SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-280
District Docket No. XIV-07-0019E

IN THE MATTER OF	
ELLEN C. ROTH	
AN ATTORNEY AT LAW	

Decision

Argued: January 15, 2009

Decided: May 27, 2009

Janice L. Richter appeared on behalf of the Office of Attorney Ethics.

Stephen H. Roth appeared on behalf of respondent.

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"), following respondent's guilty plea to a charge of making a false statement to the Federal Bureau of Investigation ("FBI") and her stipulation to engaging in wire fraud and mail fraud, violations of RPC 8.4(b) (criminal conduct that reflects adversely on an attorney's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or

misrepresentation). As a result of respondent's guilty plea, on January 11, 2008, the Appellate Division of the Supreme Court of New York disbarred her.

The OAE recommended a three-year suspension, retroactive to March 1, 2007, the date of respondent's temporary suspension in New Jersey. We agree with the term of suspension, but determine that her suspension should be retroactive to the date of her New York disbarment, February 27, 2007.

Respondent was admitted to the New York bar in 1969 and the New Jersey bar in 1972. Although she has no history of discipline in New Jersey, she was temporarily suspended on March 1, 2007. In re Roth, N.J. (2007).

On January 19, 2006, the government filed a superseding indictment against respondent and others for participating in a scheme to fraudulently obtain a $49 million radiology contract for a Cook County Hospital, in Illinois. The contract was obtained by entering into a sham joint venture with a minority-owned business, in order to comply with a county requirement that a minority-owned business receive a portion of the work.

On February 27, 2007, respondent entered a guilty plea to count five of the indictment, charging her with making false statements to the FBI (18 U.S.C.A. §1001). She also stipulated to having committed the offenses set forth in counts one and two

of the indictment, charging her with wire fraud (18 U.S.C.A. §§ 1343 and 2) and mail fraud (18 U.S.C.A. §§ 1341 and 2).

Specifically, respondent was in-house counsel to Siemens, Corp., a corporate affiliate of SMS (SMS was formerly Siemens Medical Systems) and was also the assistant secretary of SMS. Faustech Industries, Inc. ("Faustech") was an Illinois corporation certified by Cook County as a Minority Business Enterprise ("MBE") for certain activities. Faust Villazan was the chief executive officer and sole owner of Faustech.

In 1994, the Cook County Board approved the construction of a new county hospital. As part of that process, in May 2000, Cook County issued a number of bid packages for separate contracts, including Bid Package No. 3 for a complete "turnkey package" for radiology equipment and a picture archiving and communication system for the new hospital.

The bid package and applicable law at the time that the bid was solicited, in May 2000, provided that no bidder would be awarded an eligible contract unless the County's Office of Contract Compliance approved its MBE and Women's Business Enterprise ("WBE") ordinances or granted a waiver to the bidder. Bidders could satisfy the requirement by forming a joint venture entity. Conditions to the bid package incorporated the MBE and WBE requirements that bidders set aside not less than thirty

percent and ten percent, respectively, of the total contract price for the participation of MBEs and WBEs. Bidders could satisfy the MBE/WBE participation requirements by forming a joint venture providing that (1) the MBE/WBE joint venturers shared in the ownership, investment, control, management, responsibilities, risks and profit for the joint venture in proportion with the MBE/WBE's ownership percentage; (2) the MBE/WBE joint venture partner was responsible for a clearly defined portion of work, commensurate with its percentage joint venture ownership, to be performed with its own workforce and/or equipment; and (3) the work assigned to the MBE/WBE joint venturer must have been clearly designated in a Joint Venture Agreement and had to be work that the MBE/WBE joint venturer had the skill and expertise to perform.

Where the MBE/WBE participation was to be achieved through a joint venture, the contractor was required to submit a notarized Schedule B Affidavit of Joint Venture, together with the joint venture agreement, to demonstrate to the County the MBE's or WBE's share in the "ownership, control, management, responsibilities, risks and profits" of the joint venture. Among other things, the affidavit was to identify "other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control."

The partners were to provide all copies of written agreements between venturers concerning the project.

Bidders were required to affirm, via notarized signature, that the statements in the affidavit were correct and that they had included all material information to explain the joint venture and the intended participation of each venturer. Signatories were warned that any material misrepresentation would be grounds for termination and action under federal and state law concerning false statements. Acting on behalf of SMS, respondent reviewed the policies.

