SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-266
District Docket No. XIV-2014-0112E

IN THE MATTER OF	:
CHRISTOPHER M. HARTWYK	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 19, 2017

Decided: April 4, 2017

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

John P. McDonald 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)(2), following respondent's guilty plea, in the Criminal Court of the City of New York, County of New York, to offering a false instrument for filing, a second-degree misdemeanor, in violation of New York Penal Law § 175.30. The OAE recommends that we impose a three to six-month term of

suspension on respondent.[1] Respondent requests the imposition of a reprimand.

For the reasons set forth below, we determine to grant the OAE's motion for final discipline and to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1985. He has no history of discipline and was not temporarily suspended in connection with this matter. In a brief and certification submitted to us on September 27, 2016, and again during oral argument, respondent represented that he has not engaged in the practice of law in more than four years.

On March 7, 2014, before the Honorable Neil E. Ross, respondent entered a guilty plea to offering a false instrument for filing, a second-degree misdemeanor, in violation of New York Penal Law § 175.30. Respondent's guilty plea was to the sole count of the complaint filed against him by the New York District Attorney's Office on that same date.

During his plea allocution before Judge Ross, respondent admitted that, on March 2, 2009, while First Deputy General Counsel for the Port Authority of New York and New Jersey (the Port Authority), he filed a letter containing false information

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[1] In its initial brief to us, the OAE had requested a one-year term of suspension. During oral argument, ethics counsel stated that, after considering the compelling character letters submitted by respondent, the OAE had concluded that the recommendation of a shorter term of suspension was appropriate.

with his supervisor, Darrell Buchbinder, who was General Counsel to the Port Authority. Specifically, the letter falsely represented that Weil, Gotshal & Manges LLP (Weil), a law firm retained by the Port Authority in 2007, would be providing its services to the Port Authority at a fifteen percent discount. Respondent admitted to investigators for the New York District Attorney's Office that he had fabricated the letter; that Weil had never agreed to discount its legal services to the Port Authority; and that he filed the letter with his supervisor to give the appearance that the Port Authority was receiving a discount that respondent knew it was not receiving.

On the date of his guilty plea, in accordance with the plea agreement between respondent and the New York District Attorney, Judge Ross simultaneously sentenced respondent to a one-year conditional discharge[2] and ordered him to complete twenty days of community service and pay mandatory fines and penalties.

By letter dated March 19, 2014, the Office of Inspector General for the Port Authority referred this matter to New Jersey disciplinary authorities. In the letter, the Inspector General claimed that respondent's "false statements resulted in

[2] In New York, when a court imposes a conditional discharge, the defendant is released without imprisonment or probation supervision, but is subject, during the period of conditional discharge, to such conditions as the court imposes. N.Y.P.L. § 65.05.

the [Port Authority] not being able to realize a nearly $7.5 million discount on Weil's legal fees, which exceeded $50 million over a six-year period."

In his brief to us, respondent asserts that Weil never agreed to discount its legal fees for services provided to the Port Authority. To the contrary, respondent points out that, on February 13, 2007, Buchbinder drafted and executed a retainer agreement with Weil that included no discount for legal services. In statements made to the New York District Attorney's Office, Frederick S. Green, Esq., who signed the retainer agreement on behalf of Weil, confirmed that (i) he had not signed the alleged discount letter, and (ii) Weil never agreed to provide a discount on legal work performed for the Port Authority.

On February 23, 2007, two years before respondent fabricated the letter, and despite the language of the retainer agreement that he had executed as General Counsel to the Port Authority, Buchbinder represented, in a confidential memorandum to the Executive Director of the Port Authority, that Weil would be providing a fifteen percent discount for legal services performed. Respondent alleges that, over time, as Weil's legal fees continued to accrue, Buchbinder pressured him to obtain a letter for the Port Authority files indicating that Weil had

agreed to provide the discount. Knowing that Weil had never agreed to a discount, respondent "foolishly, illegally and unethically produced such a letter which satisfied Mr. Buchbinder."

