SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-023

IN THE MATTER OF :

SALVATORE DE LELLO, JR. :

AN ATTORNEY AT LAW :

Decision

Argued: March 16, 2000

Decided: December 20, 2000

Richard J. 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"), based upon respondent's August 10, 1999 guilty plea to the third degree crime of commercial bribery and breach of duty to act disinterestedly, in violation of *N.J.S.A.* 2C:21-10a(2); the fourth degree crime of forgery, in violation of *N.J.S.A.* 2C:21-1a(2); the fourth degree crime of falsifying records, in violation of *N.J.S.A.* 2C:21-4a; and the fourth degree crime of false swearing, in violation of *N.J.S.A.* 2C:28-2a.

Respondent was admitted to the New Jersey bar in 1983. In 1996, after he admitted to improper conduct before a tribunal, the matter was diverted pursuant to *R.*1:20-3(i)(2)(B)(i). Respondent was temporarily suspended by the Court on August 31, 1999. *In re De Lello*, 161 *N.J.* 137 (1999).

Respondent represented Paul LoPapa and acted as settlement agent in a series of transactions involving the same parcel of real estate. On January 26, 1996 LoPapa, through a partnership named Castle Rock Real Estate, bought a residence for $2,475,000. On that same day, the partnership sold the property for $4,900,000 to Joseph Georges, a fictitious person. According to the real estate documents, Georges gave the partnership a $3,900,000 note and purportedly paid the $1,000,000 balance in cash. On the same day, Georges transferred the property to LoPapa's corporation, Castle Rock Real Estate, Inc. (a corporation separate and distinct from the similarly named partnership)

As the settlement agent in the above three transactions, respondent had a fiduciary duty to the title company, Old Republic National Title Insurance Company, and its broker, Progressive Title Agency, Inc. The $3,900,000 note had been brokered by The Boston Note Company of Boston, Massachusetts, with funding provided by a Florida lender known as The Triad Funding Group, Inc. The lender sold the note for $3,350,000 to Federal Savings Bank, an Arkansas bank, which, in turn, sold the note to the ultimate victim, Liberty Savings Bank ("Liberty") in Texas. The $3,350,000 was used to finance the initial $2,475,000 acquisition; the net proceeds of $727,216 were remitted to LoPapa. For his part in the

transactions, respondent received a $22,375 fee. LoPapa, who had not used any of his own funds to acquire the property, received the $727,216 net proceeds and promptly defaulted on the mortgage payments. All of the funds passed through respondent's trust account.

According to an August 17, 1999 letter, in which the New Jersey Division of Criminal Justice reported the incident to the OAE, the following events then transpired:

> Liberty thereafter filed a foreclosure action. In response, Castle Rock brought a separate quiet title action against Liberty, Mr. DeLello and Joseph Georges (LoPapa sued the fictitious persona he created) and alleged that the conveyance to Georges was invalid and that a number of documents prepared and recorded by Mr. DeLello were forgeries. It is believed that the quiet title action was used as a smoke screen to divert attention from the suspicion that Georges was a fictitious person created by LoPapa in furtherance of his scheme to defraud lenders. Although the quiet title action was filed in August 1997, it was never served on Liberty or Mr. DeLello.
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> On June 19, 1998, LoPapa was arrested on complaints alleging [eight charges]. . . .
>
> Mr. DeLello was arrested on July 22, 1998 . . . . Subsequent to his arrest, Mr. DeLello offered to cooperate and was interviewed at length over a three-day period. Mr. DeLello stated the obvious, that Georges did not personally attend the closing. He admitted to wrongfully notarizing Georges' signature on closing documents, but maintained that he was duped by LoPapa into believing that Georges was a very successful businessman who was too busy to attend meetings, become involved in the details of the transaction or appear at the closing. Mr. DeLello claimed that he wrongfully notarized the documents on the day of the closing because he was told by LoPapa that a few documents inadvertently had not been notarized by another notary. (A number of Georges and LoPapa closing documents were, in fact, signed by an outside notary, who was interviewed and could not recall the transaction, lending at least some degree of credibility to Mr. DeLello's version of events.) Mr. DeLello also admits to having authored a memo to one of the lenders in which he created the misleading impression that he had actual contact with Georges. He described the three transactions (the transfer from EMC [the original seller] to Castle Rock Partnership to Georges to Castle Rock, Inc.) as having

been necessitated by lender requirements for Georges, rather than Castle Rock, to provide a security interest in the transaction. Correspondence from one of the lenders provides a certain degree of support for Mr. DeLello's position. Mr. DeLello does not have any prior record of arrests or convictions. There is no proof that Mr. DeLello profited from these transactions, other than having received attorneys fees.

