SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-200
District Docket No. XIV-2012-0159E

IN THE MATTER OF	:
ROBERT B. DAVIS	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 17, 2016

Decided: February 7, 2017

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

William D. Levinson 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, following respondent's conviction for conspiracy to commit wire fraud and bank fraud, contrary to 18 U.S.C. §§ 1349 and 3551. The OAE seeks a two-year or three-year suspension, alleging that, as evidenced by his criminal conviction, respondent violated 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). For the reasons expressed below, we determined to grant the motion and recommend a three-year suspension, retroactive to February 27, 2012.

Respondent was admitted to the New York bar in 2003 and the New Jersey bar in 2005. He has no history of discipline in New Jersey.

On November 24, 2009, respondent was suspended from the practice of law in New York, pending final disposition of the federal charges levied against him. On April 18, 2011, he resigned from the New York bar.

From September 28, 2009 to July 1, 2011, respondent was ineligible to practice law in New Jersey for failing to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. From July 1, 2011 to April 23, 2013, respondent was listed as "Retired." His eligibility to practice was restored on April 23, 2013, and he remains eligible to date.

On October 6, 2008, a Superseding Indictment was filed in the United States District Court for the Eastern District of New York (E.D.N.Y.), charging respondent with one count of conspiracy to commit wire fraud and bank fraud, contrary to 18 U.S.C. §§ 1349 and 3551 (count one); five counts of wire fraud,

contrary to 18 U.S.C. §§ 1343, 2, and 3551 (counts two, six, seven, eight, and nine); and two counts of bank fraud, contrary to 18 U.S.C. §§ 1344, 2, and 3551 (counts ten and eleven).

Respondent and several co-defendants were accused of taking part in a fraudulent real estate investment scheme. They recruited individuals with good credit to purchase residential real estate within the Eastern District of New York. They offered these straw buyers "investment opportunities," and told them that other investors would make the mortgage payments and/or rent out the properties. The straw buyers also were told that, eventually, their names would be removed from the title. Several co-defendants acted as loan officers to secure mortgages for the straw buyers. The loan applications contained misrepresentations, including enhancement of financial information (bank balances and income) for the straw buyers.

Respondent, for his part, acted as an attorney in connection with the closing of some of these fraudulent real estate transactions, which took place in two phases. In phase one, an individual assigned his or her right to purchase the property to a straw buyer in exchange for a fee, which ranged from $105,000 to $600,000. A set of documents reflecting the purchase price, which included both the sales price and the assignment fee, was prepared for the bank. Neither the

assignment, nor the assignment fee, was disclosed to the banks or mortgage companies. Typically, the sum of the sales price and the assignment fee equaled the mortgage amount stated on the fraudulent loan applications. The full proceeds from the mortgage loans involved with the fraudulent closings that respondent handled were wired into his attorney trust account.

In the second phase, respondent provided the sellers with sets of closing documents that excluded the assignment of rights to the straw buyer. No record of the assignment or fee would be present in the financial documents prepared for the closing. Respondent drafted checks totaling the sales price for payment to the seller and/or the previous mortgage holder. He then disbursed the remaining mortgage proceeds to himself and other co-conspirators. In all cases, mortgage payments never were made to the lenders. Eventually, the lenders informed the straw buyers that they were responsible for the mortgage payments. For his part, respondent received a $2,500 to $5,000 fee per closing.

On November 6, 2008, respondent entered a guilty plea to count one (wire and bank fraud conspiracy) of the Superseding Indictment, before the Honorable Steven M. Gold, United States Magistrate Judge. Before his plea could be accepted, however, the Honorable Jack B. Weinstein, Senior U.S.D.J., was required

to review it. Respondent admitted that, between March 2005 and February 2008, in his capacity as a real estate attorney, he prepared numerous falsified HUD-1 statements, which had the effect of defrauding his own clients (the lending banks).[1] The HUD-1 statements reflected that the straw buyers borrowed more funds than the amounts disbursed to the sellers. Respondent knew that the buyers would not be residing in the homes and that the straw purchasers had no intention of paying the mortgage loans. He admitted that he violated his fiduciary duty to the banks by distributing the proceeds from the loans to "people who weren't entitled to the money."

