

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-061
District Docket No. XIV-06-173E

IN THE MATTER OF
LINDA SERRANO
AN ATTORNEY AT LAW

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Decision

Argued: May 10, 2007

Decided: June 29, 2007

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

Jeffrey Smith appeared 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"), following respondent's guilty plea to a federal information charging her with making a false statement to a federal agency, in violation of 18 U.S.C.A. §1001 and 2. The OAE urged a suspension ranging from eighteen months to two years, retroactive to the date of

respondent's temporary suspension in New Jersey, April 6, 2006. In re Serrano, 186 N.J. 285 (2006). We determine to impose an eighteen-month retroactive suspension.

Respondent was admitted to the New Jersey bar in 1992. At the relevant times, she maintained a law office in Union, New Jersey. She has no history of discipline.

The factual basis of respondent's misconduct was elicited by Assistant United States Attorney Richard E. Constable, III, at the plea hearing:

BY MR. CONSTABLE

. . . .

Q Did you provide professional services, including acting as a closing agent, for the closing of residential mortgages brokered by Mario Mehn for properties in Union, New Jersey, on or about April 12 -- April 2nd, 1999 through December 27, 2002?

A Yes.

Q During this period, did you, at the direction of Mario Mehn and others, prepare materially false HUD-1s in order to qualify unqualified borrowers for HUD insured mortgages?

A Yes.

Q Specifically, on or about March 23, 2000, involving the sale of HUD-insured property located at 150 Pointe Avenue in Elizabeth, New Jersey, with a mortgage of \$152,710, did you submit -- did you prepare and submit to HUD a HUD-1 that falsely stated

that \$7,917.80 was paid by the borrower of that transaction as a down payment?

A Yes.

Q Did you know when you made this statement regarding the borrower's down payment, that HUD would rely on that representation and others in the HUD-1 in deciding whether to insure the borrower's mortgage on that property?

A Yes.

Q Did you receive monetary compensation from Mario Mehn for your role in submitting that HUD-1 to HUD?

A Yes.

Q Were the actions that you've described today voluntarily and purposefully done and not done because of error, mistakes, accident or some other innocent reason?

A Yes.

Q In so doing, did you have the intent to defraud?

A Yes.

Q Are you guilty of this charge in the information?

A Yes.

THE COURT: [sic] Your Honor, the United States represents that the loan applications [sic] that the defendant just referenced was submitted in a matter within the jurisdiction of the Executive Branch of the Government, namely HUD's consideration of mortgage applications seeking insurance from HUD.

Moreover, that the false statements contained in the loan applications were

relied upon by HUD in determining whether to issue mortgage insurance.

THE COURT: Mr. Smith, do you agree with that representation?

Mr. Smith: I do.

BY THE COURT:

Q Miss Serrano, it is stipulated in your plea agreement that the loss for which you are being held responsible is more than \$20,000 and less than \$40,000?

A Yes, your Honor.

Q Do you stipulate to that fact as though alleged against you in an indictment and proven beyond reasonable doubt to a jury trial?

A Yes, your Honor.

Q How much of a financial benefit did you receive from Mr. Mehn as a result of this conduct?

A A legal fee, maybe \$1,000. I didn't receive anything else.

[Ex.C12-Ex.C14.]

Mario Mendoza, a licensed realtor for Weichert Realtors, "conceived" the mortgage scheme in which respondent became involved. Mendoza, Kenneth DiPrenda, a loan officer of AMS Mortgage, and Myriam¹ Vaca, an employee of a check-cashing business, were respondent's co-defendants. A summary of the

¹ Also appears in the record as Myrium.

underlying facts is contained in respondent's pre-sentence investigation report.²

16. The conspiracy occurred between December 1999 and July 2001. The object of the scheme was to fraudulently induce FHA to insure certain mortgage loans made by an authorized mortgage company, which enabled Mendoza, DiPrenda, Vaca, and Serrano to profit from the sales of the properties financed by such loans.

17. Mendoza, DiPrenda, and Vaca submitted falsified mortgage loan applications and related documents concerning properties on which Mendoza was the realtor. The mortgage loan applications and related documents were falsified by defendants Mendoza, DiPrenda, and Vaca in several ways.

18. First, Mendoza recruited individuals to pose as purchasers of FHA-insured properties (the "borrowers") and assisted them in using false identities to qualify for HUD-insured mortgages. DiPrenda then provided false credit explanation letters ("cry letters"), which letters purported to explain borrowers' poor credit to mortgage companies.

