SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-271
District Docket No. XIV-2011-638E
and
Docket No. DRB 13-272
District Docket No. XIV-2011-639E

IN THE MATTER OF	
EDWARD G. ENGELHART	
AN ATTORNEY AT LAW	
IN THE MATTER OF	
GOLDIE C. SOMMER	
AN ATTORNEY AT LAW	

Decision

Argued: January 16, 2014

Decided: February 11, 2014

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Scott B. Piekarsky appeared on behalf of respondent Edward G. Engelhart.

Jack D. Arseneault appeared on behalf of respondent Goldie C. Sommer.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

These matters came before us on separate motions for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13, following respondents' guilty pleas, in the United States District Court for the District of New Jersey, to one count of conspiracy to structure transactions involving financial institutions to evade a reporting requirement, contrary to 31 U.S.C. §5324(a)(3) and §5324(d)(1), in violation of 18 U.S.C. §371. Because respondents were indicted together and the facts underlying their pleas are nearly identical, we consolidate these matters for the purpose of rendering our decision.

For each respondent, the OAE requests a suspension "in the range of one year to 18 months." For the reasons set forth below, we impose a one-year suspension on both respondents, retroactive to the date of their temporary suspension, May 22, 2013.

Respondent Engelhart was admitted to the New Jersey bar in 1979. Respondent Sommer was admitted to the New Jersey bar in 1976. At the relevant times, they maintained an office for the practice of law under the name of Sommer and Engelhart, in Fairfield.

Both respondents have an unblemished disciplinary history. However, on May 22, 2013, they were temporarily suspended after they pleaded guilty to the criminal offenses underlying the OAE's motions for final discipline. In re Engelhart, 213 N.J. 564 (2013), and In re Sommer, 214 N.J. 172 (2013).

In identically-worded informations, filed by the United States Attorney for the District of New Jersey, respondents were charged with

> knowingly and for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a),[1] and the regulations issued thereunder, conspired and agreed [with each other] to structure and assist in structuring transactions with a domestic financial institution, namely TD Bank, by causing United States currency to be deposited in amounts not exceeding $10,000, contrary to Title 31, United States Code, Sections 5324(a)(3) and 5324(d)(1).
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> [E-OAEaEx.A;S-OAEaEx.A.][2]

Respondents were charged with having violated 18 U.S.C. §371, which applies "[i]f two or more persons conspire either to

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[1] 31 U.S.C.A. §5313(a) requires banks (among other domestic institutions) to file a currency transaction report (CTR) for each cash deposit, withdrawal, exchange of currency, or any other payment or transfer, that exceeds $10,000.

[2] "E-OAEaEx.A" refers to the undated federal information for respondent Engelhart. "S-OAEaEx.A." refers to the undated federal information for respondent Sommer.

commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose." The information described the overt acts underlying the alleged crime as follows:

> 1. While practicing as licensed attorneys in the State of New Jersey, [respondents Engelhart and Sommer] received approximately $354,000 in U.S. currency from a client during the period from on or about August 13, 2010 through on or about September 22, 2010.
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> 2. From on or about August 13, 2010 through on or about September 22, 2010, [respondents Engelhart and Sommer] and others deposited and caused the deposit of the approximately $354,000 in U.S. currency into an Attorney Trust account held at TD Bank in amounts not exceeding $10,000.
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> [E-OAEaEx.A;S-OAEaEx.A.]

On February 7, 2013, respondents Engelhart and Sommer entered separate guilty pleas, the factual basis of which essentially tracked the information. Specifically, they each admitted that, between August 13 and September 22, 2010, they knowingly and purposely received $354,000, which they agreed to deposit, and did deposit, into their firm's attorney trust account "in a manner that would not result in the filing of a reporting form," that is, in individual amounts not exceeding $10,000.