On March 9, 2010, Judge Weinstein accepted respondent's previously entered guilty plea. On March 16, 2010, Judge Weinstein sentenced respondent to six months' imprisonment and set joint and several restitution at $5,166,900. Prior to imposing the sentence, Judge Weinstein noted that this was a "very difficult case." The government acknowledged that respondent had "accepted responsibility in a very meaningful

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[1] The record does not reveal the exact number of fraudulent transactions respondent handled; however, at his sentencing, his attorney explained that those transactions affected eight different financial institutions.

way" and, therefore, it did not oppose a probationary sentence. Respondent became a key trial witness in the prosecution of his co-defendants and testified over the course of several days. Accepting that respondent had assisted the government, Judge Weinstein also determined that respondent had undertaken extraordinary efforts to educate himself, including obtaining both college and law degrees and becoming a member of the bar. Although the judge found that respondent was a responsible family man and a productive member of his community, he believed that a custodial sentence, nevertheless, was required.

Subsequently, on March 29, 2010, a Judgment in a Criminal Case was filed with the recommendation from the court that respondent be "incarcerated at a facility in or as close to Montclair[,] New Jersey as possible." Respondent also was ordered to pay $100 per month, starting six months after the completion of his incarceration, toward the total restitution amount of $5,166,900.

In a separate proceeding, on January 4, 2011, a felony arrest warrant was issued against respondent on the sole count of grand larceny in the second degree, contrary to New York

Penal Law Section 155.40(1).[2] Respondent was charged with stealing approximately $517,500 from Texas Capital Bank by engaging in a scheme, similar to the one employed in the federal matter, involving real property located at 335 Warwick Avenue, Mount Vernon, New York.

Specifically, in January 2006, respondent and a co-defendant, Vijay Khemraj, knowingly submitted a Uniform Loan Application that falsely indicated that the property would be the primary residence of Tamie Randolph, and knowingly misrepresented Randolph's personal information, including her salary and the balance of her personal bank account.

Additionally, respondent and Khemraj knowingly submitted a HUD-1 form that falsely indicated that Randolph had made a down payment of $39,425.25, when, instead, Randolph had received $15,000 to participate in the scheme. The HUD-1 also falsely represented that Sazie Wilson, the original homeowner, had received sales proceeds of $494,042.23 from Texas Capital Bank, when she received no funds at the time of closing. Lastly, respondent and Khemraj knowingly submitted a primary residence

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[2] On January 10, 2011, respondent was arrested on that warrant, which was forwarded to the Superior Court, Westchester County.

affidavit and verification of employment form that contained false information.

On October 4, 2011, respondent pleaded guilty before the Honorable Richard A. Molea, Presiding Justice, to a charge of grand larceny in the third degree, with the understanding that he would receive a sentence of probation and pay restitution of $22,500,[3] a surcharge of $325, and a DNA fee of $50. On December 22, 2011, respondent was so sentenced.

On February 27, 2012, respondent reported both convictions to the OAE.

In the midst of the state court action, on August 18, 2011, the Supreme Court, Appellate Division, First Judicial Department, accepted respondent's affidavit of resignation and removed his name from the roll of attorneys and counselors-at-law in New York, effective April 18, 2011.

In its brief, the OAE asserted that respondent's legal career is still salvageable. Hence, it argued for a period of suspension of either two or three years. In support, the OAE cited the following cases.

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[3] During his allocution, respondent admitted that he received $22,500 of the unlawfully obtained mortgage proceeds.

In In re Alum, 162 N.J. 313 (2000), the Court imposed a one-year suspension, but suspended it due to the passage of time since Alum's conduct, his long unblemished legal career, and his community service. Alum fraudulently procured secondary financing (called "silent seconds") in seven discrete real estate transactions in which he represented either the buyer or the seller. In some transactions, Alum permitted the purchase price of the property to be inflated in order to obtain one hundred percent financing, and then created fictional repair credits that reflected a discount on the sale price. In several of the transactions, the buyer's loan exceeded the full purchase price of the property and the buyer walked away from the transaction with cash. In other transactions, the buyer obtained a second mortgage loan that was not disclosed to the primary mortgage lender. See, also, In re Newton, 159 N.J. 526 (1999) (one-year suspension for attorney who engaged in nine fraudulent real estate transactions, took a false jurat, prepared false and misleading HUD-1 statements that harmed lenders, and engaged in multiple conflicts of interest) and In re Daly, 195 N.J. 12 (2008) (eighteen-month suspension following attorney's guilty plea to conspiracy to submit false statements in settlement documents in four real estate cases).

