SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 16-328
District Docket Nos. XIV-2012-0133E
and XIV-2015-0481E

IN THE MATTER OF	:
MICHAEL LEVITIS	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 19, 2017

Decided: May 12, 2017

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

Respondent did not appear 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, following respondent's guilty pleas in the United States District Court, Eastern District of New York to knowingly and willfully making a false and fraudulent statement and representation in a matter related to political fundraising (18 U.S.C. §1001(a)(2) and 3551 et seq.) and, subsequently, in the

Southern District of New York, to conspiracy to commit mail and wire fraud (18 U.S.C. §1341) and conspiracy to commit wire fraud (18 U.S.C. §1343), violations of 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).

The OAE recommended that respondent be disbarred. We agree with the OAE's recommendation.

Respondent was admitted to the New Jersey and New York bars in 2000. On March 15, 2012, he was temporarily suspended in New Jersey, for his guilty plea to a violation of 18 U.S.C. §1001(a)(2). In re Levitis, 209 N.J. 424 (2012). In 2015, the Supreme Court of New York, Appellate Division, Second Department accepted respondent's resignation from the New York bar and ordered his disbarment. In the Matter of Michael Levitis, 131 A.D.3d 195 (2015).

In 2011, the United States Attorney (USA) for the Eastern District of New York filed an information charging that respondent "did knowingly and willfully make a materially false, fictitious and fraudulent statement and representation in a matter" in that he represented that he and John Doe, an individual whose identity is known to the USA, had never discussed holding a political fundraising event, when they had done so. On March 1, 2011,

respondent filed a waiver of indictment and entered a guilty plea before the Honorable Allyne R. Ross, U.S.D.J. He admitted that, on or about January 6, 2010, agents from the Federal Bureau of Investigation (FBI) appeared at his house and asked whether he discussed holding a political fund-raiser with "a certain person." Respondent admitted that he lied and told the FBI that he had not, when he had actually done so. Respondent's conduct had come to light as a result of an investigation into a State Senator.

On August 2, 2011, respondent was sentenced to three years' probation, and ordered to pay a $15,000 fine and a $100 special assessment.

While on probation, respondent committed additional criminal offenses. On April 8, 2014, he waived prosecution by indictment and consented to proceeding by way of information. On that same date, before the Honorable Paul G. Gardephe, U.S.D.J., United States District Court, Southern District of New York, he entered a guilty plea to one count of conspiracy to commit mail and wire fraud, and one count of conspiracy to commit wire fraud.

Respondent read into the record the following factual basis for his plea:

> [F]rom 2009 through April 2013, I along with others operated Mission Settlement Agency, a debt settlement company. During this period, I agreed with other employees of the company to defraud Mission Settlement Agency's customers by making misrepresentations about Mission's

> fees and results, among other things. Those misrepresentations were made for the purpose of obtaining money and property.
>
> As part of this conspiracy and to further the scheme to defraud, I and others knowingly mailed materials using the U.S. Postal Service and private carriers. For example, in or about 2011 I knowingly caused a solicitation letter to be mailed that contained fraudulent and deceptive information.
>
> In addition, as part of the conspiracy and to further the scheme to defraud, I and others transmitted various writings, pictures, and sounds by means of wire, radio, and television in interstate and foreign commerce.
>
> I committed these acts in Manhattan. I engaged in this conduct knowingly and intentionally.
>
> Also . . . from about 2011 through 2013, I along with others operated Alpha Debt Settlement, also a debt settlement company. During this period I agreed with other employees of the company to defraud Alpha Debt Settlement customers by making misrepresentations about Alpha's fees and results, among other things. Those misrepresentations were made for the purpose of obtaining money and property.
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> [Ex.J26-9 to J27-8.]

Respondent's statement added that, on May 11, 2012, he e-mailed certain Alpha employees, instructing them to make misrepresentations to Alpha customers and, as part of this scheme, used the same methods described above.

Respondent admitted that he took advantage of people who were struggling financially and "caused them financial loss and

hardship." He apologized to the court, the government, his family, and the victims of his crimes.