DD Industries, LLC ("DD Industries"), was a joint venture arrangement incorporated as a limited liability corporation, formed by SMS and Faustech for the sole purpose of bidding on Bid Package No. 3. Daniel Desmond was the district business administrator of the Chicago-area office of SMS and the president of DD Industries, LLC.

Respondent drafted the legal documents to create DD Industries, a joint venture, between SMS and Faustech. She also drafted certain portions of Bid Package No. 3, including the Affidavit of Joint Venture submitted by DD Industries with the bid package.

In May 2000, Villazan and "SMS Manager A" met and agreed to terms for a side agreement. On May 25, 2000, SMS Manager A's

assistant sent an email to respondent and other SMS employees, setting forth the terms of the side agreement. On the same day, Villazan's lawyer sent to respondent an email detailing the same terms, which boiled down to a payment to Faustech of $450,000, with a $50,000 bonus if the county issued the purchase order by August 31, 2000. In other words, Faustech was to receive a $500,000 flat fee, regardless of any profits made by the joint venture.

On May 26, 2000, respondent replied to the emails. She indicated that she was working on revisions to the draft joint venture agreement, that a senior SMS official would review it, and that there "should not be any problems with approvals."

On June 20, 2000, DD Industries submitted a joint venture bid to provide and service radiology equipment for the new Cook County hospital. SMS assigned respondent to be the principal person to prepare the final bid documents related to the joint venture. On behalf of SMS, respondent was responsible for assuring compliance with the County's terms and conditions. She drafted the joint venture agreement and participated in drafting the affidavit. The documents filed with the county did not disclose the flat-fee side agreement.

Among other things, the Affidavit of Joint Venture stated:

(1) profit and loss sharing between SMS and Faustech would be in accordance with each party's ownership percentage: 70% for SMS, 30% for Faustech; (2) there were no other applicable ownership interests, including ownership options or other agreements that restricted or limited ownership and/or control between the joint venture partners; and (3) other than the joint venture agreement, there were no other agreements. The bid contained inaccurate information relating to the payment terms between Faustech and SMS. Respondent knew that each statement was false at the time the affidavit was submitted.

By email dated June 20, 2000, respondent sent a revised joint venture agreement to Villazan's lawyer and others, stating as follows:

> Please note that the two side agreements (service agreements with Faustech and SMS, including the information payments schedules and milestones) have not been included in this package. They will be prepared and reviewed but they are not a part of the County's documentation for bid review. These are, and should be treated as, confidential to the parties.
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> [Ex.B8.]

Respondent's intent was that "the service agreements, which were never drafted, would contain the actual terms for payment to SMS and Faustech, including the flat-fee deal with Faustech."

After Cook County reviewed bids by DD Industries and GE Medical Systems ("GE"), the Cook County Board determined that DD Industries was the lowest qualified bidder meeting specifications. On August 2000, the Board awarded the contract for Bid Package No. 3 to DD Industries for a contract price of $49,337,491. Respondent believed that the contract might not have been awarded "but for the false statements contained in the Affidavit of Joint Venture."

On October 24, 2000, GE filed a complaint in the United States District Court against Cook County, seeking to enjoin the County's award of the contract to DD Industries, on the basis that its bid was contrary to state law, the county's own ordinance, and the terms and conditions for the bid request. DD Industries intervened in the litigation.

SMS contended that there was no flat-fee agreement with Faustech, portraying it as preliminary negotiations only, and that the only agreement with it was the joint venture agreement. As part of her plea, respondent acknowledged that SMS's position was intentionally false and/or misleading and that SMS failed to disclose the flat-fee agreement.

Respondent "was told" to stay away from the injunction hearing, but received updates during the trial from her SMS supervisor. After the hearing, in July 2001, "the SMS Outside

Attorney" sent respondent a draft memo acknowledging that SMS' litigation arguments were inconsistent with the facts concerning the flat-fee agreement between SMS and Faustech. Respondent, however, took no action to correct the positions taken by DD Industries, which she knew were false.

On March 5, 2001, the magistrate judge recommended enjoining the County from awarding the contract to DD Industries, in part because the joint venture did not expect Faustech to perform a commercially useful function, which it could not have done nevertheless, and because DD Industries submitted a false bid by failing to disclose the side agreement.

