SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-275
District Docket No. XIV-2011-0468E

IN THE MATTER OF	:
ISADORE H. MAY	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 19, 2017

Decided: March 1, 2017

Reid A. Adler 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), pursuant to R. 1:20-13(c), following respondent's conviction in the United States District Court for the District of New Jersey (USDC) of one count of violating the Sherman Act, 15 U.S.C. §1.

The OAE recommended a three-year suspension. We determine to impose a three-year, retroactive suspension.

Respondent was admitted to the New Jersey bar in 1985. Effective December 14, 2001, the Supreme Court suspended him for one year for engaging in a conflict of interest; assisting another in the unauthorized practice of law; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and engaging in conduct prejudicial to the administration of justice. Between 1996 and 1997, in approximately seventy personal injury matters, respondent conspired with another attorney, his brother-in-law, Norman I. Ross, to circumvent conflict of interest rules, prohibiting the representation of both driver and passenger in accident cases. Respondent agreed to represent clients in cases in which Ross perceived a conflict of interest, but Ross performed the legal services, thereby leaving respondent as the attorney of record in name only. Respondent received almost $25,000 for his part in the scheme, which was uncovered by an OAE random audit of Ross' attorney books and records. In re May, 170 N.J. 34 (2001). Respondent was reinstated to the practice of law on April 23, 2003. In re May, 176 N.J. 121 (2003).

On May 10, 2012, the Court temporarily suspended respondent as a result of his conviction in this matter. In re May, 210 N.J. 154 (2012). By letter dated August 30, 2011,

respondent reported his August 24, 2011 guilty plea to the OAE, as required by R. 1:20-13(a)(1).

Respondent pleaded guilty to an Information, charging him with one count of Sherman Act Conspiracy, a violation of 15 U.S.C. §1, which states as follows:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.

The Information alleged that, through a partnership, respondent purchased tax liens from municipalities located in New Jersey.[1] Various other individuals and entities, not named as defendants, also participated with respondent as co-conspirators in the charged offense, performing acts and making statements in furtherance of a bid-rigging scheme.

As explained in the Information, when the owner of real estate in New Jersey fails to pay property, water, or sewer

[1] This case arises out of the same criminal conspiracy as a companion case, I/M/O Robert W. Stein, Docket No. DRB 16-271, also heard at our January 19, 2017 session.

taxes, the municipality in which it is located may attach a lien. If the lien remains unpaid, it may then be sold at a tax lien auction. At auction, the value of the lien includes the amount of unpaid property taxes, accrued interest, and other applicable costs and penalties. Bidders at these auctions include individuals, companies, and financial institutions.

Pursuant to a competitive bidding process, bidders will bid on the interest rate that the property owner will pay if and when the tax lien is redeemed. Bidding begins at the statutory maximum (eighteen percent) and can be driven down in the bidding process to zero. Typically, the winning bidder has the right to collect interest at the winning rate, as well as the original lien amount and penalties. If the taxes, interest, and penalties remain unpaid, the winning bidder may also foreclose on the property owner's right of redemption, and take title to the property.

From the beginning of 2003 until February 2009, respondent and the co-conspirators engaged in a conspiracy to suppress and eliminate competition in the bidding process by submitting non-competitive and collusive bids at public auctions for tax liens in various New Jersey municipalities. According to the information, respondent's and the co-conspirators' "combination

and conspiracy was in unreasonable restraint of interstate trade and commerce," a violation of 15 U.S.C. §1.

In furtherance of the combination and conspiracy to rig bids at tax lien auctions, respondent and the co-conspirators:

> a. attended meetings and engaged in discussions or conversations regarding bids for tax liens being auctioned by municipalities within the District of New Jersey;
>
> b. agreed during those meetings and discussions not to compete at certain tax lien auctions by allocating which tax liens each would bid on or refrain from bidding;
>
> c. submitted bids in accordance with the agreements reached; and
>
> d. purchased tax liens pursuant to those agreements at collusive and non-competitive interest rates.
>
> [OAEbEx.1¶11.][2]

One or more of the co-conspirators used out-of-state funds to purchase tax liens. Out-of-state bidders both participated in and paid for multiple tax liens using out-of-state funds. Therefore, respondent and the co-conspirators were within, and substantially affected, the flow of interstate trade and commerce.

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[2] OAEb refers to the OAE's July 29, 2016 brief in support of the motion for final discipline.

On August 24, 2011, respondent pleaded guilty before the Honorable Dennis M. Cavanaugh, U.S.D.J. After soliciting a factual basis, the judge accepted respondent's plea and found him guilty of the Sherman Act violation.

On April 7, 2016, the Honorable Susan D. Wigenton, U.S.D.J., sentenced respondent to a one-year term of probation, a $20,000 fine, and a $100 special assessment. Special conditions also were made a part of respondent's probationary term: (1) new debt, self-employment, and business disclosure restrictions; and (2) a restriction prohibiting employment and/or capital ventures that involve the investment of tax liens.

The term of probation represented a three-level downward departure, based, in part, on respondent's cooperation, for six years, with government investigators, which helped the government secure convictions for fifteen other individuals involved in the bid-rigging scheme. Respondent paid $120,000 toward the settlement of a class action lawsuit and expressed deep remorse for his criminal actions.

The OAE recommended "at least" a three-year suspension, citing two cases in which three-year suspensions were applied retroactively to the attorneys' temporary suspensions in New

Jersey. See In re Abrams, 186 N.J. 588 (2006) and In re Mueller, 218 N.J. 3 (2014), discussed below.

The OAE did not take a position on whether the suspension should be imposed prospectively or retroactively. In aggravation, however, the OAE cited respondent's prior one-year suspension, for conduct that also involved dishonesty.