At the November 19, 2014 sentencing, Judge Gardephe remarked that, although respondent's mother was listed as the owner of Mission, respondent was responsible for managing its daily operations, financing, hiring and terminating employees, and advertising and soliciting customers.

According to the judge, Mission purported to offer debt settlement services to consumers who were struggling with credit card debt. Mission told its clients it could convince the credit card companies to accept a fraction of the amount that they owed. For many clients, Mission never attempted to negotiate a reduction in their debt. Instead, it withdrew money from their bank accounts and did nothing to help them. Mission also lied about its fees, telling customers that there was no initial amount owed and that they would be charged only a $49 monthly administration fee. Yet, Mission took an initial fee of eighteen percent of the total amount the client owed, and took additional fees from funds that customers agreed could be automatically withdrawn from their bank accounts each month, believing that the funds were deposited into escrow accounts that later would be used to pay creditors as part of a negotiated settlement. However, of the $14 million that Mission collected from clients

between 2009 and 2013, only $4.4 million were paid to creditors. For more than 1200 clients, Mission collected $2.2 million and never paid a penny to their clients' creditors.

Judge Gardephe found that Mission employees also lied about the company's relationship with the federal government and one of three major credit card bureaus, telling prospective customers that it had obtained their credit information from a particular credit bureau. Mission's literature included the seal of the United States and referred to nonexistent offices and administrators. According to the judge, these were all lies.

Judge Gardephe added that Mission advised its customers to cease communicating with, or making payments to, credit card companies, and promised to arrange for their representation if they were sued. Respondent's advice had a devastating effect on the customers because Mission provided no services at all to hundreds of them. Mission sent none of the money it had collected from its customers to the creditors. This led to the customers' receipt of dunning letters and telephone calls from creditors, as well as the accrual of interest, which vastly increased the amount of the customers' debt and resulted in lawsuits, judgments, garnishment of wages, foreclosures, seizure of bank accounts, destruction of credit ratings, and bankruptcies.

The judge found that, in the wake of the 2008 recession, Mission preyed on people who had lost their jobs and had gotten into financial trouble - individuals with serious illnesses, single parents, retired individuals, and desperate people who were drowning in debt. The individuals were frantic to get control of their finances, believed Mission's lies, and trusted Mission to help them, but were "systematically betrayed." The judge underscored that the financial consequences of Mission's crimes will negatively impact its customers for years to come, preventing them from obtaining loans, mortgages, and credit cards; and causing emotional harm and pain, anxiety, stress, depression, and anger flowing from the continued negative financial consequences of Mission's criminal conduct.

During the sentencing hearing, respondent's counsel urged the court to consider respondent's good character. He noted that respondent had fled from Russia at an early age to escape religious oppression. His family arrived in Brooklyn, penniless. Thus, from the age of thirteen, he worked to help pay his family's rent. He quickly became the person on whom his family relied. He worked at various jobs to support his family while attending law school, from which he graduated at the age of twenty-two. He supports his entire family, including his ill

father, and his sister and niece, both of whom were victims of physical abuse.

Respondent's counsel argued for a lower sentence, claiming among other things, that respondent was a "remorseful and broken man," and deeply upset at the plight of his clients. His good qualities vis-à-vis his "awful criminal conduct," will "cause him to change. It will cause him to live a good life." He suggested a sixty-month alternative sentence.

Respondent apologized to the court, to his family, and to Mission's clients. He pledged to work to provide full restitution to his clients.

The Assistant United States Attorney (AUSA) pointed out that respondent and his companies tricked clients out of the little money they had. The clients went looking for help but, instead, Mission exploited them, and duped them into believing that Mission could cure their problems and settle their debts for a fraction of the amount owed because of respondent's special relationship with credit agencies and his special expertise. The AUSA pointed out that, for decades, respondent enjoyed a life of comfort and stability. He has a devoted family, immigration status, and a good education, and enjoyed a high-paying career as an attorney; yet, he hurt his clients by spending their money on

luxury cars, "a glitzy nightclub," and his own family's credit card bills.