On September 28, 2001, the injunction was upheld. The County filed a notice of appeal, but the parties eventually settled the litigation. Up until the settlement, respondent was aware that SMS continued to falsely maintain that all facts concerning the "side agreement" had been disclosed in court and that SMS was honoring the joint venture agreement, not the flat-fee agreement.

In September 2004, the FBI interviewed respondent in connection with its criminal investigation of the DD Industries bid. Respondent "knowingly and willfully made materially false, fictitious and fraudulent statements and representations" during the FBI investigation, namely:

(1) she had no idea what was meant by an e-mail confirming the $500,000 flat fee compensation agreement between SMS and VILLAZAN;
(2) she would have been shocked if SMS had participated in any agreements other than what had been disclosed to the County; and,
(3) SMS' payments to VILLAZAN were an advance of profits.

[Ex.B13-Ex.B14.]

During her plea, respondent admitted that she knew about the agreement between SMS and Faustech to pay Villazan a flat fee, regardless of any profits. She also admitted that she and others concealed that agreement from Cook County.

For purposes of computing her sentence under the Federal Sentencing Guidelines, respondent also stipulated to having committed the offenses set forth in counts one and two of the superseding indictment. As to count one, in furtherance of executing the fraudulent scheme, on October 3, 2001, respondent

> caused an e-mail to be transmitted by means of interstate wire from the Northern District of Illinois to SMS' attorney in New Jersey, which wire transmission consisted of a draft letter from DANIEL DESMOND to Cook County, in violation of Title 18, United States Code, Sections 1343 and 2.
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> [Ex.B14.]

As to count two, on February 22, 2001, respondent and others, for the purpose of executing the above scheme,

> knowingly deposited and caused to be deposited to be sent and delivered by a private and commercial interstate carrier . . . a Federal Express package addressed to Mellon PSFS . . . and containing a check in the amount of $153,635.39, as partial payment for DD Industries' work on the Radiology Contract, in violation of Title 18, United States Code, Sections 1341 and 2.
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> [Ex.B15.]

On February 28, 2008, U. S. District Court Judge John W. Darrah sentenced respondent to a four-year term of probation and home confinement for one year. He also ordered her to perform 200 hours of community service and to pay costs and a $12,500 fine. The judge determined that a downward departure from the sentencing guidelines was warranted because respondent's involvement in the scheme was not as pervasive as that of others who had masterminded the scheme. The judge considered that respondent did not initiate or design the fraudulent scheme. The judge remarked that she participated in it by preparing the false affidavit of joint venture, but only after her repeated attempts to avoid doing so were rejected by others at SMS. The judge noted that the decision to form a sham joint venture to ostensibly comply with MBE requirements was made and negotiated by other officers at SMS, without respondent's involvement.

The judge also remarked that, several times during the bidding process, respondent suggested that SMS seek a waiver of

the MBE requirements from the county. Her suggestions were ignored or brushed aside. When she raised concerns about the MBE requirements, SMS' lead outside counsel told her not to worry about it. She had no active role in concealing the fraud, during a hearing in the civil case. In addition, her supervisors told her to stay away from the civil proceedings, at which time lead outside counsel attempted to conceal the scheme.

The judge concluded that others higher in the SMS corporate structure were the primary forces behind the fraud and the subsequent efforts to conceal it. He added, "However, Roth and Daniel Desmond, a district business administrator for SMS, are the only SMS employees charged." The judge concluded further that, considering the nature and circumstances of the offense, the offense level under the guidelines substantially overstated the seriousness of the offense.

The judge noted that the loss amount ($14.7 million) caused an increase of 20 levels under the sentencing guidelines that "vastly overstates Roth's culpability in the matter and produces a Guidelines sentence that is grossly disproportionate to Roth's participation in the offense. This is particularly so when considering the conduct of those individuals who initiated, planned and supplied the driving force behind the fraud and yet, were not prosecuted." The judge stated:

> The fraud in this case was intended to benefit SMS. SMS was charged with and previously pled guilty to one count of obstruction of justice pursuant to a plea agreement with the Government. SMS did not stipulate to the underlying fraud offense; and as a result, SMS paid only a fine of $1 million, without probation, and restitution based on an agreed loss amount of $1,516,683. Had SMS been held accountable for the $14.7 million loss amount, it would have faced a maximum fine of $29.4 million with $26,460,000 as the low end of the Guideline range. The gross disparity between the $14.7 million being used to calculate Roth's sentence under the Guidelines and a penalty of a fine only based on a loss amount of $1.5 million paid by SMS leads to a manifestly unjust result. The corporation that initiated and was the intended beneficiary of the fraud received a relatively small financial penalty . . . whereas, a low-level employee, who initially resisted the fraud scheme and would have received no benefit from it, is facing several years of incarceration under the Guidelines. . . .
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> [Ex.G4-Ex.G5.]

