respondent's Keystone income, thereby facilitating the tax evasion.

Pursuant to respondent's and Bagdis' scheme, Keystone paid respondent's salary directly into an AGC bank account. Respondent then used the funds in the AGC account to pay his own personal expenses, including his home mortgage, a "brokerage account," lawn care, pool services, a pre-paid funeral, and the like.

Respondent filed no personal income tax return for 1999, although he earned $51,688 from Keystone. He then arranged for Bagdis to prepare false personal income tax returns for him for the years 2000 through 2007. Respondent knowingly signed and filed those returns, even though they failed to disclose the substantial income that he earned from Keystone, paid to him through the AGC account, as seen below.

Respondent and Bagdis filed corporate tax returns for Keystone that falsely showed that the company had paid respondent no officer compensation for the tax years in question. In fact, respondent placed into his AGC bank account

the following amounts derived from Keystone: 1999 ($51,688); 2000 ($106,600); 2001 ($102,500); 2002 ($106,600); 2003 ($93,890); 2004 ($99,630); 2005 ($95,940); 2006 ($94,975); and 2007 ($78,546). Respondent did so to evade taxes.

All told, for the years 1999 through 2007, respondent received about $830,369 in unreported Keystone income. In the plea agreement, the parties stipulated that the tax loss to the federal government caused by respondent's tax evasion for those years was approximately $137,635.

At sentencing, the prosecutor summed up respondent's criminal acts:

> Your Honor, the government recommends a guideline sentence for various reasons. This is a very basic tax fraud scheme. Mr. Bozeman was president of a relatively successful corporation. Instead of paying taxes on the money that he got, or on the income that he earned, he put every two weeks — he had that income go to a nominee bank account, for one reason, to hide it from the government. This didn't just happen for one year. He orchestrated this so it happened every two weeks for eight years, hundred thousand dollars each year he did not pay any taxes on. It worked out to be over $800,000.
>
> During this time, he went to law school. While he was in law school, the search warrant was executed on Mr. Bagdis' office. He had plenty of opportunity to go around and say — he had plenty of resources to ask — is this the right thing to get out?

> During this time he was summer interning for the Camden County Prosecutor's Office, still every year committing a crime. He studied for the Bar, passed the Bar, every year committing a crime. Clerking for a judge, while, as you said, committing a crime. Not until he was – after he was indicted in – I believe it was June 17th, 2008 – not until two weeks before trial was when he finally took responsibility for his actions.
>
> [OAEBEx.F,19-14 to 20-16.]

Although respondent's attorney urged leniency because respondent had no prior criminal history and was remorseful, the sentencing judge was less than sympathetic:

> THE COURT: Now, counsel, before we leave this point – and I hate to put you through this, because I'm going to put your client through it when he gets up to allocute.
>
> But, in any case, you say that he shows remorse, but he didn't show any remorse at all. I'm talking about the investigation [sic] took place, and I think the indictment was brought in '07.
>
> The investigation was known to your client even before then because I think the feds were knocking on Mr. Bagdis' door and seizing items of evidence and information about what was going on. The rumors were clearly abundant and spreading throughout Mr. Bagdis' association and affiliations.
>
> Your client did nothing. He sat back. He said, let the government come towards me. Let them bring the indictment. They did.
>
> Still, your client sat back. He didn't say, look, Mr. U.S. Attorney, I was involved

with Mr. Bagdis from the time of 1999. I participated in this, and I was wrong.

No, your client waited two weeks before the trial or a month before – no, it was less than a month because I was here preparing for trial with all counsel in that regard. Your client comes into Court. We went through the pretrial motions. Your client comes into Court two weeks before the trial and says, yeah, I'm guilty.

That shows remorse? No. I think it shows that the writing was on the wall, and it was clear he was going down in a big pile of flames.

Not only that, your client got a significant break from the government because they allowed him to plead guilty to one count. There's a multitude – I think there's at least 12 other counts that he agreed with them that they moved to dismiss at the conclusion of the sentencing.

So your client got more than a break. But I don't see a remorse [sic]. What I see is that your client regrets that he faces what he faces today, but this comes much too late.

[OAEBEx.F13-13 to 15-10.]

Shortly thereafter, the judge explained the significant custodial sentence for respondent's involvement in the criminal conspiracy:

> This Court has considered the factors that are spelled out in Title 18 United States Code Section 3553(a), and we have considered the nature and circumstances of the offense. We find that the nature and circumstances of the offenses are serious.

. . . .

For you being a lawyer, an educated person, one that had a respectable reputation, to be involved in this conspiracy to defraud the federal government is absurd. It's ridiculous. It's a total contradiction of what and who you were.