In sentencing respondent, the judge considered the sentencing guidelines that provided for: (1) a three-level enhancement for respondent's role as a manager or supervisor of criminal activity that involved five or more participants or was otherwise extensive; (2) a sixteen-level enhancement to reflect that the loss amount was more than a million dollars but less than two-and-a-half million dollars; (3) a six-level enhancement to reflect that the offense involved 250 or more victims; and (4) a three-level reduction to reflect respondent's acceptance of responsibility for his acts. The judge considered further the "extraordinary fact" that the crime was directed at

> hundreds of desperate people drowning in debt, desperate to find a way out of their problem and [Mission's/respondent's] determination to extract from these people -- working people, immigrant people, unsophisticated people -- their last few dollars. That's what makes this special. That's what makes this crime extraordinary. And that's why it is deserving of a significant period of incarceration.
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> [Ex.K59-2 to K59-9.]

The judge found that respondent's motivation for committing the crime was simple greed. He had a highly successful law practice with no need to engage in the fraud. The "hard-earned money" that he stole from his desperate clients went, in part, to

fund a nightclub he owned and to pay for leases on Mercedes Benz automobiles and a Bentley.

Judge Gardephe also considered that, at the time respondent was sentenced to probation in the prior matter, he was in the midst of committing the crimes before him. Moreover, the criminal conduct took place on a daily basis over a span of four years. It was not one bad decision, but reflected "years of intentional fraudulent activity."

The judge concluded that a significant period of incarceration was necessary to deter respondent from committing future crimes, and to serve as a general deterrent. The judge did not find that respondent's acts of charity, kindness to friends and family, and cooperation with prosecutors and regulators was so extraordinary or significant to mitigate his extremely serious crimes or to justify a departure or variance from the guideline sentencing range. The judge, thus, imposed sixty months' imprisonment on count one and forty-eight months' imprisonment on count two, to run consecutively; three years of supervised release on each count to run concurrently; $2,196,522 in restitution, a $15,000 fine, and a $200 special assessment.

The OAE argued that attorneys guilty of fraud have received either lengthy suspensions or have been disbarred. To support its argument, the OAE cited In re Bultmeyer, 224 N.J. 145 (2016)

(attorney disbarred for conspiracy to commit wire fraud causing losses of more than seven million dollars and impacting approximately 179 victims); In re Marino, 217 N.J. 351 (2014) (attorney disbarred for misprision of a felony; the company that employed the attorney perpetrated a fraud on investors, causing approximately 392 of them to lose over $309 million; the court ordered the attorney to make restitution of $60 million jointly and severally with the other defendants); In re Mueller, 218 N.J. 3 (2014) (three-year retroactive suspension for attorney guilty of conspiracy to commit wire fraud; the attorney conspired to defraud real estate investors by falsely promising large returns on their million-dollar investment, while he had wired the funds to co-conspirators who depleted the funds for their personal expenses); and In re Abrams, 186 N.J. 588 (2006) (three-year retroactive suspension for attorney guilty of two counts of wire fraud; the attorney overstated the value of the accounts receivable of a company of which he was part owner, whose assets were bought by another company and then fraudulently paid debts of the sold company with assets of the buying company, resulting in a $200,000 loss).

The OAE maintained that this case is similar to the Marino and Bultmeyer cases in respect of both the staggering losses to victims and the sentences the attorneys received. According to

the OAE, the very serious nature of respondent's fraud, the stunning financial losses to vulnerable victims, and respondent's prior conviction for a violation of 18 U.S.C. §1001(a)(2), which alone would warrant a one to three-year suspension,[1] requires his disbarment.

Following a review of the record, we determine to grant the OAE's motion. 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). Respondent's guilty plea to violations of knowingly and willfully making a false and fraudulent statement and representation in a matter related to political fundraising, 18 U.S.C. §1001(a)(2), conspiracy to commit mail and wire fraud, 18 U.S.C. §1341, and conspiracy to commit wire fraud, 18 U.S.C. §1343, constitute violations of RPC 8.4(b) and RPC 8.4(c). 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.