19. Mendoza and DiPrenda, with the assistance of Vaca, provided funds which borrowers produced at closing, while falsely representing that those funds were "gifts" from friends or relatives of the borrowers, through the creation of false "gift letters." The closing attorney, Linda Serrano, would then prepare the fraudulent HUD-1 Settlement Statements in order to qualify unqualified borrowers for HUD-insured mortgages. The HUD-1 forms also represented that Serrano was

² In re Spina, 121 N.J. 378, 389 (1990), permits the consideration of any relevant documents, including the pre-sentence report, to obtain the "full picture" in an ethics proceeding.

provided with the settlement money (closing costs) by the borrowers, and therefore, HUD relied on these representations to insure the borrowers' mortgages on the properties.

20. Defendants Mendoza, DiPrenda, and Vaca disguised the transfer of the illicit proceeds of the fraud by using their own personal bank accounts to deposit attorney trust account checks made payable to each other and returned some of the funds to each other's bank accounts through their own personal bank accounts. Eventually, the properties went into foreclosure.

21. With respect to a specific property, in November 2000, Mendoza was the real estate agent for a home located at 18 Arverne Terrace in Irvington, New Jersey. As the real estate agent, Mendoza agreed to broker the sale of 18 Arverne Terrace for \$115,000. Subsequently, Mendoza arranged to have an individual, referred to as A.Y., obtain an FHA-insured mortgage and purchase 18 Arverne Terrace for \$100,000. A.Y., however, did not qualify for an FHA-insured mortgage. In order [to] have this A.Y. qualify, Kenneth DiPrenda prepared and submitted fraudulent documents, including explanation of poor credit and savings history letters, for inclusion in the A.Y.'s FHA-insured loan application.

22. On April 19, 2001, at the closing, Mendoza directed the settlement agent/closing attorney, Linda Serrano, to prepare a fraudulent HUD-1 Settlement Statement. On the HUD-1 Settlement Statement, for example, A.Y. represented that he/she provided the settlement attorney with \$7,971.56. However, A.Y. never deposited any monies with Serrano. According to the HUD-1 Settlement Statement, Mendoza was to receive a \$3,000 commission as the real estate agent. However, following the sale of 18 Arverne Terrace to A.Y., Mendoza directed Serrano to issue him a check for \$8,800 out of the proceeds of the sale of 18 Arverne Terrace. The

check was made payable to Mendoza and deposited into his personal bank account.

23. While Vaca may not have been involved with the above property, she participated in the conspiracy with respect to other properties that went into foreclosure as the result of false statements being provided to HUD. Specifically, in December 1999, Vaca claimed she gave a gift of \$7,500 to an individual who purported to be Vaca's sister for the purchase of 450 East Jersey Street, Elizabeth, New Jersey, with a HUD-insured mortgage of \$165,000. Vaca did not fund the gift, nor was the individual her sister. Vaca participated in the same exact scheme for a property located at 1088 Magnolia Avenue, in Elizabeth, where **Serrano** was the settlement agent/closing attorney.

24. All the defendants profited from their participation in the scheme. According to the investigating agent, and as agreed by defendants Mendoza, DiPrenda, and Vaca, they split profits of over \$300,000. **Serrano**, however, profited between \$20,000 and 40,000.

25. The investigation revealed that there were 12 properties that went into foreclosure in connection with the conspiracy involving Mendoza, DiPrenda, and Vaca. **Serrano** was the closing attorney on five of the properties.

. . . .

30. The loss amount attributable to Mendoza, DiPrenda, and Vaca is approximately \$300,000. This amount represents an estimate of the illegal profits or gains realized by the conspiracy and is used as an alternate means of calculating the loss, pursuant to Application Note 9 of U.S.S.G. §2F1.1..[sic] **Serrano** will be held accountable for a loss amount of between \$20,000 and \$40,000, which is also an estimate of the illegal profits or gains from her involvement in the instant offense.

[Pre-sentence Investigation Report ¶16-
¶25;¶30.]

Assistant U.S. Attorney Constable filed a motion for a downward departure of the applicable sentencing guidelines, based on respondent's cooperation with the criminal investigation. The letter in support of that motion stated:

As the Court is aware, the defendant pled guilty to making material false statements in violation of Title 18, United States Code, Section 1001. This carries a statutory maximum penalty of five years.