Respondent did not file a brief with us. When completing his oral argument form, however, he "respectfully request[ed] that the recommended three-year suspension be retroactive to when [he] self-reported to the OAE in August 2011."

* * *

Following a review of the record, we determined to grant the OAE's motion. Respondent's criminal conviction clearly and convincingly establishes that he has committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(b). Moreover, the facts underlying his conviction evidence that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of RPC 8.4(c).

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). Hence, the sole issue is the extent of discipline to be imposed.

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." Ibid. (citations omitted).

Fashioning the appropriate penalty involves a consideration of 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).

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). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). 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 his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

In In re Mueller, supra, 218 N.J. 3, the attorney received a three-year suspension, retroactive to his temporary suspension in New Jersey. Mueller pleaded guilty to a federal information charging him with conspiracy to commit wire fraud. He received a five-month term of incarceration, followed by two years of probation, and was ordered to pay $25,500 in restitution. In the Matter of Erik W. Mueller, DRB 13-324 (February 12, 2014) (slip op. at 8).

Mueller conspired and agreed with Allen Weiss, a real estate developer, and other co-conspirators, to defraud a group of physicians/investors, who were lured into investing $1,000,000 to convert existing properties into medical offices. The doctors were falsely promised returns of between twenty and thirty percent on their investments. Mueller held the investment funds for the project in his trust account. Id. at 3.

Over the course of a year thereafter, Mueller, at Weiss' and the co-conspirators' behest, wire-transferred various amounts of the investors' funds to their bank accounts, after which they used those funds for their own purposes, which were unrelated to the development project. Id. at 4. After all of the

funds had been depleted, Weiss and his co-conspirators persuaded Mueller to join in their illegal activities. Id. at 6.

Specifically, when the investors began to question the project and the use of their funds, Mueller, Weiss, and others misrepresented to them that the funds were safe. To entice additional investors, Weiss directed Mueller to create a false lien and note, containing names of guarantors who had not actually signed the note. In front of a potential investor, Mueller notarized the bogus document, after which the investor advanced $150,000. Id. at 5. Mueller also prepared a letter to another investor, stating that he held $834,000 in his trust account for the project, when the account held only $164 in project funds. He also faxed a false trust account statement to another investor showing $612,000 in the account, when the actual balance was only $8,900. Ibid.

In mitigation, Mueller was not the instigator of the fraudulent scheme, and benefitted only by receipt of a $20,000 fee; he had no disciplinary history; he cooperated with the federal government; he expressed his sincere remorse for his conduct; and he submitted evidence of his good personal traits. Id. at 14.

In re Abrams, supra, 186 N.J. 588, the attorney also received a three-year suspension, retroactive to his temporary suspension in New Jersey. Abrams pleaded guilty to two counts of wire fraud for his participation in a scheme to defraud Thermadyne Holdings Corporation in connection with its purchase of Woodland Cryogenics, Inc., in which he was part owner, vice-president, secretary and, at times, general counsel. He was sentenced to a four-month term of incarceration and three years of supervised release. In order to artificially inflate the value of the company's assets, Abrams instructed his accounts receivable administrator to fraudulently overstate Woodland's accounts receivable. In the Matter of Andrew C. Abrams, DRB 06-027 (April 28, 2006) (slip op. at 2-3).

After the sale, Abrams continued to work for Thermadyne and used Thermadyne's funds to satisfy Woodland's pre-existing debt to the IRS and other Woodland liabilities not assumed by Thermadyne under the purchase agreement. Id at 4.

Abrams committed wire fraud when he faxed a document from Philadelphia to Thermadyne, in Missouri. The facsimile grossly overstated the "collectability" of Woodland's other accounts receivable to Thermadyne in the final stages of the negotiations. That information caused Thermadyne to wire-

transfer, from New York to Philadelphia, $1.508 million to purchase Woodland's assets. Id. at 5.

In aggravation, Abrams was a primary participant in the scheme to defraud Thermadyne out of $200,000, and was motivated by self-gain. Id. at 8. In mitigation, he had an unblemished ethics history in New Jersey, cooperated fully with the federal government, and repaid Thermadyne. Ibid.

In In re Noce, 179 N.J. 531 (2004), the attorney received a three-year, retroactive suspension after he pleaded guilty to conspiracy to commit mail fraud. In the Matter of Philip S. Noce, DRB 03-225 and DRB 03-169 (December 8, 2003) (slip op. at 2). Noce 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, from which HUD suffered losses of over $2.4 million. Noce 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. Id. at 5-7. In mitigation, Noce was paid only his regular fee and cooperated fully with the government during its investigation. Id. at 9.

Here, respondent's conduct, engaging in a fraudulent scheme with his co-conspirators to manipulate the bidding process in municipal tax lien sales in New Jersey, is similar to that of the attorneys in Mueller and Abrams, both of whom received retroactive three-year suspensions. In addition, in Mueller and Abrams, the mitigation is almost identical to that of respondent, including substantial cooperation with the government, expressed remorse for his actions, and repayment to the victims.

Unlike the attorneys in Mueller and Abrams, however, respondent has prior discipline. In 2001, he received a one-year suspension for misconduct that took place in 1996 and 1997, some twenty years ago.

We determine that the passage of time and the fact that respondent has been temporarily suspended since self-reporting his crime to the OAE warrants the imposition of a three-year suspension, retroactive to May 10, 2012, the effective date of his temporary suspension.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Isadore H. May
Docket No. DRB 16-275

Argued: January 19, 2017

Decided: March 1, 2017

Disposition: Three-year retroactive suspension

Members	Three-year retroactive suspension	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9		

Ellen A. Brodsky
Chief Counsel