On May 15, 2013, respondents Engelhart and Sommer were each sentenced to a two-year term of probation, with six months of location monitoring, fined $20,000, and ordered to pay a $100 special assessment. At the sentencing proceeding, both respondents took responsibility for what they had done and expressed their shame and remorse. The prosecutor, who asked for a "no-jail sentence," pointed out that respondents' "acceptance of responsibility . . . was encompassing" and that he could not remember "many cases where a defendant was as forthcoming and legitimately tried to do the right thing after the fact," as was the case with these two respondents.

Moreover, respondents were devoted to their families, numerous letters were submitted to the sentencing judge, attesting to their good character, and, as the trial court judge observed, there was no greed involved in their crimes. During the Sommers sentencing, the judge believed it quite "telling" that attorney Jack Arseneault, whom the judge described as "very respected," had agreed to monitor and maintain respondents' firm's trust account.

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

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); 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 a respondent for a 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, many factors must be taken into consideration, 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). Yet, even if the misconduct is not related to the practice of law, it must be kept in mind that an attorney "is bound even in the absence of the attorney-client relation to a more rigid standard of conduct than required of laymen." In re Gavel, 22 N.J. 248, 265 (1956). "To the public he is a lawyer whether he acts in a representative capacity or otherwise." Ibid.

Suspensions are typically imposed on attorneys who improperly structure cash transactions to avoid reporting requirements. See, e.g., In re Hausman, 177 N.J. 602 (2003) (five-year suspension, retroactive to date of temporary suspension;[3] attorney pleaded guilty to four counts of structuring within a ten-month period and was imprisoned for fifteen months, followed by two years of supervised release, and fined $5000; the attorney knew that the monies had been the product of unlawful activity); In re Khoudary, 167 N.J. 593 (2001) (two-year suspension, retroactive to date of temporary suspension; attorney pleaded guilty to structuring; he and a friend devised a scheme whereby the attorney would cash four

[3] Hausman had been temporarily suspended for approximately four years; hence, part of the suspension was served prospectively.

stolen checks for his friend, who was to cash them on behalf of a third party, in a manner that avoided reporting the transactions to the IRS; in exchange, the attorney received one-half of the friend's commission for doing so; the attorney deposited the checks into his trust account and then purchased cashier's checks in a manner that avoided the required notice to the IRS; the attorney was unaware that the checks had been stolen; mitigating factors included his acknowledgment of wrongdoing and his remorse); In re Chung, 147 N.J. 559 (1997) (eighteen-month suspension, retroactive to the date of temporary suspension; attorney pleaded guilty to a one-count information charging him with failure to file a report of a cash transaction involving more than $10,000, a misdemeanor, and failure to file a federal tax return, also a misdemeanor, and was sentenced to one year of probation, six months of which was home confinement, fined $1000, and ordered to pay a $50 special assessment; for several months, the attorney made fifteen cash deposits of less than $10,000 each, totaling $114,376.69, into five different escrow accounts at five different banks; the funds were to be used to purchase a restaurant, but neither the attorney nor his firm filed an IRS Form 8300 and no bank ever filed a CTR; mitigating factors included the attorney's previously

unblemished seventeen-year career, his performance of legal services for the poor and community organizations for little or no compensation, the absence of greed, and his son's neurological problems); and In re Maycher, 172 N.J. 317 (2002) (three-month suspension; attorney pleaded guilty to failing to maintain records of transactions regarding the establishment of letters of credit of more than $10,000, in violation of 12 U.S.C. § 1956, a misdemeanor, and was sentenced to one year of probation and fined $20,000; at his plea hearing, the attorney admitted that he not only failed to retain documentation of a $100,000 letter of credit and two $200,000 letters of credit, he also had an employee make nineteen separate deposits into his attorney trust account, at different bank branches, in order to avoid the filing of a CTR; mitigating factors included numerous letters attesting to the attorney's good character, his unblemished twenty-eight-year legal career, and his active involvement in professional, civic, and charitable organizations). But see In re Richardson, 171 N.J. 227 (2003) (reprimand; attorney pleaded guilty to a one-count information charging him with the knowing and wilful failure to keep and maintain IRS form 8300 (Report of Cash Payments over $10,000 Received in a Trade or Business), in violation of 26 U.S.C.