We also consider the history and characteristics of the defendant. Like I said, you had no prior criminal contacts with the system. It speaks volumes for you. But how and why you would get involved in this scheme and continue to be involved in it over the length of time, for the life of me — I mean, I can't understand why you would jeopardize — I ask defendants most times that come into my courtroom that are standing here in a basic white-collar situation.

You know the reasons why most of the blue-collar criminals come in here. They are trying to make money. They are trying to sell drugs; they are trying to rob whatever; they are trying to make money.

But here you had the ability to make an income. You had an ability to live comfortably. You had good foundation and support. The blue-collar defendants that come in here, they don't have that. They maybe have one parent. They may not even have a high school diploma. They may not have a job skill. But you, you got all of it going for you, and you're still going for more, defrauding the government. Why would you put your freedom in jeopardy by committing this crime?

We also consider the seriousness of the offense. This Court finds that this offense is a serious offense. It is a necessary obligation of each of us who earn an income in these United States to pay our taxes. It

> makes the system run. There are a lot of things our tax dollars go to. Look around you and be thankful that you're in a country that can be able to provide the things that our country provides us.
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> [OAEBEx.F23-7 to 25-11.]

According to the OAE's motion, by virtue of his guilty plea, respondent violated RPC 8.4(b) (a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE argued, in its brief to us, that a three-year suspension was appropriate, citing the case of one of respondent's co-defendants in the underlying criminal enterprise. Michael S. Klein, an attorney employed in Bagdis' office, was suspended by the Court for three years as a result of his guilty plea to criminal charges involving his participation with Bagdis in a scheme similar to that of respondent. In re Klein, 209 N.J. 234 (2012).

Klein had been charged with, and pleaded guilty to, one count of tax evasion (26 U.S.C. §7201) and one count of criminal conspiracy to defraud the United States (18 U.S.C. §371). After his 1994 graduation from law school, Klein accepted employment in Bagdis' law office. From 1995 through 2003, Klein allowed

Bagdis to divert funds that Bagdis should have withheld from his wages for federal taxes. In the Matter of Michael Scott Klein, DRB 11-137 (July 21, 2011) (slip op. at 2). Klein deposited his salary into the bank account of a business that he had created at Bagdis' suggestion. He then paid his own personal expenses out of that business account. Klein knowingly failed to file personal tax returns and to pay federal taxes on the 1995 through 2003 income derived from his employment with Bagdis. At the time, Klein knew that, by improperly utilizing the corporation to pay his own personal expenses, he was "avoiding the duty and responsibility" of all taxpayers, "which is to pay taxes" Id. at 3.

In Klein, the government had "urged a significant downward departure from the sentencing guidelines, based on [Klein's] substantial assistance to the government in the investigation and prosecution of other individuals involved in the conspiracy." Id. at 5. At sentencing before the same judge who sentenced respondent, Klein showed deep remorse. The judge noted that the $74,446 in evaded taxes was "miniscule," compared to that of other defendants in the scheme. Id. at 4.

Klein was sentenced to concurrently running five-year terms of probation (one for each count) and a nine-month period of

house arrest, and ordered to pay restitution of $74,446 Id. at 5.

The OAE cited a second case, In re Noce, 179 N.J. 531 (2002), which also proceeded by way of a motion for final discipline. There, the attorney received a three-year suspension after having pleaded guilty in federal court to one count of conspiracy to commit mail fraud. Noce had been involved with a corrupt real estate enterprise that, through the procurement of fraudulent home mortgage loans, defrauded the Department of Housing and Urban Development of $2,400,000.

As previously noted, respondent agreed with the OAE's recommendation of a three-year suspension, retroactive to his December 16, 2009 Pennsylvania suspension.

Respondent was convicted of one count of conspiracy to defraud the United States, as a result of his having evaded the payment of federal income taxes and having filed false tax returns for the years 2000 through 2007. For his criminal offense, respondent was sentenced to a twenty-two month prison term and three years' supervised release and ordered to pay restitution of over $137,000, a $2,000 fine, and a $100 special assessment.

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 criminal conviction constitutes a violation of RPC 8.4(b) and RPC 8.4(c). 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. 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).

Here, respondent pleaded guilty to one count of conspiracy to defraud the United States, freely admitting, in the underlying criminal proceedings, that his actions amounted to tax evasion, a violation of 26 U.S.C. §7201, as well as the

lesser included offense of filing false tax returns, a violation of 26 U.S.C. §7206 (1).