The judge remarked that the SMS, parent company, Siemens AG, had an annual revenue of approximately 87 billion euros in 2001 and that SMS's annual revenues were in the billions of dollars.

The judge also considered that (1) the evidence presented "overwhelmingly supports the conclusion" that respondent presented no threat of recidivism; (2) she had no criminal or disciplinary history and had shown obvious and sincere remorse

for her crime; (3) hers was a one-time occurrence; (4) the publicity generated from the case caused her great embarrassment and humiliation; and (5) she lost her law license, as well as a raise or bonus for her conduct, estimated as a $65,000 loss of income.

Finally, the judge considered that a sentence within the guideline range might be ineffective or counterproductive, in terms of deterrence to others. The officers at SMS who initiated and drove the scheme to defraud the County were not before the court. The judge concluded that to harshly punish respondent "would not deter and could encourage others in positions of control to make decisions, such as here, to violate the law, knowing that those lower on the corporate ladder would bear the risks of detection and prosecution." Although the judge remarked that the seriousness of respondent's conduct could not be minimized, he believed that the sentence was sufficient to meet the sentencing guidelines.

By letter dated February 20, 2007, respondent notified the OAE that, on the advice of counsel, she planned to enter a guilty plea to count five of the superseding indictment, had not practiced law since January 23, 2006, had retired from SMS, effective October 31, 2006, would provide certified copies of her judgment of conviction and transcript of her guilty plea as

soon as available, and would notify New York ethics authorities of the developments on that same day. As mentioned above, respondent was temporarily suspended in New Jersey on March 1, 2007. She remains suspended to date.

As indicated earlier, the OAE recommended a three-year suspension, citing, among other cases, In re Abrams, 186 N.J. 589 (2006); In re Chianese, 157 N.J. 527 (1999)(attorney transposed a signature on a document that he filed with the court, together with an affidavit, in a civil proceeding involving the attorney; the attorney was found guilty of perjury, theft by deception, and forgery); In re Kushner, 101 N.J. 397 (1986)(attorney guilty of false swearing; the attorney filed a false certification intended to cause financial loss to a lender); and In re Boccieri, 170 N.J. 191 (2001)(attorney guilty of mail fraud; the attorney instructed the stock transfer agent for a company to transfer thousands of shares of common stock to the attorney's name).

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 guilty plea to making a false statement to the FBI and stipulation to wire and mail fraud constitute a violation of RPC 8.4(b) (commission of a criminal act that reflects adversely

on his honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). 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 the attorney's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, supra, 118 N.J. at 445-46.

Lying to officials during the course of an investigation has resulted in discipline ranging from a censure to a short-term suspension. In In re Myers, 178 N.J. (2003), the Court imposed a censure on an attorney who made misstatements to police officers. (We had voted for a three-month suspension). During the investigation of a notorious murder case, the attorney denied having had a conversation with an individual, Peppi Levin, in whom the murder suspect had confided that he would like to find his wife dead and had asked if Levin knew anyone that could help him. In another police interview, two and one-half years later, the attorney truthfully disclosed her conversation with Levin. Subsequently, she testified truthfully

in the murder trial and retrial, relaying her conversation with Levin and admitting that she had lied to the police.

At the trial, the attorney explained that, when the police initially arrived, she was "taken aback" and hoped that she would not be involved in the situation. She added that, after the police interviewed her, she called Levin, who told her to "forget about it." She did not contact the police to correct her statement.

The attorney claimed that she had asked herself "a thousand times" why she had denied that conversation. She explained that she was surprised by the arrival of the police; that she did not consider it to be a formal investigation or understand its importance; and that she used poor judgment. She expressed regret for her actions.

We determined that the attorney's failure to correct her original misrepresentation to the police for such a long period of time, until she was faced with a subpoena, belied her contentions that she had been taken aback and in shock at the initial interview. We found that her misstatements were self-serving, against the public interest, and a design on her part not to become involved in the investigation.