Respondent asserts that, because Weil never agreed to discount its services, the Port Authority was "not overbilled and suffered no losses." He further alleges that, shortly after the Port Authority reported his misconduct to New Jersey disciplinary authorities, Buchbinder was forced to resign due to pending investigations by the New York District Attorney and the Securities and Exchange Commission regarding the Port Authority's use of funds to rebuild the Pulaski Skyway. Finally, respondent notes that the Inspector General's letter addresses neither the language contained in the retainer agreement between Weil and the Port Authority nor Buchbinder's representations contained in his confidential memorandum to the Executive Director.

The OAE notes that respondent did not notify disciplinary authorities of his criminal charges or the disposition of his matter, but cooperated by submitting documents relating to his conviction to the OAE through his counsel.

* * *

By pleading guilty to offering a false instrument for filing, respondent violated 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).

Final disciplinary proceedings in New Jersey are governed by R. 1:20-13(c). Under this 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); and In re Principato, 139 N.J. 456, 460 (1995). Specifically, a conviction establishes a violation of RPC 8.4(b). Pursuant to this rule, 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." Thus, the singular question before us in this matter is the quantum of discipline to be imposed on respondent for his violations of RPC 8.4(b) and RPC 8.4(c). 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 fashioning the proper quantum of discipline in this case, the interests of the public, the bar, and 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). Thus, we must consider

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). Yet, even if the misconduct is not related to the practice of law, an attorney "is bound even in the absence of the attorney-client relation to a more rigid standard of conduct than required of laymen." In re Gavel, 22 N.J. 248, 265 (1956). "To the public he is a lawyer whether he acts in a representative capacity or otherwise." Ibid.

The sanction imposed for respondent's misconduct — a misrepresentation made to his supervisor and to his client, the Port Authority — has ranged from the imposition of a reprimand to a long-term suspension, depending on the facts of each case, including the extent of the wrongdoing, the harm to the client or others, and the presence of mitigating circumstances. See, e.g., In re Yoelson, 212 N.J. 457 (2012) (reprimand for attorney who fabricated a court order permitting her son's use of her surname as his last name; for most of the son's life, his father had permitted the use of the mother's surname; when the attorney sought to register the son in an out-of-state school, the school required an official document to permit the son to use the mother's surname; the attorney, under time constraints just days

before the enrollment deadline, fabricated the court order; other mitigation included the terminal illness of the attorney's husband at that time, her lack of disciplinary history, her admission of wrongdoing, and remorse); In re Bedell, 204 N.J. 596 (2011) (reprimand for attorney who represented two passengers for injuries sustained in an automobile accident; after the clients refused settlement offers for their injuries, the attorney fabricated individual releases for both clients, reflecting the offered amounts ($17,500 and $15,000); he then signed the clients' names, attempting to mimic their signatures, and signed his own name as a witness to the signature on each release, knowing that neither client had signed it; in addition, the attorney took the jurat on both releases, falsely indicating that his clients had personally appeared before him and signed the documents; when the clients later confirmed with the attorney their rejection of the settlement offers, the attorney failed to inform them that he had sent the executed releases on which he had forged their signatures, witnessed their signatures, and affixed jurats; mitigation included the attorney's admission of wrongdoing and lack of prior discipline); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award in order to mislead his partner; the attorney then lied to the OAE about the

arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Gasper, 149 N.J. 20 (1997) (reprimand for attorney who provided his client with a court order he had forged, which purported to grant the relief the client sought; the attorney, however, had never even filed a complaint in the client's case); In re Homan, 195 N.J. 185 (2008) (censure for attorney who fabricated a promissory note reflecting a loan to him from a client, forged the signature of the client's attorney-in-fact, and gave the note to the OAE during the investigation of a grievance against him; the attorney told the OAE that the note was genuine and that it had been executed contemporaneously with its creation; ultimately, the attorney admitted his impropriety to the OAE; extremely compelling mitigating factors considered, including the attorney's impeccable forty-year professional record, the legitimacy of the loan transaction listed on the note, and the fact that the attorney's fabrication of the note was prompted by his panic at being contacted by the OAE and his embarrassment over his failure to prepare the note contemporaneously with the loan); In re Brollesy, 217 N.J. 307 (2014) (three-month suspension in a consent to discipline matter for an attorney who