Attorneys who evade, or seek to evade, the payment of income taxes typically receive two-year suspensions. See, e.g., In re Lewis, 214 N.J. 515 (2013) (attorney convicted of one count of knowingly and willfully subscribing to a false federal income tax return, in contravention of 26 U.S.C.A. §7206(1); the attorney failed to report over $950,000 in income derived from his law practice from 2003 through 2005 and for which he owed in excess of $300,000 in federal taxes); In re Foglia, 207 N.J. (2011) (attorney pleaded guilty to one count of willfully attempting to evade the payment of federal income tax (26 U.S.C. §7201) and one count of knowingly or willfully making a "materially false, fictitious or fraudulent statement or representation," in violation of 18 U.S.C. §1001); In re Weiner, 204 N.J. 589 (2011) (attorney pleaded guilty to two counts of willfully preparing and presenting to the IRS a false and fraudulent tax return on behalf of a taxpayer, in violation of 26 U.S.C. §7206(2); the attorney was sentenced to a two-year probationary term, which included six months of house arrest; the attorney also was ordered to pay a $i0,00 fine and a $200 "special assessment"); In re Rakov, 155 N.J. 593 (1998) (two-

year suspension for an attorney with an unblemished disciplinary record convicted of five counts of attempted income tax evasion, in violation of 26 U.S.C. §7201; the attorney failed to report on his federal income tax returns the interest paid to him on personal loans; he was sentenced to six months' home confinement and three years' probation and was fined $20,000); In re Batalla, 142 N.J. 616 (1995) (attorney underreported his taxable income by approximately $25,000 on his individual return for a single tax year, 1990, and by approximately $100,000 on his partnership return for the year 1991, thereby evading $39,066 in taxes); In re Nedick, 122 N.J. 96 (1991) (attorney pleaded guilty to one count of tax evasion after failing to include cash fees as personal, taxable income); In re Tuman, 74 N.J. 143 (1977) (attorney convicted of a knowing and willful attempt to evade income tax returns); In re Becker, 69 N.J. 118 (1976), (attorney pleaded guilty to one count of tax evasion); and In re Gurnik, 45 N.J. 115, 117 (1965) (attorney pleaded nolo contendere to a charge of tax evasion in one calendar year; the Court stated that "derelictions of this kind by members of the bar cannot be overlooked. A lawyer's training obliges him to be acutely sensitive of the need to fulfill his personal obligations under the federal income tax law").

As pointed out by the OAE, however, an attorney recently received a three-year suspension for almost identical misconduct to that of respondent. In In re Klein, supra, 209 N.J. 234, the attorney, respondent's co-defendant, was involved in a similar scheme with Bagdis to evade his own federal taxes. Klein, too, used a corporate entity to hide his own personal income from the federal government. Klein, however, received a lesser criminal sentence than respondent, meted out by the same judge who sentenced respondent. In Klein's case, the government had urged a significant downward departure from the sentencing guidelines (no such departure was requested for respondent), based on his substantial assistance to the government and his deep remorse. Klein received two concurrent five-year terms of probation and nine months' house arrest and was ordered to pay restitution of $74,446.

In respondent's case, the sentencing judge found significant aggravating factors that led him to impose a harsher custodial sentence on respondent. Specifically, respondent had not assisted the federal authorities in their investigation of Bagdis. Moreover, respondent waited until two weeks before his trial to "come clean." Respondent also engaged in repeated criminal acts with every paycheck that he received, for years on

end, while attending law school, during an internship in the Camden County Prosecutor's office, when serving a judicial clerkship, and, finally, as a newly licensed, practicing attorney.

The sole mitigating factor presented is respondent's lack of prior discipline.

While both respondent and Klein engaged in criminal activity for about eight years, we find respondent's actions to have been more egregious, because his plan to deceive the government had already taken root and become an integral part of his life as he honed his attorney skills in law school, the internship with a prosecutor's office, and a judicial clerkship. In fact, respondent entered the practice of law with unclean hands. So, too, the total tax that he evaded is twice that of Klein, who had significant mitigation in his favor. Klein cooperated with the federal investigation into the wrongdoing, whereas respondent sat mute. So too, Klein expressed deep remorse. In respondent's case, however, the sentencing judge was indignant when respondent's counsel suggested remorse. For these reasons, in our view, a three-year suspension, retroactive to December 16, 2009, the date of respondent's Pennsylvania suspension, is insufficient. We determine that a three-year

suspension, retroactive to February 10, 2012, the date of respondent's New Jersey temporary suspension, is the appropriate sanction. We so vote.

Member Gallipoli did not participate. Members Hoberman and Singer abstained.

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 Wayne D. Bozeman
Docket No. DRB 13-222

Argued: November 21, 2013

Decided: December 19, 2013

Disposition: Three-year retroactive suspension

Members	Disbar	Three-year Retroactive Suspension	Reprimand	Dismiss	Abstained	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli						X
Hoberman					X	
Singer					X	
Yamner		X				
Zmirich		X				
Total:		6			2	1

Isabel Frank
Acting Chief Counsel