On October 1, 1999 respondent was sentenced to a three-year term of probation and was fined $30,000.

The OAE urged us to impose a two-year suspension, citing *In re Panepinto*, 157 *N.J.* 458 (1999); *In re Kaplan*, 154 *N.J.* 13 (1998); *In re Silverman*, 80 *N.J.* 489 (1979); *In re Konigsberg*, 132 *N.J.* 263 (1993); *In re Bateman*, 132 *N.J.* 297 (1993); *In re Gassaro*, 124 *N.J.* 395 (1991); *In re Gillispie*, 124 *N.J.* 81 (1991) and *In re Van Dam*, 140 *N.J.* 78 (1995). Respondent consented to imposition of the recommended discipline.

* * *

Following a review of the full record, we determined 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 four crimes – commercial bribery and breach of duty to act disinterestedly, forgery, falsifying records and false swearing – constituted 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 of *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 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. Here, respondent committed serious crimes that directly involved his law practice. Although it appears that he was not motivated by greed, he received $22,375 in attorneys' fees for his role in the fraudulent transactions. On the other hand, it should be considered, in mitigation, that respondent had been practicing law for thirteen years and had virtually no disciplinary history (only a diverted matter), at the time of his wrongdoing.

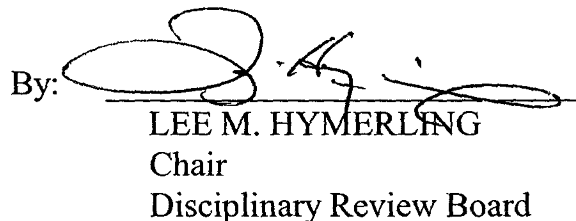
For conduct similar to respondent's, the Court has imposed long-term suspensions. *See, e.g., In re Chianese*, 157 *N.J.* 527 (1999) (three-year suspension where attorney committed perjury, theft by deception and forgery; attorney sued former client, claiming client owed attorney money under a brokerage agreement, attorney filed an affidavit to which he attached a brokerage agreement containing his client's signature, which he had photocopied from another document); *In re Van Dam, supra*, 140 *N.J.* 78 (1995) (attorney suspended for three years after he pleaded guilty to making a false statement to a savings

and loan institution and obstructing justice; attorney concealed his partner's involvement as shareholder of a company that had obtained a loan from a financial institution for which respondent's partner was director and general counsel); *In re Gillespie, supra*, 124 *N.J.* 81 (1991) (three-year suspension where attorney pleaded guilty to wilfully aiding and assisting in the presentation of false corporate tax returns; attorney assisted client in diverting corporate funds and in failing to report income); *In re Kushner*, 101 *N.J.* 397 (1986) (attorney suspended for three years after pleading guilty to false swearing; attorney made a false statement to a court by denying that he had signed a promissory note that was the subject of civil litigation).

We unanimously determined that, here, too, a three-year suspension is warranted for respondent's criminal conviction, the suspension to be retroactive to his August 31, 1999 temporary suspension. In our view, the two-year suspension recommended by the OAE is insufficient to address the seriousness of respondent's conduct and to preserve the public's confidence in the disciplinary system.

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

Dated: 12/20/00

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

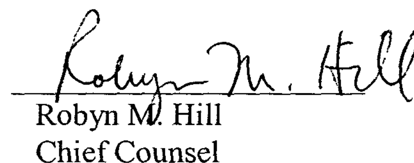
In the Matter of Salvatore DeLello, Jr.
Docket No. DRB 00-023

Argued: March 16, 2000

Decided: December 20, 2000

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
Total:		9					



Robyn M. Hill
Chief Counsel