SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-125
District Docket No. XIV-06-018E

IN THE MATTER OF

MARC F. DESIDERIO

AN ATTORNEY AT LAW

Corrected Decision

Argued: June 19, 2008

Decided: October 7, 2008

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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"), based on respondent's guilty plea in the United States District Court for the Southern District of Florida ("the district court") to involvement in a money-laundering conspiracy, in violation of 18

U.S.C.A. §371 and §1956(h). We voted to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1972. He has no prior final discipline. On July 27, 2007, respondent was temporarily suspended as a result of this conviction. In re Desiderio, 192 N.J. 216 (2007). He remains suspended to date.

On or about August 9, 2006, respondent and his New Jersey law partner, Loel H. Seitel, were named in a superseding indictment in the district court.[1] Respondent was charged with conspiracy to commit money laundering (18 U.S.C.A. §1956(h)); money laundering concealment (18 U.S.C.A. §1956(a)(1)(B)(I)); conspiracy to obstruct justice (18 U.S.C.A. §371 and §1503); obstruction of justice (18 U.S.C.A. §1503), and making a false statement to a federal agency (18 U.S.C.A. §1001).

On July 19, 2007, respondent appeared in the district court before the Honorable James I. Cohn. Pursuant to a plea agreement, respondent pled guilty to the first count of the indictment, charging him with money-laundering conspiracy, in violation of 18

[1] On October 2, 2008, we transmitted to the Court a recommendation for the disbarment of Loel Seitel, respondent's former law partner and co-conspirator.

U.S.C.A. §371 and §1956(h).[2]

Count one of the indictment stated that, from 1994 to 2003, respondent

> did knowingly and willfully conspire, confederate, and agree with Jeffrey Tobin and with other persons known and unknown to the Grand Jury to commit the following offenses: (a) to launder funds and monetary instruments in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i) and (b) to launder funds and monetary instruments in violation [of] Title 18, United States Code, Section 1957.
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> [OAEbExA7.][3]

The plea agreement stated:

> For purposes of this plea agreement the sole object of the conspiracy charged in Count 1 of this superseding indictment is contained in paragraph 2(b), which charges the defendant

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[2] 18 U.S.C.A. §371, titled "Conspiracy to commit offense or to defraud United States," states:
If two or more persons conspire either to commit any offense against 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 affect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years or both.
18 U.S.C.A. §1956, titled "Laundering of monetary instruments," states:
(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

[3] "OAEb" refers to the OAE brief in support of the motion for final discipline.

with conspiring to launder funds and monetary instruments, in violation of Title 18, United States Code, Section 1957.

[OAEbExB¶1.]

On July 19, 2007, respondent, respondent's counsel, an Assistant United States Attorney, and a Senior Trial Attorney, U.S. Department of Justice, signed a three-page document titled **FACTUAL BASIS FOR PLEA TO COUNT 3**. That document, which was incorporated into the plea agreement, reads, in its entirety:

> If this matter were to proceed to trial the government would prove the following beyond a reasonable doubt as to [respondent's] guilt on Count 1 of the superseding indictment, that is, from about 1994 until late 2003, [respondent] conspired with Jeffrey Tobin and others to violate Title 18, United States Code, Section 1957. The government's evidence would prove the offense as follows:
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> Beginning in about 1992, Jeffrey Tobin and Joseph Russo, Jr. were operating a substantial marijuana distribution organization that involved purchasing thousands of pounds of Mexican marijuana in either California or Arizona and then transporting the drugs to the New Jersey area for distribution in New Jersey, New York, Pennsylvania and other states. Once the drugs arrived in the New Jersey area they were stored at various stash houses located in the immediate area. The drugs were then delivered to local distributors located in New Jersey and New York.
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> In about 1994, Jeffrey Tobin met [respondent],

who was an attorney practicing in Englewood Cliffs, New Jersey, as well as in other states. [Respondent] was the step-father of Peter Rossi, who was employed by Tobin's marijuana organization. At that time, Jeffrey Tobin requested that [respondent] assist Tobin by renting a residence in Englewood Cliffs on behalf of Tobin. Tobin did not inform [respondent] that he was a marijuana trafficker. Instead, he advised [respondent] that he was operating a loanshark business and that he needed a stash house to store large amounts of cash needed in his business. Tobin stressed that his involvement in renting the stash houses had to be confidential and could never be revealed. [Respondent] then convinced attorney Loel Seitel, an attorney who practiced law with him, to lease the stash house on behalf of Tobin. In all, over the course of approximately eight years, [respondent] and Seitel leased three stash houses for various periods of time on behalf of Tobin. The leases for the houses were in the name of Loel Seitel. The monthly rental expenditures were paid from Seitel's law office operating account that was maintained at a local bank. In return, Tobin periodically provided [respondent] and Seitel with cash from his marijuana business to pay them for the rental expenses incurred. Each house was located in the Englewood Cliffs, New Jersey area. The three houses were always used to store marijuana by members of Tobin's organization even though [respondent] was always informed that the residences were being used to store large amounts of cash for use in Tobin's loanshark business.

