SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-337
District Docket No. XIV-2008-0437E

IN THE MATTER OF	:
DENNIS J. OURY	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 28, 2016

Decided: June 15, 2016

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

John M. Carbone 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), pursuant to R. 1:20-13(c), following respondent's guilty plea, in the United States District Court for the District of New Jersey (USDNJ) to one count of conspiracy to defraud the Borough of Bergenfield (the Borough or Bergenfield) of money, property, and respondent's honest services, and one count of failure to file a federal income tax return for

the year 2006, violations of both RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). We determine to grant the OAE's motion and to impose a three-year suspension, retroactive to respondent's November 17, 2009 temporary suspension.

Respondent was admitted to the New Jersey bar in 1975. He has no prior discipline. On November 17, 2009, he was temporarily suspended as a result of his conviction in the within criminal matter. In re Oury, 200 N.J. 435 (2009). He remains suspended to date.

The charges to which respondent pleaded guilty are contained in a July 28, 2009 superseding indictment in the USDNJ, charging him with one count of conspiracy to defraud the Borough of his honest services, in violation of 18 U.S.C.A. §1349; seven counts of mail fraud, in violation of 18 U.S.C.A. §1341 and §1342; and four counts of failure to file tax returns, in violation of 26 U.S.C.A. §7203.

On September 29, 2009, respondent pleaded guilty to count one of the superseding indictment (conspiracy to defraud the Borough of money, property, and honest services) and count eleven of the

superseding indictment (failure to file a federal tax return for tax year 2006).

At respondent's plea hearing, the Honorable Stanley R. Chesler, USDJ, elicited the facts underlying the two crimes. Specifically, in 2001, respondent conspired and agreed with another individual, Joseph Ferriero, to form a business that would offer grant consulting services to municipalities. They each took a material financial interest in the company, which they named Governmental Grants Consulting (GGC).

Respondent and Ferriero deliberately structured GGC so that their interest and involvement in the company would not be known to others, including to potential municipal clients. To conceal their involvement, respondent and Ferriero prepared a shareholders' agreement and other documents for GGC that assigned officer roles in the company to "front people," rather than to themselves.

In late 2001, respondent and Ferriero agreed to contact officials respondent knew in Bergen County municipalities, including municipalities where respondent was a public official. The two men then solicited several municipal officials to retain GGC. When contacting those officials, respondent intentionally failed to disclose to them that he held a financial interest in GGC.

In November or December 2001, respondent and Ferriero learned that respondent was to be appointed as the attorney for the Borough, effective January 1, 2002. They agreed to approach several municipal officials in Bergenfield about retaining GGC. When respondent contacted those officials, he intentionally failed to disclose his financial interest in GGC. Either respondent or Ferriero, each with the input and approval of the other, then created a proposed municipal resolution appointing GGC as the grants consultant for the Borough.

On December 31, 2001, respondent sent an e-mail to the Borough Administrator containing the previously prepared resolution, appointing GGC as the grants consultant for Bergenfield. That same day, respondent informed Ferriero that he had given the resolution to the Borough Administrator.

Respondent was sworn in as the Borough Attorney the following day, January 1, 2002. While the mayor and council were considering the pending resolution appointing GGC, they solicited respondent's advice on the resolution in his capacity as Borough Attorney. Respondent provided his advice on the subject, intentionally failing to disclose his interest in GGC.

Shortly thereafter, the Borough Council adopted the resolution naming GGC as the Borough's grants consultant. That resolution contained false representations about GGC. Specifically, the

resolution stated that GGC was in the business of assisting municipalities in making applications for local, state, and federal grants; and GGC has special expertise, training, and a reputation for acquiring governmental grants, low interest loans, and passive economic benefits for municipalities.

Respondent provided the resolution to the Borough, knowing that it contained false representations, and then, as Borough Attorney, intentionally failed to inform the borough officials of their falsity and of his own financial interest in GGC.

At subsequent Borough Council meetings and work sessions in 2002, during which GGC's work for the Borough was discussed, respondent continued to conceal from officials his involvement with GGC. As Borough Attorney, respondent obtained correspondence about the progress of Bergenfield's grant applications and forwarded them to Ferriero, who then urged GGC's grant writer to apply for certain grants on behalf of the Borough. Ferriero was given copies of the applications, in order to "push entities of the state," such as the New Jersey Department of Environmental Protection, to expedite the funding of its grants.

In June 2004, the Borough paid GGC approximately $128,625 for grant applications procured by GGC's grant writer. Ferriero then distributed those funds, including $27,538 to himself and $25,016 to respondent. Respondent deposited his share into a Saddle Brook

bank account. He conceded that his involvement with GGC, while acting as the Borough Attorney for Bergenfield, created a conflict of interest that he intentionally concealed from the Borough.