misled his client, a Swedish pharmaceutical company, that he had obtained visa-approval for one of the company's top-level executives to begin working in the United States; although the attorney had filed an initial application for the visa, he took no further action thereafter and failed to keep the client informed about the status of the case; in order to cover up his inaction, the attorney lied to the client, fabricated a letter purportedly from the United States Embassy, and forged the signature of a fictitious United States Consul to it, in violation of RPC 8.4(c); violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) also found; mitigation included the attorney's twenty years at the bar without prior discipline and his ready admission of wrongdoing by entering into a disciplinary stipulation); In re Yates, 212 N.J. 188 (2012) (three-month suspension for attorney who allowed the statute of limitations to expire on a medical malpractice claim and hid that fact from the client and his firm by stalling all communications with the client, until eventually fabricating a $600,000 settlement agreement; in mitigation, the attorney had a thirty-year career with no disciplinary record and cooperated with the OAE by entering into a stipulation); In re Kasdan, 115 N.J. 473 (1989) (three-month suspension for misconduct in six matters, including numerous misrepresentations to a client that a complaint had

been filed and preparation and delivery of a false pleading to the client; in another case, the attorney concealed from the client the fact that the case was dismissed due to her failure to answer interrogatories; she then repeatedly misrepresented the status of the case and fabricated trial dates to mislead the client; in two other cases, a real estate closing and a custody matter, the attorney ignored the clients' numerous requests for information; in two other real estate matters, she engaged in gross neglect when closing title without securing payment of the purchase price from her clients; she also knowingly delivered to the seller's attorney a trust account check that turned out to be drawn against insufficient funds); In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters; in one matter, for a period of five months, the attorney engaged in an elaborate scheme to mislead his clients that, although he had subpoenaed a witness, the witness was not cooperating; to "stall" the client the attorney prepared a motion for sanctions against the witness, which he showed the client but never filed with the court; he then informed the client that the judge had declined to impose sanctions; thereafter, the attorney traveled three hours with his client to a non-existent deposition, feigned surprise when the witness did not appear, and then traveled to the courthouse purportedly to advise the judge of

the witness' failure to appear at the deposition; the attorney was also found guilty of a pattern of neglect, lack of diligence, failure to communicate with clients, failure to abide by discovery deadlines contained in a court order, failure to abide by the clients' decisions concerning the representation, and a pattern of misrepresentations; although the attorney's conduct involved only four matters, the six-month suspension was predicated on his pattern of deceit); In re Morell, 180 N.J. 153 (2004) (reciprocal discipline matter; one-year suspension for attorney who told elaborate lies to the client about the status of the case and fabricated documents, including a court notice and a settlement statement for his clients' signature); In re Weingart, 127 N.J. 1 (1992) (two-year suspension, all but six months of which were suspended; the attorney lied to his client about the status of the case and prepared and submitted to his client, to the Office of the Attorney General, and to the Administrative Office of the Courts a fictitious complaint to mislead the client that a lawsuit had been filed; the attorney was also found guilty of lack of diligence, failure to communicate, dishonesty and misrepresentation, and conduct prejudicial to the administration of justice); In re Penn, 172 N.J. 38 (2002) (three-year suspension in a default matter for attorney who failed to file an answer in a foreclosure action,

thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible); and In re Yacavino, 100 N.J. 50 (1985) (three-year suspension for attorney who prepared and presented to his clients two fictitious orders of adoption to conceal his neglect in failing to advance an uncomplicated adoption matter for nineteen months; the attorney misrepresented the status of the matter to his clients on several occasions; in mitigation, the Court considered the absence of any purpose of self-enrichment, the aberrational character of the attorney's behavior, and his prompt and full cooperation with law enforcement and disciplinary matters).