The OAE further noted decisions imposing more serious discipline, such as In re Frost, 156 N.J. 416 (1998), In re Bateman, 132 N.J. 297 (1993), In re Panepinto, 157 N.J. 458 (1999), and In re Noce, 179 N.J. 531 (2004). In Frost, the Court imposed a two-year suspension for the attorney's preparation of false closing documents, including a false RESPA that incorrectly listed an unpaid lien as paid. Frost also failed to escrow the amount necessary to settle the lien. And in not honoring escrow instructions, Frost also breached his escrow agreement. Frost had a fairly extensive ethics history. 156 N.J. at 416. In Bateman, the Court imposed a two-year suspension following the attorney's mail fraud conspiracy conviction for making "false statements on a loan application" and assisting a client in obtaining an inflated real estate appraisal. The attorney in Panepinto also received a two-year suspension following his bank fraud conspiracy conviction for participating in a fraudulent scheme with a client, who obtained a mortgage for which he was not qualified, based on a fictitious loan from Panepinto and documentation reflecting a highly inflated purchase price on the HUD-1.

In Noce, the Court imposed a three-year suspension following the attorney's criminal conviction for mail fraud conspiracy. 179 N.J. at 531. Noce received a significant

downward departure at sentencing, due to his substantial cooperation with the federal government. Noce acted as a settlement agent in a conspiracy to defraud the Department of Housing and Urban Development (HUD) through the fraudulent procurement of FHA loans for unqualified home buyers. HUD suffered substantial losses of more than two million dollars as a result of the scheme. For his part, Noce knowingly certified both HUD-1 and gift transfer statements that falsely indicated that the buyer used gift funds toward the real estate purchase. There were no gift funds, however. Noce received no more than his regular real estate fee in the fraudulent real estate transactions. He was sentenced to five years of probation with nine months of home confinement, fined $5,000, and ordered to pay $2,408,614 in restitution to HUD. Although we unanimously recommended a three-year suspension, we noted that "five members would have [voted to] disbar[] respondent were it not for his substantial cooperation with the authorities" In the Matter of Philip S. Noce, DRB 03-225 and 03-169 (December 8, 2003) (slip op. at 10).

The OAE contends that respondent's conduct is similar in gravity to that of the attorney in Noce. Respondent's fraud cost the banks over $5 million, while Noce's was less - $2.4 million. Like Noce, respondent received an attorney fee of between $2,500

and $5,000 per closing. Further, their sentencing exposure was similar - Noce was sentenced to five years of probation with nine months of house arrest while respondent served six months in a federal penitentiary and was sentenced to probation for five years in New York.

In mitigation, the OAE points out that respondent was a relatively inexperienced attorney at the time of these events, that he practiced alone without the benefit of a mentor or a supervising attorney, that he has paid restitution,[4] that he has no disciplinary history in New Jersey, and that he cooperated with the OAE. For those reasons, the OAE recommended that respondent be suspended for two or three years, rather than disbarred.

In his brief, respondent urges us to consider significant mitigation, arguing that he has been punished well beyond the appropriate level of discipline because he played a small part in an otherwise global fraud that he could not have foreseen or prevented. He cast some of the responsibility for his misconduct on banks, noting that, since 2009, banks in both the United

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[4] The record does not provide any further detail regarding the restitution respondent may have paid.

States and Europe have admitted their guilt in the mortgage fraud crisis, and have paid over 150 billion dollars in fines.

Additionally, respondent points out that, of his own volition, he ceased practicing law in New Jersey from 2009 to 2013 in order to take time to process his professional and personal shortcomings. He sought psychological treatment to assist in this process. Respondent asserts that, since he resumed his practice in 2013, he has been vigilant in his compliance with the ethics requirements of the profession. Finally, he asks us to consider, in mitigation, the passage of time since the commission of his crimes.

Subsequently, on October 11, 2016, counsel for respondent also submitted a brief arguing for a one-year suspension, retroactive to September 28, 2009, the date his ineligible status commenced, or, at the latest, February 27, 2012, the date he reported his convictions to the OAE.

