

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-283
District Docket No. XIV-05-113E

IN THE MATTER OF
ROBERT A. FELMEISTER
AN ATTORNEY AT LAW

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Decision

Argued: November 17, 2005

Decided: December 22, 2005

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

Respondent waived appearance for oral argument.

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 one-count information filed in the

United States District Court for the District of New Jersey, charging misprision of felony, a violation of 18 U.S.C.A. §4.

Respondent was admitted to the New Jersey bar in 1978. Although he has no disciplinary history, on March 14, 2005, he was temporarily suspended after entering the above guilty plea. In re Felmeister, 182 N.J. 592 (2005).

On March 7, 2005, respondent entered a guilty plea to misprision of felony, a violation of 18 U.S.C.A. §4. That statute provides:

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

The Assistant United States Attorney elicited from respondent the factual basis for the guilty plea. From December 1999 through September 2000, respondent represented Armando Relvas and Joseph F. Battaglia in the purchase of a business known as Universal Windows. Relvas and Battaglia obtained a \$1,750,000 loan guarantee from the Small Business Administration ("SBA") in connection with the transaction. The SBA required

Relvas and Battaglia to contribute \$700,000 toward the purchase price. Respondent was aware that Relvas and Battaglia, along with a loan broker named Benjamin Lenkiewicz, falsely represented to the SBA that respondent's clients had contributed the required \$700,000. Despite respondent's knowledge of this fraud, in January 2000, he prepared and submitted to a lender a HUD-1 settlement form misrepresenting that his clients had made the required \$700,000 capital injection. After the closing, respondent learned from Lenkiewicz that his clients had concealed from the SBA and the lender a \$700,000 purchase money mortgage from the sellers. In September 2000, respondent recorded the mortgage with the county clerk. Respondent did not report either the loan scheme or the mortgage concealment to any authority.

On June 13, 2005, the Honorable Garrett E. Brown, Jr., U.S.D.J., sentenced respondent to a three-year probation term, including confinement to his home for six months, except for approved absences. Judge Brown also ordered respondent to pay restitution of \$106,827.78 to the SBA and the lender, a \$5,000 fine, and a \$100 special assessment. At sentencing, Judge Brown remarked that, because there was very little personal financial

gain — only his legal fee — respondent's misconduct was difficult to explain.

In its brief, the OAE asserted that respondent violated RPC 8.4(b) (criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Citing In re Fishman, 177 N.J. 600 (2003), and In re Primavera, 157 N.J. 459 (1999), the OAE urges us to recommend an eighteen-month suspension, retroactive to March 14, 2005, the date of respondent's temporary suspension.

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 misprision of felony constituted a violation of RPC 8.4(b) and (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 level of discipline 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 represented the purchasers of a business and assisted their scheme to defraud the SBA and the lender by preparing and submitting a false HUD-1 form. In our view, respondent's misconduct was more serious than that of attorneys who concealed so-called "silent seconds" or secondary financing, which lenders typically prohibit in real estate transactions. Respondent knew that the loan was guaranteed by the SBA, a branch of the federal government, and that public funds were at risk. He knowingly and voluntarily participated in the fraud, and failed to disclose it to the proper authorities, in violation of federal law. In addition, the amount at stake was substantial.

As Judge Brown observed, it is difficult to explain respondent's participation in the fraudulent scheme. He gained no pecuniary advantage, save for his legal fees for the closing.

The two cases that the OAE cited are on point. Both attorneys pleaded guilty to misprision of felony and received eighteen-month suspensions. The attorney in Fishman helped his clients establish charitable trusts in an offshore jurisdiction and, after learning that the trusts contained proceeds of a securities fraud, he failed to report the information to any authority. In the Matter of Yale M. Fishman, Docket No. 03-090 (DRB July 21, 2003) (slip op. at 2). He also agreed to assist his clients in obtaining those funds, notwithstanding his knowledge of the illegal means by which they were acquired, and to conceal their offense. Ibid.

In Primavera, the attorney, representing the sellers of a house, learned that the buyer and his attorney intended to submit to the buyer's lender a HUD-1 form misrepresenting the purchase price and the amount of cash brought to the closing. In the Matter of Thomas E. Primavera, Docket No. 98-295 (DRB February 1, 1999) (slip op. at 2). Nevertheless, the attorney proceeded with the transaction and concealed the HUD-1 form from the real estate brokers at the closing, in an attempt to reduce the likelihood that the fraud would be reported to the lender. Ibid.

Attorneys guilty of similar crimes have also received eighteen-month suspensions. See, e.g., In re Chung, 147 N.J. 559 (1997) (eighteen-month suspension for attorney who pleaded guilty to a federal information charging him with receiving more than \$10,000 in cash in a transaction and failing to file a report of the transaction, as required by law); and In re Silverman, 80 N.J. 489 (1979) (eighteen-month suspension for attorney who pleaded guilty to a federal indictment that charged obstruction of justice; the attorney filed an answer in a bankruptcy action falsely stating that his client was entitled to maintain custody of approximately twenty-six tractors and trailers, knowing of the falsity of the answer; the attorney had been a member of the bar for almost fifty years, with no disciplinary history).

See also In re Alum, 162 N.J. 313 (2000), in which the attorney participated in a series of fraudulent real estate transactions; the Court stated that "[o]rdinarily, acts of dishonesty, such as the falsification of public documents or lending documents, warrant a period of suspension." Id. at 315.

Based on the above case law, we determine that a suspension of eighteen months, to be imposed retroactively to March 14,

2005, the date of respondent's temporary suspension, is the appropriate discipline for his monumentally poor judgment. Chair Maudsley and Vice-Chair O'Shaughnessy did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Louis Pashman, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

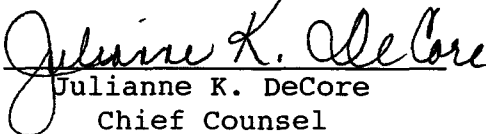
In the Matter of Robert A. Felmeister
Docket No. DRB 05-283

Argued: November 17, 2005

Decided: December 22, 2005

Disposition: Eighteen-month suspension

Members	Disbar	Eighteen-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley						X
O'Shaughnessy						X
Boylan		X				
Holmes		X				
Lolla		X				
Neuwirth		X				
Pashman		X				
Stanton		X				
Wissinger		X				
Total:		7				2


Julianne K. DeCore
Chief Counsel