The defendant voluntarily approached law enforcement and provided substantial assistance to the United States as soon he [sic] obtained counsel. She willingly debriefed [sic] federal law enforcement officials about a large scale mortgage fraud conspiracy involving Mario Mendoza, Kenneth DiPrenda, Myrium Vaca, and others in and around Union, NJ. The defendant explained her role in the conspiracy and the roles of several charged and uncharged persons, including the driving force behind the fraud, Mario Mendoza. In so doing, the defendant provided information that has been useful to federal authorities. In addition, at all times the defendant was prepared to testify truthfully against Mr. Mendoza and other co-conspirators, both before a federal Grand Jury and at trial, if necessary. Indeed, the United States was able to successfully prosecute several individuals who conspired to defraud HUD based, in large part, on information provided to us by the defendant, and their knowledge that the defendant was prepared to testify against them.

Based on the foregoing, it is clear that the defendant has provided substantial assistance in the investigation of others and has

provided useful and reliable information about their activities in a timely manner. On this basis, and pursuant to Section 5K1.1 of the Sentencing Guidelines, the United States respectfully moves the Court to depart from the guidelines in its sentence of the defendant.

[Ex.E2.]

The federal district court granted the government's motion, sentencing respondent to a one-year term of probation, and imposing a \$5,000 fine and a \$100 special assessment. The Court added that, if the fine were paid, it would "entertain a motion within six months" for an early discharge of probation.³

Respondent's counsel contended that her profit from the transactions consisted of her legal fees. He estimated that she was involved in approximately twenty-five closings, and that her profit of \$20,000 to \$40,000 represented her legal fees for all of the transactions.

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

Respondent's guilty plea to a federal information charging her with violating 18 U.S.C.A. §1001 and 2 constitutes conclusive

³ For engaging in a conspiracy to defraud the United States, the court sentenced Mendoza to two years probation "with special conditions" and six-months home confinement, fine waived, restitution of \$100,000, and a special assessment of \$100; DiPrenda was sentenced to two years probation, fine waived, restitution of \$28,857.86, and a special assessment of \$100; and Vaca was sentenced to two years probation "with conditions" and a special assessment of \$100.

proof of her guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's criminal activities form the basis of several ethics violations: RPC 8.4(b) (criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The sole issue left for determination is the quantum of discipline to be imposed. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989); In re Infinito, 94 N.J. 50, 56 (1983). The primary purpose of discipline is not to punish the attorney, but to preserve public confidence in the bar. In re Kusher, 101 N.J. 397, 400 (1986). The level of discipline imposed in disciplinary matters based on the commission of a crime depends on a number of 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/her prior trustworthy conduct, and general good conduct." In re Magid, 139 N.J. 449, 452 (1995), citing In re Lunetta, supra, 118 N.J. at 445-46.

As set forth in respondent's plea agreement and pre-sentence investigation report, she profited from a scheme to fraudulently induce FHA to insure certain mortgage loans. Between April 1999 and December 2002, she acted as the closing agent for residential

mortgages and prepared fraudulent HUD-1 settlement statements to "qualify unqualified borrowers" for HUD-insured mortgages, knowing HUD would rely on the forms to determine whether to insure the mortgages. Respondent was involved in approximately twenty-five closings, five of which ended in foreclosure. She profited \$20,000 to \$40,000 from the scheme.

At sentencing, the federal district court granted the U.S. Attorney's motion for a departure from the applicable sentencing guidelines. The motion noted that respondent voluntarily approached law enforcement authorities, willingly informed them about a large scale mortgage fraud conspiracy, and was willing to testify against her co-conspirators. The court did not find respondent's involvement to be as serious as that of her co-defendants, who entered guilty pleas to conspiracy to defraud the United States.

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.