The attorney had previously been reprimanded for publishing flyers and making statements in several newspapers that contained inaccurate and misleading statements.

In In re Devin, 138 N.J. 46 (1994), the attorney misrepresented to a police officer that his client was on vacation in New York. The attorney knew that his client had been incarcerated. The attorney received a three-month suspension for his misconduct, which also included a series of misrepresentations to his client.

As to mail and wire fraud charges, attorneys guilty of such crimes generally receive long periods of suspensions. The Court imposed a retroactive three-year suspension in In re Anderson, 195 N.J. 474 (2008), where the attorney entered a guilty plea to honest services mail fraud, in violation of 18 U.S.C.A. §§ 1341 and 1346. The city treasurer for the City of Philadelphia enlisted the attorney to start a business for the purpose of assisting individuals to make claims against unclaimed funds held by the City or to have payments made to individuals who had lost or misplaced bonds issued by the City. For the attorney's services, successful claimants would pay her a percentage of the recovered funds. The attorney and the city treasurer agreed that the latter would receive approximately thirty-five percent of the profits, which would be hidden from his employer, the City,

by having the payments made in cash. Because the city treasurer was in charge of the agency that maintained the list of unclaimed funds, his participation in the payments from the business conflicted with his employment. The city treasurer provided the attorney with the list of individuals to contact. Once the attorney received her fee from the bond holder, she would distribute the city treasurer's share to him in cash, outside of his office.

As part of her plea agreement, the attorney also stipulated to her participation in another scheme to defraud the Pennsylvania Department of Public Welfare, by submitting a fraudulent $3,200 invoice for professional services to a state-funded program. The mails were used in furtherance of the scheme. Here, too, the attorney gave a portion of the funds to the city treasurer, based on his claim that he needed it for another co-defendant to make a donation to a school that was honoring the co-defendant.

The attorney received a downward departure at sentencing because of her substantial cooperation in the case and the assistance she provided in the prosecution of others involved in the scheme.

Another attorney also received a retroactive three-year suspension. In re Abrams, 186 N.J. 588 (2006). The attorney

pleaded guilty to two counts of wire fraud for his participation in a scheme to defraud Thermadyne Holdings Corporation in connection with its purchase of Woodland Cryogenics, Inc., in which the attorney was part owner, vice president, secretary and, at times, general counsel. The attorney instructed his accounts receivable administrator to fraudulently overstate Woodland's accounts receivables.

After the sale, the attorney continued to work for Thermadyne and knowingly misappropriated Thermadyne funds by, for example, using Thermadyne funds to pay Woodland's old debt to the IRS and other Woodland liabilities that were not assumed by Thermadyne pursuant to the purchase agreement.

The attorney committed wire fraud when he faxed a document from Philadelphia to Thermadyne in Missouri. The facsimile grossly overstated the "collectibility" of Woodland's other accounts receivable to Thermadyne in the final stages of the negotiations. The information caused Thermadyne to pay $1.508 million to purchase Woodland's assets, which funds were wire-transferred from New York to Philadelphia.

We considered, in aggravation, that the attorney was a prime participant in the scheme to defraud Thermadyne out of $200,000 and that his motivation was self-gain. In mitigation, the attorney had no disciplinary history in New Jersey,

cooperated fully with the federal government, and repaid Thermadyne.

The attorney in In re Chianese, supra, 157 N.J. 527, also received a three-year retroactive suspension for his conviction of third degree perjury, third degree attempted theft by deception, fourth degree forgery, and fourth degree forgery by uttering. The matter arose from a civil dispute between the attorney and a former client with whom he had a brokerage contract to find a buyer for the client's tile and marble business. The dispute centered on the conditions under which the attorney was to be paid. In connection with the lawsuit he instituted, claiming entitlement to $42,125, the attorney filed an affidavit to which he attached a written brokerage agreement, purportedly signed by his former client, which agreement contained an hourly rate provision. The State contended that the attorney had taken signatures from another document and placed them on the brokerage agreement by "photocopy process," filed the false document and affidavit knowing that the signatures were false, lied, committed perjury, taken a "substantial step in an effort to obtain money by false pretenses, committed forgery, and uttered a forged document."

Because the attorney's criminal activity was limited to one incident, his suspension was made retroactive to the date of his temporary suspension.