Respondent's misconduct is also akin to disciplinary precedent for misrepresentations made by attorneys to third parties. Attorneys found guilty of such misrepresentations generally have received reprimands. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.4(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014)

(attorney misrepresented to her employer, for five years, that she had taken steps to pass the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement from the employer for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation considered); In re Liptak, 217 N.J. 18 (2014) (attorney misrepresented to a mortgage broker the source of funds she was holding in her trust account for a real estate transaction; the attorney also committed recordkeeping violations; compelling mitigation considered); In re Lowenstein, 190 N.J. 58 (2007) (attorney failed to notify an insurance company of the existence of a lien that was required to be satisfied out of the settlement proceeds; the attorney's intent was to avoid the satisfaction of the lien); and In re Agrait, 171 N.J. 1 (2002) (attorney listed $16,000 on a RESPA as a deposit required to be held in escrow, despite never having collected those funds for the closing; the attorney also failed to disclose a prohibited second mortgage to the lender). But see In re Otlowski, 220 N.J. 217 (2015) (censure imposed on attorney who had misrepresented to both his client's lender and to the OAE that funds belonging to the lender and co-lenders, which had been deposited into the attorney's trust account, were frozen by a court order when, to the contrary, they had been disbursed to

various parties; the attorney also made misrepresentations on an application for professional liability insurance; violations of RPC 8.1(a) and RPC 8.4(c); mitigating factors included the passage of time, the absence of a disciplinary history despite the attorney's lengthy career, and his public service and charitable activities).

Terms of suspension have been imposed where attorneys have deceived either their law firm or a government agency. See, e.g., In re Carmel, 219 N.J. 539 (2014) (three-month suspension for attorney who attempted to perpetrate a fraud on the IRS; in connection with a foreclosure action on behalf of a client bank, the attorney fabricated a lis pendens document, back-dated it, and affixed a court's seal to it in an attempt to lead the IRS to believe that its lien was "junior" to the bank's lien; mitigating factors were that the attorney lacked an ethics history and that he personally paid the IRS lien, with interest, to extinguish the lien); and In re Day, 217 N.J. 280 (2014) (three-month suspension for attorney who violated RPC 8.4(c) by grossly inflating the time that he had spent doing legal work for clients to cover up time that he was not in the office; the attorney submitted time entries indicating that he attended depositions on fifty-one dates, when he had done so on only twenty occasions; when he reviewed the firm's pre-bills, he crossed off the time that he

had not spent on the files, but then consciously avoided verifying the accuracy of the final bills, which were inaccurate; when the firm discovered the inaccurate billing, it reimbursed approximately $123,000 to the affected clients; we found that, although the attorney's misrepresentations to the law firm were not undertaken with an intent to deceive the clients, his dishonest conduct was prolonged and pervasive and calculated to serve his own financial ends; mitigating factors included the attorney's involvement in numerous activities for the betterment of his community; the passage of seven years since the misconduct took place; and the attorney's unblemished disciplinary history; he was no longer practicing law).

Here, respondent's misconduct – making an intentional misrepresentation to a government agency – is also comparable to making misrepresentations on HUD-1 forms in connection with real estate transactions, as in Agrait, above. The discipline imposed for misrepresentations on closing documents has ranged from a reprimand to a term of suspension, depending on the seriousness of the conduct, the presence of other ethics violations, the harm to the clients or third parties, the attorney's disciplinary history, and mitigating or aggravating factors. See, e.g., In re Barrett, 207 N.J. 34 (2011). In that case, the attorney engaged in misrepresentations in connection with a real

estate closing in which the homeowners' property was in foreclosure. In the Matter of Dennis J. Barrett, DRB 10-435 (June 3, 2011) (slip op. at 2). In an effort to "save their home," the homeowners engaged the services of a mortgage broker who, in turn, located an investor to buy their property, lease it back to them, and sell the property to them at a later date. Id. at 2-3. The attorney represented the investor; the homeowners were not represented. Id. at 3. The attorney admitted that he failed in his duty to disburse the funds in accordance with the settlement statement. Id. at 4. He certified that the homeowners had received $60,992.54, when he had disbursed only $8,700 to them. Ibid. Further, he certified that the investor brought $29,346 to the closing, when, in fact, he provided no funds. Ibid. The attorney, who had no record of discipline, was reprimanded for his violation of RPC 8.4(c). See also, In re Mulder, 205 N.J. 71 (2011) (reprimand for attorney who certified that the HUD-1 he prepared was a "true and accurate account of the funds disbursed or to be disbursed as part of the settlement of this transaction;" specifically, the attorney certified that a $41,000 sum listed on the HUD-1 was to satisfy a second mortgage; in fact, there was no second mortgage encumbering the property; the attorney's recklessness in either making or not detecting other inaccuracies on the HUD-1, on the deed, and on