A three-year retroactive suspension was imposed in In re Noce, 179 N.J. 531 (2004), for the attorney's fraud, conduct prejudicial to the administration of justice, and conflict of interest. In one matter, Noce notarized a document without witnessing its execution. However, the bulk of his misconduct centered on his participation in a conspiracy to defraud HUD

through the fraudulent procurement of home mortgage loans insured by the Federal Housing Administration ("FHA"). In re Noce, DRB 03-225 and 03-169 (December 16, 2003) (slip op. at 4-5). Noce played a minor role in the scheme, which took place from April 1995 to January 1998, and involved the submission of fraudulent certifications to HUD that the purchasers had received checks enabling them to contribute to the purchase price and to qualify for the FHA-insured mortgages. The "gift checks," however, were "bogus." Id. at 5. Thus, the buyers 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. Noce performed the title work and acted as the settlement agent and closing attorney for the unqualified buyers. Id. at 5. Noce knowingly certified HUD-1 settlement statements and gift transfer certifications that falsely indicated that the buyer's gift check funds were paid to the seller. 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. There was no evidence that Noce was paid more than his regular real estate transaction fee in connection with

the fraudulent real estate closings. Id. at 5. HUD suffered a loss of more than \$2,400,000. Id. at 7.

Additionally, Noce 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.

As in this case, Noce's substantial cooperation with the government prompted the Assistant United States Attorney 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, and required to pay a fine of \$5,000 and to make restitution to HUD in the amount of \$2,408,614.

In In re Capone, 147 N.J. 590 (1997), the attorney received a two-year suspension, retroactive to his temporary suspension, for making misrepresentations to a bank to successfully obtain a mortgage loan for himself. In re Capone, DRB 96-145 (June 19, 1996) (slip op. at 2). The attorney later defaulted on the loan. Ibid. Ultimately, he pleaded guilty to a charge of knowingly making false statements on a loan application (18 U.S.C.A. §§ 1014 and 2).

In In re Bateman, 132 N.J. 297 (1993) (two-year retroactive suspension), an attorney was convicted of mail fraud conspiracy for making false statements on a loan application and thereby assisting a client in obtaining an inflated appraisal value for

the property. The lender required substantial collateral to secure \$5,000,000 in financing to develop certain property, which only had an estimated value of \$300,000. The attorney was instrumental in procuring an escalated \$6,500,000 property appraisal value, having arranged the services of a real estate broker for a fee. As a result, the holding company and its principals received approximately \$1,250,000 in advances on a loan. The attorney was sentenced to a suspended five-year prison term, fined \$15,000, ordered to perform three hundred hours of community service, and placed on probation for three years.

In In re Poling, 121 N.J. 392 (1990), the Court imposed a fourteen-month suspension (time-served) on an attorney who pled guilty to preparing a false financial statement, in violation of N.J.S.A. 2C:21-4(b)(2). He submitted a closing statement to a vendor that falsely represented that there was no secondary financing on a transaction, when he had prepared a second mortgage for \$4,000 from the buyers to the sellers. In re Poling, DRB 89-257 (August 10, 1990) (slip op. at 3). The attorney also notarized an affidavit in which the buyers swore that they did not have any secondary financing. Ibid.

Respondent's conduct is most similar to Noce's. However, she was involved in approximately half the number of Noce's transactions and for a shorter period of time. From the standpoint

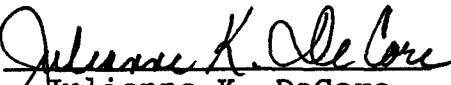
of sentencing, Noce's conduct was treated much more harshly: a five-year probationary period together with nine months home confinement, as opposed to a one-year probationary period; both attorneys received a \$5,000 fine; however, Noce was required to reimburse HUD the amount of \$2,408,614, while respondent was not required to make any reimbursements. Respondent's criminal conduct, thus, was not deemed as serious as Noce's.

Given these distinctions, the three-year suspension imposed in Noce is too severe. Also, respondent's full cooperation with the government's investigation, including her willingness to testify against her co-conspirators, persuades us that an eighteen-month suspension, retroactive to the date of her temporary suspension in New Jersey, April 6, 2006, is appropriate discipline for her offenses.

Member Baugh 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
William J. O'Shaughnessy, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

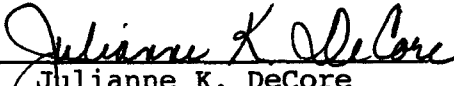
In the Matter of Linda M. Serrano
Docket No. DRB 07-061

Argued: May 10, 2007

Decided: June 29, 2007

Disposition: 18-month suspension

Members	Disbar	Eighteen month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh						X
Boylan		X				
Frost		X				
Lolla		X				
Neuwirth		X				
Stanton		X				
Wissinger		X				
Total:		8				1


Julianne K. DeCore
Chief Counsel