§7203, a federal misdemeanor; the attorney was sentenced to one year of probation and fined $2500; on twenty-four occasions, during a three-month period, the attorney's clients, who owned a restaurant, gave him cash amounts ranging from $1000 to $10,000, for a total of $164,546, which he failed to report, because he suspected that his clients were trying to hide income and which was used to buy real estate in a transaction where he acted as the closing attorney; the attorney resigned from his position as a Superior Court judge in Somerset County as a result of the conviction; in our view, only a reprimand was justified because of the "strong mitigating circumstances," which included an unblemished legal career of more than thirty years, the attorney's resignation from the bench, lack of pecuniary gain, and the fact that he had "suffered enough for his wrongdoing").

What degree of discipline for respondents Engelhart and Sommer do the above cases suggest is appropriate? Hausman (five-year suspension) and Khoudary (two-year suspension) involved more serious conduct. Hausman structured the transactions for his own benefit and knew or believed that the funds received were the product of illegal activity. Khoudary, too, had his own financial interest at heart. In Chung

(eighteen-month suspension), the attorney also pleaded guilty to failure to file a federal tax return.

In the cases that resulted in less severe sanctions, Maycher (three-month suspension) and Richardson (reprimand), there were special, compelling mitigating circumstances justifying the respective form of discipline. In Maycher, we considered that the attorney had provided numerous letters attesting to his good character, his active involvement in professional, civic, and charitable organizations, and his unblemished twenty-eight-year legal career. In Richardson, the "strong mitigating circumstances" included an untarnished career of more than thirty years, his resignation from the bench, and the fact that he had paid dearly and suffered enough from his misdeeds.

Here, too, there are strong mitigating factors to take into account. Both respondents have enjoyed unblemished careers of more than thirty years; both readily accepted responsibility for their wrongdoing and expressed contrition and remorse for what they had done; both submitted to the sentencing judge numerous

letters attesting to their character; and they did not act for pecuniary gain.[4]

Nevertheless, we note that, in order to structure $354,000, respondents would have had to have arranged for more than thirty deposits. They also involved people close to them in their illegal activity. Indeed, at oral argument before us, we learned that respondents used friends and family to assist them with their structuring activities. Maycher (three-month suspension) involved nineteen deposits and Richardson (reprimand) likely involved about sixteen.

After comparing respondents' conduct to that of the above attorneys, as well as considering the aggravating factors present in these matters, we determine that a one-year suspension is the right level of discipline for each respondent. The Board's majority voted to make the one-year suspension retroactive to the date of respondents' temporary suspension, May 22, 2013. Chair Frost and member Hoberman would make the suspension prospective.

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[4] At oral argument before us, counsel for respondent Sommer mentioned that the client did not want his wife to know that the client had "all this cash."

Member Singer voted to impose a three-month suspension, retroactive to the date of respondents' temporary suspension. Member Gallipoli filed a dissent, recommending respondents' disbarment. Member Doremus 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
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Edward G. Engelhart
Docket No. DRB 13-271

In the Matter of Goldie C. Sommer
Docket No. DRB 13-272

Argued: January 16, 2014

Decided: February 11, 2014

Disposition: One-year retroactive suspension

Members	Disbar	One-year Prospective Suspension	One-year Retroactive Suspension	Three-month Retroactive Suspension	Did not participate
Frost		X			
Baugh			X		
Clark			X		
Doremus					X
Gallipoli	X				
Hoberman		X			
Singer				X	
Yamner			X		
Zmirich			X		
Total:	1	2	4	1	1

Isabel Frank
Acting Chief Counsel