the affidavit of title was viewed as an aggravating factor; mitigating circumstances justified only a reprimand); In re Spector, 157 N.J. 530 (1999) (reprimand imposed on attorney who concealed secondary financing to the lender through the use of dual HUD-1 statements, Fannie Mae affidavits, and certifications); In re Gahwyler, 208 N.J. 353 (2011) ("strong" censure imposed on attorney who made multiple misrepresentations on a HUD-1, including the amount of cash provided and received at closing; attorney also represented the putative buyers and sellers in the transaction, a violation of RPC 1.7(a)(1) and (b); mitigating factors included his unblemished disciplinary record of more than twenty years, his civic involvement, and the lack of personal gain); In re Khorozian, 205 N.J. 5 (2011) (censure imposed on attorney who represented the buyer in a fraudulent transaction in which a "straw buyer" bought the seller's property in name only, with the understanding that the seller would continue to reside there and would repurchase the property after one year; the attorney prepared four distinct HUD-1s, two of which contained misrepresentations of some form, such as concealing secondary financing or misstating the amount of funds that the buyer had contributed to the acquisition of the property; in aggravation, the attorney changed the entries on the documents after the parties had signed them); In re

Nihamin, 217 N.J. 616 (2014) (three-month suspension for attorney who prepared HUD-1s that falsely indicated that earnest money deposits had been made and who also disbursed loan proceeds not in accordance with the lenders' instructions; prior admonition); In re De La Carrera, 181 N.J. 296 (2004) (three-month suspension in a default case in which the attorney, in one real estate matter, failed to disclose to the lender or on the HUD-1 the existence of a secondary mortgage taken by the sellers from the buyers, a practice prohibited by the lender; in two other matters, the attorney disbursed funds prior to receiving wire transfers, resulting in the negligent invasion of clients' trust funds); In re Nowak, 159 N.J. 520 (1999) (three-month suspension for attorney who prepared two HUD-1s that failed to disclose secondary financing and misrepresented the sale price and other information; the attorney also engaged in a conflict of interest by arranging for a loan from one client to another and by representing both the lender (holder of a second mortgage) and the buyers/borrowers); In re Swidler, 205 N.J. 260 (2011) (six-month suspension imposed in a default matter; in a real estate transaction, the attorney represented both parties without curing a conflict of interest; the attorney acted dishonestly in a subsequent transfer of title to property; specifically, in the first transaction, the buyer, Rai, gave a mortgage to Storcella,

the seller; the attorney, who represented both parties, did not record the mortgage; later, the attorney represented Rai in the transfer of title to Rai's father, a transaction of which Storcella was unaware; the attorney did not disclose to the title company that there was an open mortgage of record; the attorney was also guilty of grossly neglecting Storcella's interests, depositing a check for the transaction in his business account, rather than his trust account, and failing to cooperate with disciplinary authorities; prior reprimand and three-month suspension); In re Fink, 141 N.J. 231 (1995) (six-month suspension for attorney who failed to disclose the existence of secondary financing in five residential real estate transactions, prepared and took the acknowledgment on false HUD-1 statements, affidavits of title, and Fannie Mae affidavits and agreements, and failed to witness a power of attorney); In re Newton, 157 N.J. 526 (1999) (one-year suspension for attorney who prepared false and misleading HUD-1 statements, took a false jurat, and engaged in multiple conflicts of interest in real estate transactions); and In re Frost, 156 N.J. 416 (1998) (two-year suspension for attorney who prepared misleading closing documents, including the note and mortgage, the Fannie Mae affidavit, the affidavit of title, and the settlement statement; the attorney also breached an escrow agreement and failed to

honor closing instructions; the attorney's ethics history included two private reprimands, a three-month suspension, and a six-month suspension).