Respondent admitted that, as Borough Attorney, he had a duty to provide honest services to Bergenfield and that he breached that duty by failing to disclose his conflict of interest as Borough Attorney. Respondent further admitted that, by establishing and structuring GGC so that his and Ferriero's involvement would not be publicly known, he facilitated the concealment of the conflict of interest. Indeed, he had an explicit understanding with Ferriero that neither of them would publicly disclose respondent's involvement with GGC. Respondent also admitted that he filed certain local government financial disclosure forms for Bergenfield for years 2001 through 2004, in which he intentionally failed to disclose his involvement with GGC and then placed those documents in the United States mail, thereby knowingly, willfully, and with an intent to defraud, using the United States mail. He did so with the intent to defraud the Borough of money, property, and respondent's own honest services.

Finally, respondent admitted that he failed to file a federal personal income tax return for the year 2006, although he was required by law to do so. Respondent acknowledged that, while he made some payments to the Internal Revenue Service in 2006, he owed

significant taxes for that year, and knew that he was required to file a tax return. By failing to do so, he acted willfully, voluntarily, and in violation of a knowing legal duty.

On November 29, 2012, Judge Chesler sentenced respondent to a three-year term of probation, constituting a significant downward departure from an offense level 21 to an offense level 8. He further imposed a $17,500 fine, a $125 special assessment, and a requirement that respondent continue to cooperate with the Internal Revenue Service.[1]

When Judge Chesler considered the government's downward departure application, he took into account, as mitigating factors, the timeliness and significance of respondent's cooperation, which was critical to the conviction of a co-defendant, and the fact that respondent was "indeed a very, very credible witness." In determining to enter a non-custodial sentence, the judge noted that respondent was sincerely repentant, and that there was "no likelihood" that he would ever appear "before this Court or any other court again."

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[1] Between respondent's 2009 plea hearing and the 2012 sentencing hearing, the United States Supreme Court decided Skilling v. United States, 561 U.S. 358 (2010), involving the honest services fraud statute (18 U.S.C. §1346) and former Enron CEO Jeffrey Skilling. The Court found that the statute, which prohibits "a scheme or artifice to deprive another of the intangible right of honest services," related only to bribes and kickback schemes.

The OAE sought a three-year suspension for respondent's violation of RPC 8.4(b), citing several cases in which three-year suspensions were imposed, and relying primarily on In re Anderson, 195 N.J. 474 (2008). In that case, the attorney received a three-year retroactive suspension for honest services mail fraud, as described in more detail below. Through counsel, respondent agreed with the recommendation. The parties have further agreed that the suspension should be made retroactive to the date of respondent's temporary suspension, November 17, 2009.

Upon 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). 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).

Respondent's most serious criminal conduct involved the conspiracy to defraud the public of money, property, and honest services. Attorneys who have engaged in similar misconduct have received long periods of suspension. See, e.g., In re Mueller, 218 N.J. 3 (2014) (three-year retroactive suspension for attorney convicted of conspiracy to commit wire fraud, in violation of 18 U.S.C.A. §1343 and 18 U.S.C.A. §1349; the

attorney conspired with Allen Weiss, a commercial real estate developer, as well as other co-conspirators, to defraud investors in real estate projects; the attorney, as legal counsel for one of the projects, formed several limited liability corporations with Weiss to acquire, develop, finance, and convert existing properties into medical offices and to sell the offices to physicians; Weiss induced prospective investors by making false promises of twenty to thirty percent returns and by delivering false guarantees to them; in all, they raised $1,000,000 from investors, which the attorney held in his trust account; at Weiss' and another co-conspirator's direction, the attorney wire-transferred investment funds to their personal bank accounts, which they used for their own personal expenses, and other expenses unrelated to the development project; although some investors developed concerns about the project's solvency, the attorney notarized a bogus lien document from Weiss, which Weiss delivered to an individual who then invested approximately $150,000; the attorney also prepared a letter falsely stating that he held $834,000 of investors' funds in his trust account for the project, when that account held only $164; he delivered that letter to an individual who then invested $75,000 in the project; another false trust account statement showed a balance of $612,461, when the actual balance in the