Respondent's counsel advances several mitigating factors in support of his position that no more than a one-year retroactive suspension should be imposed. First, respondent did not profit from any illegal activity; rather, he collected only a standard legal fee for the eight illegal real estate transactions he handled. Second, at the time of his misconduct, respondent had been an attorney for only two years and was practicing without

the benefit of a mentor. Third, respondent entered into a cooperation agreement with the government and provided substantial assistance to its pursuit of the others involved in the scheme.

Counsel further asserts that respondent voluntarily ceased practicing law following his transgressions. Specifically, between September 28, 2009, and July 1, 2011, respondent voluntarily made himself ineligible to practice law by failing to pay his annual registration fees. Then, beginning July 1, 2011, respondent registered in New Jersey as "retired." Although respondent reported to the OAE, on February 27, 2012, his convictions and suspension from the practice of law in New York, the OAE did not promptly file an ethics proceeding against him.

Subsequently, after having voluntarily ceased the practice of law for three-and-one-half years, and not having heard from the OAE, respondent applied for a certificate of good standing from the Court. That certificate was granted on March 25, 2013. It was not until August 2014, that the OAE replied to respondent's self-notification letter. Based on the foregoing, particularly the fact that more than nine years have passed since the commission of the misconduct, respondent's counsel asserts that, not only should the suspension be limited to one year, but also it should be retroactive.

Following a review of the record, we determined to grant the OAE's motion.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(C)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Specifically, the conviction establishes a violation of RPC 8.4(b). Moreover, the nature of respondent's crime involves dishonesty, fraud, deceit, and misrepresentation. Thus, he also is guilty of violating RPC 8.4(c). Pursuant to R. 1:20-13, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer." Hence, the sole issue before us is the extent of discipline to be imposed on respondent for his violation of RPC 8.4(b). R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Principato, supra, 139 N.J. at 460 (citations omitted).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect the attorney's clients. In re Schaffer, 140 N.J. 148, 156 (1995). "To the public he is a lawyer whether he acts in a representative capacity or otherwise." In re Gavel, 22 N.J. 248, 265 (1956). Thus, offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, will, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995).

Rather, we must take into consideration many 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, 118 N.J. 443, 445-46 (1989).

Attorneys who have been convicted of crimes arising from filing false documents with a government agency as part of a real estate closing have received varying degrees of suspensions, based on the severity of their crimes. See, e.g.,

In re Poling, 121 N.J. 392 (1990), (time-served suspension of fourteen months for an attorney who pleaded guilty to preparing a false financial statement in violation of N.J.S.A. 2C:21-4(b)(2); the attorney submitted a closing statement to a vendor which misrepresented the fact that there was no secondary financing on a transaction, when, in fact, he had prepared a second mortgage for $4,000 from the purchasers to the sellers; attorney also had notarized an affidavit wherein the purchasers swore that they did not have any secondary financing); In re Daly, supra, 195 N.J. 12 (eighteen-month suspension following attorney's guilty plea to conspiracy to submit false statements in settlement documents in four real estate cases); In re Serrano, 193 N.J. 24 (2007), (eighteen-month retroactive suspension for attorney who had pleaded guilty to making a false statement to a federal agency, in violation of 18 U.S.C.A. §1001 and 2; the attorney knowingly prepared materially false HUD-1 forms in order to obtain HUD-insured mortgages for unqualified borrowers; the attorney received between $20,000 and $40,000 as the result of her illegal conduct in approximately twenty-five closings; the criminal court granted the government's motion for a downward departure from the sentencing guidelines based on the substantial assistance she provided to the government; she was sentenced to a one-year term of probation, fined $5,000, and

ordered to pay a $100 special assessment); In re Fox, 221 N.J. 263 (2015) (one-year retroactive suspension for attorney following his guilty plea in United States District Court for the District of New Jersey to one count of making a false, fictitious, and fraudulent statement to HUD, in violation of 18 U.S.C. §1001; he had prepared two versions of the HUD-1, one showing that the purchaser had received a gift of equity in the amount of $28,445.70, to be used toward the purchase of the property, the other showed that the purchaser had received $45,065.82 in proceeds from the sale, when he had received no monies from the sale; the attorney was sentenced to six months in prison, followed by two years of supervised release, and was ordered to make restitution in the amount of $603,074.40; the judge granted the government's motion for a downward departure from the sentencing guidelines, making note of "the significance and usefulness of the defendant's assistance," which had resulted in "a number of individuals" having been brought to justice; previous censure); In re Alum, supra, 162 N.J. 313 (one-year suspended suspension, for an attorney who fraudulently procured secondary financing in seven discrete real estate transactions in which he represented either the buyer or the seller); In re Newton, supra, 159 N.J. 526 (one-year suspension for engaging in nine fraudulent real estate transactions, taking