The OAE and respondent argue for a three to six-month term of suspension and a reprimand, respectively. In support of a suspension, the OAE first cites In re Adler, 177 N.J. 605 (2003). In that case, which came before us on a motion for reciprocal discipline, the attorney, who had no disciplinary history, had entered a guilty plea in New York to the same offense as respondent – misdemeanor offering a false instrument for filing. In the Matter of Steven A. Adler, DRB 03-118 (July 15, 2003) (slip op. at 1-2). The attorney had forged a signature on a deed, and then notarized the forgery, in order to "streamline" a real estate transaction, for the benefit of his client, after the sellers had died. Id. at 3. He also forged signatures on ancillary documents required to close the transaction. Id. at 4. For his offense, he received a conditional discharge and was ordered to pay $9,200 in restitution to the heir to the sellers. Id. at 2. He was subsequently suspended in New York for one year. Id. at 1.

We found, in aggravation, that respondent's guilty plea in New York did "not fully reflect the scope of [his] misconduct," which also included the creation of a prior fictitious real

estate transaction, gilded by subsequent lies, in an attempt to "cover his misdeeds." Id. at 5. Additionally, there was evidence that the attorney's misconduct caused actual harm to an innocent third party – the heir to the sellers - whose Medicaid coverage and a necessary surgery were both delayed due to the attorney's deceit. Ibid. The Court agreed that a one-year suspension was proper.

Next, the OAE cites the companion cases of In re Chilewich, 192 N.J. 221 (2007), and In re Sorkin, 192 N.J. 76 (2007), in support of a term of suspension. In that combined decision, which came before us on separate motions for final discipline, the attorneys, who had no disciplinary history, both had entered guilty pleas in New York to felony-level offering of a false instrument for filing, a more egregious offense than respondent's. In the Matter of Daniel Seth Chilewich/In the Matter of Olga Sorkin, DRB 06-281 and DRB 06-324 (March 20, 2007) (slip op. at 2-3). The attorneys had been the subject of a ninety-three count indictment, charging a criminal enterprise spanning from 1995 through 2000; specifically, while practicing personal injury law, they had engaged in an extensive "running scheme," whereby New York City hospital employees were systematically bribed to disclose the identities of accident victims and to refer them to the attorneys. Id. at 3. They then

filed false retainer statements with the Office of Court Administration in an attempt to cover up their larger scheme. For their offenses, the attorneys each were sentenced to five years' probation and were ordered to forfeit a combined $125,000. Id. at 6,9. They were subsequently disbarred in New York.[3] Id. at 7,9. The attorneys admitted to using illegal "runners" on a combined seventy occasions. Id. at 8,10.

We found, in aggravation, that the scope of the running scheme employed by Chilewich and Sorkin, combined with the blatant misrepresentations they had made to courts regarding the origins of their cases, mandated the imposition of one-year suspensions. Id. at 21-23. The Court agreed.

The OAE also cites In re Filosa, 220 N.J. 28 (2014), which came before us on a motion for reciprocal discipline. The attorney, who had no disciplinary history, had been found guilty by New York disciplinary authorities of violating the equivalent of New Jersey RPC 3.3(a)(4) (a lawyer shall not knowingly offer evidence that the lawyer knows to be false), RPC 3.4(a) (a lawyer shall not unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or

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[3] In New York, a disbarred attorney may seek reinstatement seven years after the effective date of the disbarment.

assist another person to do any such act), RPC 3.4(b) (a lawyer shall not falsify evidence, counsel or assist a witness to testify falsely), RPC 4.1(a) (a lawyer shall not knowingly make a false statement of material fact or law to a third person), RPC 8.4(a) (conduct that violates the Rules of Professional Conduct), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). In the Matter of Gregory N. Filosa, DRB 14-108 (July 30, 2014) (slip op. at 1-2). In an employment discrimination lawsuit, the attorney offered a false expert report regarding damages, assisted his client to testify falsely at a deposition, and lied to opposing counsel and to the court about knowing of any improprieties by either his client or his firm. Id. at 7-8,15. When his adversary ultimately confronted him with the truth, Filosa "acted indignantly, denied any wrongdoing, and threatened the adversary with sanctions." Id. at 8,21. We found no compelling reason to deviate from the one-year suspension that New York had imposed. Ibid. The Court agreed.