The attorney in In re Kushner, supra, 101 N.J. 397, too, received a three-year retroactive suspension for his guilty plea to false swearing. The attorney made a false statement by denying that he had signed promissory notes that were the subject of litigation. The attorney had invested $45,000 in a business and had become a major stockholder in the company. When he borrowed $40,000 from a bank, he and his business partner personally guaranteed the note. The note went into default with an outstanding balance of $35,556. In a certification relating to a civil action to collect the money, the attorney denied that the signature on the promissory note was his and that he had authorized anyone to sign his name on his behalf.

In imposing a three-year suspension, the Court found that the attorney had knowingly filed a false certification intended to cause financial loss to the bank that had loaned money to his business. The attorney's false certification was obviously a significant factor in inducing the trial court to grant the attorney's motion for summary judgment, thereby enabling him to avoid his liability as a guarantor on the promissory notes. The Court found that the filing of a false certification to induce a

court to grant relief for his benefit was a fundamental breach of a lawyer's duty as an officer of the court.

See also In re Noce, 179 N.J. 531 (2004) (three-year retroactive suspension for attorney who pled guilty to conspiracy to commit mail fraud; the attorney and others participated in a scheme to defraud the Department of Housing and Urban Development (HUD) by assisting in the procurement of home mortgage loans for unqualified buyers; HUD suffered losses of over $2.4 million; the attorney was the settlement agent and closing attorney for unqualified buyers in fifty closings; he knowingly certified HUD-1 statements and gift transfer certifications that contained misrepresentations; in mitigation, it was considered that the attorney was paid only his regular fee and cooperated fully with the government); In re Panarella, 177 N.J. 565 (2003) (three-year suspension for attorney who pled guilty to being an accessory-after-the-fact in a wire-fraud scheme to deprive the public of honest services of an elected official; over a four-year period, the attorney paid a state senator $330,000, through another, to conceal their financial relationship; the senator was on the Board of Directors of the attorney's company, which contracted with local governments to collect taxes from non-residential businesses under Pennsylvania Law; the senator drafted an amendment to legislation favoring the attorney's business and helped the attorney obtain

collection work; the attorney assisted the senator in filing false disclosure statements; the court sentenced the attorney to a six-month prison term and one-year of supervised release and ordered him to pay a $20,000 fine and a $100 special assessment); In re Boccieri, supra, 170 N.J. 191 (three-year suspension for attorney who, after being discharged as a company's attorney, instructed the stock transfer agent for the company to transfer 42,500 shares of the company's common stock in his name; a week later, when the company learned of the unauthorized transfer, the attorney returned the certificate; the attorney claimed that he took the action because of his unpaid legal fee; he pled guilty to one count of mail fraud, was sentenced to one-year and one-day imprisonment, which he served at a halfway house, and two years supervised release; he was also fined $10,000); and In re Bateman, 132 N.J. 297 (1993) (two-year retroactive suspension for attorney convicted of mail-fraud conspiracy and making false statements on a loan application to assist a client in obtaining an inflated appraisal value for property ($6.5 million) to secure $5,000,000 in financing from a lender; the purpose of the loan was to develop property that had an estimated value of only $300,000; the attorney was sentenced to a suspended five-year prison term and three years probation, fined $15,000, and ordered to perform three hundred hours of community service).

Here, respondent's misconduct included making false statements to the FBI in connection with its criminal investigation into the DD Industries' bid and engaging in mail and wire fraud. Pursuant to the above-cited precedent, her conduct merits a three-year suspension. We so vote. We determine, however, that the suspension should be retroactive to February 27, 2007, the date of respondent's disbarment in New York. In reaching this determination, we took into account respondent's unblemished disciplinary record, the absence of self-benefit, and the factors considered by the sentencing judge, namely, that respondent did not initiate or design the fraudulent scheme; that she participated in the scheme only after her repeated attempts to avoid doing so were rejected by others at SMS; that her suggestions that SMS seek a waiver from the county were rejected; that she had no active role in concealing the fraud in the civil case; and that the masterminds of the scheme were not prosecuted.

Members Boylan, Baugh, Clark, and Lolla 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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ellen C. Roth
Docket No. DRB 08-280

Argued: January 15, 2009

Decided: May 27, 2009

Disposition: Three-year suspension

Members	Disbar	Three-year 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:		5				4

Julianne K. DeCore
Chief Counsel