a false jurat, preparing false and misleading HUD-1 statements that harmed lenders, and engaging in multiple conflicts of interest); In re Panepinto, supra, 157 N.J. 458 (two-year suspension following an attorney's bank fraud conspiracy conviction for participating in a fraudulent scheme with a client wherein the client obtained a mortgage for which he was not qualified, based on a fictitious loan from the attorney and documentation reflecting a highly inflated purchase price on the HUD-1); In re Frost, supra, 156 N.J. 416 (two-year suspension for attorney who prepared false closing documents, including a false RESPA that incorrectly listed as paid, a lien that was unpaid; the attorney also failed to escrow the amount necessary to settle the lien; in not honoring escrow instructions, the attorney also breached his escrow agreement; in aggravation the attorney had a fairly extensive ethics history); In re Capone, 147 N.J. 590 (1997) (two-year suspension for attorney who made misrepresentations to a bank in order to obtain a mortgage loan; based on the misrepresentations, the bank approved the loan; attorney later defaulted on the loan; 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 re Bateman, supra, 132 N.J. 297 (two-year suspension following an attorney's mail fraud conspiracy conviction for making "false statements on

a loan application" and assisting a client in obtaining an inflated real estate appraisal to secure $5,000,000 in financing from a lender to develop certain property with an estimated value of only $300,000; substantial collateral was required; 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 was placed on probation for three years); and In re Noce, supra, 179 N.J. 531 (three-year retroactive suspension for attorney who acted as a settlement agent as part of a conspiracy to defraud HUD through the fraudulent procurement of FHA loans for unqualified home buyers; HUD suffered substantial losses of more than two million dollars as a result of the scheme; the federal judgment of conviction required the attorney to pay a fine and make restitution on a payment schedule set by the court; the Court's Order of suspension required that any application for reinstatement to practice be accompanied by proof of compliance with the payment schedule set by the federal court; mitigation included the

downward departure the attorney received at sentencing due to his substantial cooperation with the federal government).

Here, respondent's conduct is similar to that of the attorneys in Serrano and Noce. In Serrano, supra, 193 N.J. 24, an eighteen-month retroactive suspension was imposed on an attorney who had pleaded guilty to making a false statement to a federal agency, in violation of 18 U.S.C.A. §1001 and 2. Serrano knowingly prepared materially false HUD-1s in order to obtain HUD-insured mortgages for unqualified borrowers. In the Matter of Linda Serrano, DRB 07-061 (June 29, 2007) (slip op. at 2-4). Specifically, the HUD-1s falsely stated that the borrowers had provided Serrano with money at settlement, such as closing costs. Id. at 5-7.

Serrano received between $20,000 and $40,000 as the result of her illegal conduct in approximately twenty-five closings. Id. at 7, 9. Her lawyer claimed that these monies represented her legal fees for all transactions. Id. at 9.

The court granted the government's motion for a downward departure from the sentencing guidelines, based on the substantial assistance that Serrano had provided to the government. Id. at 8-9. She was sentenced to a one-year term of probation, fined $5,000, and ordered to pay a $100 special assessment. Id. at 9. In addition, if Serrano paid the fine, the

court would "entertain a motion within six months" for an early discharge of probation. Ibid.

In Noce, supra, 179 N.J. 531, in one matter, the attorney notarized a document without having witnessed its execution. In the Matter of Philip S. Noce, DRB 03-225 and 03-169 (December 16, 2003) (slip op. at 3). Additionally, he had 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. Id. at 9-10. The bulk of Noce's misconduct, however, involved his participation in a conspiracy to defraud HUD through the fraudulent procurement of home mortgage loans, insured by the FHA. Id. 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, representing that the purchasers had received gift checks enabling them to contribute to the purchase price and to qualify for the FHA insured mortgages. Id. at 5. The "gift checks," however, were "bogus." Ibid. Thus, the buyers had purchased homes with FHA mortgage loans without having provided down payments, as required by HUD. Id. at 6.