Finally, the OAE relies on In re Fisher, 185 N.J. 238 (2005), also a motion for reciprocal discipline. There, the attorney, who had previously been suspended in New Jersey for lack of diligence, failure to communicate with a client,

conflict of interest, failure to maintain a bona fide office, and failure to cooperate with disciplinary authorities, had been convicted in Pennsylvania of the crimes of insurance fraud, forgery, and conspiracy. In the Matter of Robert S. Fisher, DRB 05-077 (June 21, 2005) (slip op. at 1-3). After his girlfriend's car, which contained her $3,500 laptop computer, was stolen, the attorney had a friend create a fraudulent receipt for the laptop, and then aided his girlfriend in submitting a $3,500 claim, including the fraudulent receipt, to her insurance carrier. Id. at 2-3. When the insurance carrier took no action on the claim, the attorney sued the insurer, despite his knowledge that the receipt had been fabricated. Id. at 3. For his offenses, he was sentenced to 200 hours of community service and suspended from the practice of law in Pennsylvania for one year. Id. at 4-5. We agreed that a retroactive one-year suspension was the appropriate quantum of discipline, and required that the attorney be reinstated in Pennsylvania before he could seek reinstatement in New Jersey. Id. at 11. The Court agreed.

In turn, in support of a reprimand, respondent cites In re Strupp, 147 N.J. 267 (1997). In that case, the attorney, who had no disciplinary history, was reprimanded for falsely representing to a court that he was a member of a New Jersey law

firm that did not exist; the attorney never took steps to formalize what he had hoped would be a partnership with another lawyer; also, the attorney failed to maintain a bona fide office in New Jersey and was ineligible to practice law because he had represented, in the New Jersey Lawyers' Fund for Client Protection forms, since 1990, that he was retired. In the Matter of Andrew D. Strupp, DRB 96-205 (September 18, 1996) (slip op. at 1-4).

Next, respondent cites In re Goore, 140 N.J. 72 (1995). In that case, the attorney, who had previously been reprimanded, was again reprimanded for recordkeeping violations, lack of diligence, failure to communicate with a client, failure to promptly disburse client funds from his trust account, and false statements of material fact to a bankruptcy court, made via affirmative misrepresentations of his legal fees to that court. In the Matter of Hamlet E. Goore, Jr., DRB 93-114 (January 28, 1994) (slip op. at 13-16).

Third, respondent cites In re Lewis, 138 N.J. 33 (1994), in which we recommended the imposition of a reprimand on the attorney, who had no prior discipline, for intentionally attempting to mislead a municipal court, for his own personal gain, in a landlord-tenant matter. In the Matter of Stanley M. Lewis, DRB 93-159 (January 11, 1994) (slip op. at 11-12).

Specifically, the attorney introduced into evidence a false document that purported to prove "that a heating problem in an apartment of which he was the owner and landlord had been corrected prior to the issuance of a summons." Id. at 1. The Court disagreed with our recommendation, imposing only an admonition.

Finally, respondent cites In re Turner, 83 N.J. 536 (1980). In that case, the attorney, who had no prior discipline, was reprimanded for improperly diverting funds from a corporate client in financial distress. Id. at 538. Specifically, he failed to inform a court, which was considering placing his client into receivership, that he had received a $6,000 check from the client, during the lunch break of the very court proceeding, including $1,200 owed to him for overdue legal fees. Id. at 538-39.

In the matter now before us, the OAE argues that "respondent owed his employer and the tax payers [sic] of New Jersey better," and that, because his conduct occurred while he was employed in a position as a public official, the quantum of discipline to be imposed should be enhanced. Respondent argues that there is a complete absence of aggravation in his case.

In mitigation, both the OAE and respondent point out that respondent has no disciplinary history in over thirty years at

the bar. Additionally, respondent asserts that the following mitigating factors should be considered: his good reputation, character, and prior trustworthy professional conduct; the lack of any personal gain from the misconduct; his ready admission of wrongdoing and full cooperation with law enforcement and the OAE; the unlikelihood of repeat offenses; the absence of any injury to the client (the Port Authority suffered no loss); the passage of time since the misconduct occurred; and his sincere remorse for his actions.