In 2001, [respondent] agreed to purchase a piece of real estate located in South Miami on behalf of Tobin, who wished to build a Gold's Gym on the site. Again, Tobin could not use his own funds directly because they were

> derived from the distribution and sale of marijuana. As an inducement to [respondent] and Loel Seitel, Tobin provided the two with $500,000 in cash as collateral for the purchase of the property on behalf of Tobin. The cash provided to [respondent] and Seitel was derived from profits from the sale of marijuana even though [respondent] was informed the proceeds were from Tobin's loanshark business. [Respondent] and Seitel agreed to hold the cash until the business transaction was completed.
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> [Respondent] and Seitel then purchased the real estate for $1,000,000 cash. They obtained the funds to purchase the real estate from their own bank accounts but did not use the $500,000 provided by Tobin. Tobin expected to obtain the $500,000 back from [respondent] and Seitel once the business transaction was completed. Within approximately two years, at the conclusion of the business transaction, [respondent] and Seitel returned the $500,000 in cash to Tobin.
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> It is estimated that Tobin provided [respondent] in excess of approximately $700,000 but less than $1,000,000 in cash as payments for the three stash houses and for the purchase of the property in South Miami.
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> [OAEbExD.]

On September 28, 2007, respondent was sentenced to forty-one months in prison, followed by two years' probation and a $75,000 fine.[4]

[4] Respondent is currently serving his sentence at the Butner Federal Correction Complex, Butner, North Carolina, with a projected release date of October 18, 2010.

The OAE is seeking respondent's disbarment.

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

Respondent was convicted of one count of money-laundering conspiracy, a violation of 18 U.S.C. §371 and §1956(h).

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 for conspiracy to commit money-laundering constitutes a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). 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).

Attorneys who are convicted of similar federal crimes have received long suspensions or disbarment, depending on the nature of the crime, the degree of the attorney's involvement, and the duration of the criminal behavior. See, e.g., In re Jimenez, 187 N.J. 86 (2004) (eighteen-month suspension for conviction in the United States District Court for the District of New Jersey for conspiracy to commit mail fraud and mail fraud, based upon his participation in a falsification scheme to submit fraudulent documents to a bank concerning the financial status of prospective borrowers, with the intention of causing the banks to extend loans to homebuyers who would otherwise not qualify for loans); In re Mederos, 191 N.J. 85 (2002) (eighteen-month suspension for conspiracy to commit mail fraud, in violation of 18 U.S.C.A. §371; the attorney admitted that he had entered into an illegal agreement with others to defraud lending institutions by causing the submission of false loan documents, particularly HUD-1 statements containing materially false information about the financial status of the borrowers); In re Charny, 165 N.J. 561 (2000) (eighteen-month suspension for an attorney who pled guilty to a one-count information filed in the United States District Court for the Southern District of New York charging him with conspiracy to make false statements to election officials regarding campaign

contributions, in violation of 18 U.S.C.A. §371); In re Panepinto, 157 N.J. 458 (1999) (two-year suspension for an attorney who pled guilty in the United States District Court for the District of New Jersey to conspiracy to commit bank fraud, in violation of 18 U.S.C.A. §371; in order to induce a bank to make a mortgage and loan commitment, the attorney made a fraudulent loan to a client, the intent of which was to deceive the lender that the funds were available to the purchaser of real estate); In re Noce, 179 N.J. 531 (2002) (three-year suspension for attorney who pled guilty in the United States District Court for the District of New Jersey to conspiracy to commit mail fraud, in violation of 18 U.S.C.A. §371; for three years, the attorney participated with principals of a mortgage company, a real estate broker, and others in a scheme to defraud HUD through the fraudulent procurement of FHA-insured mortgages for unqualified homebuyers; as a result of the fraudulent scheme, HUD suffered an actual loss of over $2.4 million); In re Caruso, 172 N.J. 350 (2002) (three-year suspension for attorney who pled guilty in the United States District Court for the District of New Jersey to one count of conspiracy to travel in interstate commerce to promote and facilitate bribery, in violation of 18 U.S.C.A. §371; while acting as the municipal prosecutor for the city of Camden, the mayor told the attorney that he intended to

reappoint the Camden municipal public defender, contingent on the public defender's $5,000 contribution to a political committee; the attorney agreed to act as the mayor's intermediary and then solicited and received the $5,000); and In re Seltzer, 169 N.J. 590 (2001) (disbarment for attorney who participated in a scheme to defraud insurance companies over a period of years, during which he received cash from insureds to pay others to inflate the value of the insureds' losses; on occasion, he received additional cash fees from insureds; when sentencing respondent, the judge stated: "He knew what was going on . . . It's going on for years and he went along with it and he made all that money during that period of time"; the attorney's criminal activity, thus, constituted a pattern of misconduct, not an isolated instance.

We are persuaded that respondent's situation is sufficiently akin to that in Seltzer as to warrant the same sanction. Like Seltzer, respondent assisted a criminal enterprise over a period of years (since 1994). His participation as the lessor of properties in New Jersey and the purchaser of property in Florida enabled the crime's principals to launder funds and to conceal their criminal activities from law enforcement authorities. The magnitude of the criminal plan and the nature of respondent's efforts to conceal the criminality of the enterprise compel us to recommend his

disbarment.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Isabel Frank
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marc F. Desiderio
Docket No. DRB 08-125

Argued: June 19, 2008

Decided: October 7, 2008

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Boylan	X					
Clark	X					
Doremus	X					
Lolla	X					
Stanton	X					
Wissinger	X					
Total:	9					

Julianne K. DeCore
Chief Counsel