Fifty of the eighty transactions in which Noce had participated involved illegitimate gift transfer certifications.

Id. at 7. He performed the title work and acted as the settlement agent and closing attorney for the unqualified buyers. Id. at 5. He knowingly certified HUD-1 settlement statements and gift transfer certifications falsely indicating that the buyers' gift check funds were paid to the sellers. Id. at 6. 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. Id. at 5. There was no evidence that Noce had been paid more than his regular real estate transaction fee in connection with the fraudulent real estate closings. Ibid. HUD suffered a loss of more than $2.4 million. Id. at 7. Noce pleaded guilty to one count of conspiracy to commit mail fraud, in violation of 18 U.S.C. § 371. Id. at 4.

Like Serrano, Noce's substantial cooperation with the government had prompted the government 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, fined $5,000, and ordered to make restitution to HUD in the amount of $2,408,614. Id. at 7. He received a two-year suspension for his misconduct.

Here, respondent made a profit of $22,000 from the transaction underlying his conviction in New York State court,

plus between $2,500 and $5,000 per transaction in each of the matters he handled as part of the conspiracy underlying his federal conviction. The record does not clearly specify the number of transactions he actually handled. As discussed above, Serrano handled twenty-five closings and made $20,000 to $40,000 in profits, although her attorney claimed this amount was accumulated from reasonable fees charged for each closing. Noce handled eighty transactions but took his regular fee only. Most importantly, however, respondent caused over five million dollars in damages while Noce caused just over two million dollars in damages. Further, respondent received a six-month prison term while Noce received a term of probation and nine months' house arrest. These factors render respondent's misconduct significantly more severe than Noce's.

In aggravation, although respondent, like Noce, was a small player in an otherwise very large conspiracy, it appears he attempted to branch out on his own in respect of the Texas Capital Bank transaction. Respondent admitted to personally receiving $22,000 in ill-gotten gains for this transaction alone. The fact that he seems to have separated from the larger conspiracy, to create his own enterprise, exacerbates his conduct and balances against his argument that he was merely a bit player in a global conspiracy.

In mitigation, respondent, like Noce and Serrano, cooperated with the government as a critical witness in the prosecution of his co-defendants and promptly reported his convictions to the OAE. Respondent's relative inexperience as an attorney at the time of his crimes, as noted by the OAE, however, cannot serve to mitigate knowingly lying on a HUD-1.

In our view, the appropriate quantum of discipline for respondent's misconduct is a three-year suspension. We must, however, determine whether the suspension should be retroactive or prospective. Respondent was sentenced in 2010 and 2011, respectively. Six years have elapsed since his first conviction, and almost five years have passed since he reported both convictions to the OAE. Typically, the delay in bringing this matter before us, which was no fault of respondent, could justify a retroactive suspension. Indeed, several of the cases cited above relied on this temporal component as justification for the retroactive application of the suspension imposed in those matters.

In addition, respondent voluntarily stopped practicing law in New Jersey from 2011 to 2013 by placing himself on "retired" status. Because respondent was ineligible to practice, from 2009 to 2011, for failing to pay his annual assessment to the Lawyers' Fund for Client Protection, he effectively was not able

to practice law for four years, from 2009 to 2013. In In re Farr, 115 N.J. 231, 238 (1989), the Court expressly determined that a voluntary suspension would not be considered a mitigating factor, unless imposed by Order of the Court. Here, however, respondent took the unique and affirmative step to remove himself from the practice of law via his attorney registration, by claiming retired status, and no evidence has been offered that he otherwise practiced during that time.

Therefore, on balance, especially considering the passage of time since respondent reported his convictions to the OAE, we determine that respondent be suspended for three years, but that the suspension be retroactive to February 27, 2012, the date he reported his convictions to the OAE.

Members Gallipoli and Zmirich voted for a three-year prospective suspension. Vice-Chair 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert B. Davis
Docket No. DRB 16-200

Argued: November 17, 2016

Decided: February 7, 2017

Disposition: Three-year retroactive suspension

Members	Three-year retroactive suspension	Three-year suspension	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich		X	
Total:	6	2	1

Ellen A. Brodsky
Chief Counsel