The OAE notes that respondent did not notify disciplinary authorities of his criminal charges or the disposition of his matter, but cooperated with the OAE by submitting documents relating to his conviction to the OAE through his counsel. R. 1:20-13(a)(1), however, requires attorneys to report to the OAE, in writing, when they have been charged with an indictable offense and, thereafter, to inform the OAE of the disposition of the matter. There is no evidence in the record that respondent was charged in New York with the equivalent of an indictable offense. Rather, his charge was a misdemeanor (the equivalent of a non-indictable offense in New Jersey), and was filed on the same date that he entered his guilty plea, March 7, 2014. Thus, respondent had no duty to report the fact that he was charged with the offense or the outcome thereof.

Respondent's transgression is comparable to that of the attorneys in Sunberg, Gasper, and Chatterjee, where misrepresentations were made by attorneys to their clients or their employers. In respondent's case, given his status as in-house counsel, his client and employer were one and the same. In our view, the suspension cases that the OAE cites are not applicable, as respondent's misconduct pales in comparison to that of the attorneys in those cases, where there was actual harm to an innocent third party (Adler); extensive criminal conduct, in a complex conspiracy, driven by pecuniary gain (Chilewich and Sorkin); egregious misrepresentations to adversaries and a court, for the benefit of a client, exacerbated by a refusal to concede the truth (Filosa); and the fabrication of evidence, for self-interest, in the pursuit of an insurance claim, worsened by a frivolous lawsuit after the claim was properly denied by the carrier (Fisher).

A final component in crafting the appropriate discipline in this matter is an analysis of aggravating and mitigating factors. We consider, in aggravation, that respondent committed this misconduct while serving as counsel to the Port Authority, a government agency. Although the OAE's emphasis on respondent's position of public trust is proper, the record contains no clear and convincing evidence of actual harm to the Port Authority.

Moreover, the Inspector General's claim that the Port Authority was unable to realize a nearly $7.5 million discount on Weil's legal fees is contrary to the language in the very documents underlying the Port Authority's retention of Weil. Those documents evidenced no such discount, a fact conspicuously unaddressed by the Inspector General in his letter to disciplinary authorities. Also left unaddressed was the language contained within the four corners of the retainer agreement between Weil and the Port Authority and within Buchbinder's representations, contained in his confidential memorandum to the Executive Director, which were made two years before respondent fabricated the discount letter for the Port Authority's files. The Inspector General's letter was sent within days of respondent's guilty plea, and prior to Buchbinder's resignation from the Port Authority. Respondent suggests that Buchbinder was attempting to make respondent the scapegoat for Buchbinder's own dishonest actions. Although Buchbinder's motives may be questionable, prompting some sympathy toward respondent on our part, the fact remains that respondent engaged in dishonest, unethical conduct.

As established in Lunetta, we may consider "mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." Respondent has submitted

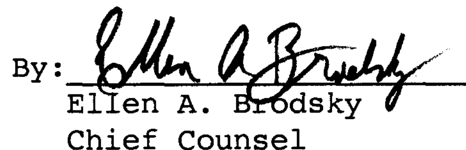
numerous character letters that can be described as truly exceptional, and warrant the finding of compelling mitigation. In further mitigation, respondent entered a guilty plea acknowledging his criminal conduct, which occurred over seven years ago. Moreover, respondent has no disciplinary history after over 30 years at the bar.

In our view, in the context of the applicable case law and the presence of compelling mitigation that clearly outweighs the sole aggravating factor, a reprimand is the proper quantum of discipline for respondent's misconduct.

Member Gallipoli voted to impose a censure. Member Zmirich voted to impose a three-month 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

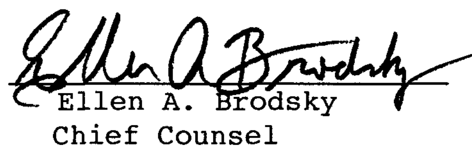
In the Matter of Christopher M. Hartwyk
Docket No. DRB 16-266

Argued: January 19, 2017

Decided: April 4, 2017

Disposition: Reprimand

Members	Reprimand	Censure	Three-month Suspension
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich			X
Total:	7	1	1


Ellen A. Brodsky
Chief Counsel