attorney's account was only $8,973; none of the developer's projects were ever completed; the loss attributable to the attorney was between $30,000 and $70,000); In re Roth, 199 N.J. 572 (2009) (three-year retroactive suspension for attorney convicted of wire fraud and mail fraud and for false statements to the FBI during a criminal investigation into a company's fraudulent bid proposal to obtain a contract with a hospital; the contract was obtained using a sham joint venture with a minority-owned business to effect compliance with county requirements that a minority-owned business receive a portion of the work under the contract; the attorney, in-house counsel for the company, prepared a bid application containing material omissions and misleading statements; retroactivity of the suspension was premised on the attorney's lack of prior discipline; the lack of personal gain; the fact that the attorney neither designed nor initiated the scheme, and participated only after repeated attempts to avoid involvement were rejected by others in the company; the attorney's lack of involvement in concealing the fraud and the personal losses he sustained from it); In re Anderson, supra, 195 N.J. 474 (three-year retroactive suspension for attorney who pleaded guilty to honest services mail fraud, in violation of 18 U.S.C.A. §1341 and §1346; the Philadelphia city treasurer recruited the

attorney to open a business that would contact individuals with prospective claims against "unclaimed" funds held by the city; the city treasurer provided the attorney with a list of prospective claimants to contact; successful claimants would pay the attorney a percentage of the recovered funds; the attorney then paid the city treasurer's share of the profits in cash, at a location away from the treasurer's office, in order to conceal the transactions from the city; the attorney also used the federal mail system to participate in another scheme – to defraud the Pennsylvania Department of Public Welfare through the use of a fraudulent invoice for professional services; the attorney then forwarded a portion of those funds to the city treasurer; at sentencing, the attorney received a downward departure for her substantial assistance and cooperation with the government in the prosecution of others involved in the scheme); In re Abrams, 186 N.J. 588 (2006) (three-year retroactive suspension for attorney who pleaded guilty to two counts of wire fraud for his scheme to defraud Thermadyne Holdings Corporation out of $200,000 during its purchase of Woodland Cryogenics, a company in which he was part owner, vice-president, secretary, and general counsel; in furtherance of the scheme, the attorney instructed his accounts receivable administrator to inflate the value of Woodland's accounts

receivable; post-sale, the attorney used Thermadyne funds to extinguish old Woodland debt, including federal tax obligations that Thermadyne had not assumed in the deal; the attorney also faxed a document to Thermadyne that grossly overstated the "collectability" of Woodland's accounts receivable, part of the inducement for Thermadyne's wire-transfer of $1.508 million for Woodland's assets; in aggravation, we considered the attorney's primary role in the fraud against Thermadyne, which was for self-gain; in mitigation, the attorney had no prior discipline in New Jersey, cooperated fully with the federal government, and repaid Thermadyne); In re Noce, 179 N.J. 531 (2004) (three-year retroactive suspension for attorney who pleaded 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, we considered that the attorney received only his regular fee and cooperated fully with the government); 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 of probation, fined $15,000, and ordered to perform three hundred hours of community service).

Also serious was respondent's conviction for failing to file a federal tax return for the 2006 tax year. In New Jersey, disciplinary cases involving willful failure to file federal income tax returns for one tax year have almost uniformly resulted in the imposition of a six-month suspension. See, e.g., In re Gaskins, 146 N.J. 572 (1996); In re Silverman, 143 N.J. 134 (1996); In re Doyle, 132 N.J. 98 (1993); In re Leahey, 118 N.J. 578 (1990); and In re Chester, 117 N.J. 360 (1990). But see In re Williams, 172 N.J. 325 (2002) (reprimand for attorney who failed to file income tax returns for four years, and who claimed that no additional taxes were due for those years; recordkeeping violations also found).

Here, in mitigation, respondent provided crucial testimony in the trials of his co-conspirator. The sentencing judge agreed with the government that his assistance in that regard was borne

out of sincere contrition for his actions, for which respondent took full responsibility. In addition, respondent has no prior discipline in forty years at the New Jersey bar.

Respondent's conduct is similar to that of the attorneys in Roth and Anderson, both of which involved fraud upon government entities. Like attorney Anderson, respondent received a downward departure during sentencing for his assistance to the government in the trial of his co-conspirator.

In light of the mitigation, even when adding respondent's failure to file a tax return for 2006, we determine that a three-year suspension, retroactive to November 17, 2009, the date of respondent's temporary suspension, is the appropriate sanction for respondent's conduct.

Member Boyer abstained.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actul expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Dennis J. Oury
Docket No. DRB 15-337

Argued: January 28, 2016

Decided: June 15, 2016

Disposition: Three-year retroactive suspension

Members	Disbar	Three-year Retroactive Suspension	Reprimand	Dismiss	Abstain	Did not participate
Frost		X				
Baugh		X				
Boyer					X	
Clark		X				
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer		X				
Zmirich		X				
Total:		8				

Ellen A. Brodsky
Chief Counsel