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[1] Here, the OAE cited In re Vargas, 170 N.J. 255 (2002) (three-year retroactive suspension for falsification of Immigration and Naturalization Service (INS) documents); In re Silverblatt, 142 N.J. 635 (1995) (three-year retroactive suspension for attorney guilty of filing false documents with the INS); and In re Fox, 221 N.J. 263 (2015) (one-year retroactive suspension for attorney guilty of making false, fictitious, and fraudulent statements to the Department of Housing and Urban Development).

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) (citation omitted). 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 assessing the appropriate discipline to impose, we consider that, first, respondent pleaded guilty to making false statements

to FBI agents during the course of an investigation relating to improper fundraising. Then, while on probation for that offense, he engaged in a long-term fraud that transpired over a period of four years. As a result of his misrepresentations, false statements, and false advertising, he duped hundreds and hundreds of Mission and Alpha customers by misrepresenting the fees the companies would charge and the results that would be achieved for the customers.

As the judge detailed during respondent's sentencing, respondent preyed on individuals who already were struggling financially. The companies, which he managed, purportedly deposited their clients' funds in escrow, under the guise of settling or lowering their debts. Instead, in many instances, the clients' debts were not satisfied, leaving them in significantly worse financial positions than they were initially. All the while, respondent and his family enjoyed the benefit of the pilfered funds by a lifestyle of excess and extravagance. In this context, we consider respondent's conduct to be particularly cruel, visiting dire consequences upon his victims.

Cases involving criminal fraud or conspiracy to commit fraud have resulted in lengthy suspensions or disbarment. In In re Mueller, supra, 218 N.J. 3 (three-year retroactive suspension), the attorney made affirmative misrepresentations to aid his co-conspirators to defraud real estate investors to obtain funds from them for a real

estate development project. Mueller wire-transferred the invested funds (approximately $1 million) from his trust account to co-conspirators. The purpose for which the funds were purportedly earmarked was not fulfilled. The co-conspirators depleted almost all of the funds for personal and other expenses, unrelated to the development project. In the Matter of Erik W. Mueller, DRB 13-324 (February 12, 2014) (slip op. at 3-4).

Mueller also engaged in lies to lull investors to believe that their funds invested in the purported development project were secure. He authored a letter misrepresenting that he was holding $834,000 in his trust account. He also faxed a false trust account statement to an investor that misrepresented that he held a balance of $612,461 in his trust account. In addition, he notarized documents for which he did not witness the execution. The documents represented a false lien and note on which the grantors' names had been forged.

Although, initially, Mueller believed that the development project was legitimate, he later clearly learned otherwise, but, nevertheless, lent his name and his position of trust to help defraud investors. His misconduct spanned an eleven-month period. Mueller was sentenced to a five-month term of imprisonment and ordered to pay $25,500 in restitution.

In In re Abrams, supra, 186 N.J. 588 (three-year retroactive suspension), the attorney entered a guilty plea 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. Abrams instructed an administrator to fraudulently overstate Woodland's accounts receivable. In the Matter of Andrew C. Abrams, DRB 06-027 (April 28, 2006) (slip op. at 3).

After the sale, Abrams continued to work for Thermadyne and used Thermadyne's funds for, among other things, the satisfaction of Woodland's previous debt to the IRS and other Woodland liabilities that were not assumed by Thermadyne under the purchase agreement.

Abrams further committed wire fraud when he faxed a document from Philadelphia to Thermadyne, in Missouri. The facsimile, sent during the final stages of negotiations, grossly overstated to Thermadyne the "collectibility" of Woodland's other accounts receivable. The information, which was wire-transferred from New York to Philadelphia, induced Thermadyne to purchase Woodland's assets for $1.508 million.

Aggravating factors were the attorney's role as a primary participant in the scheme to defraud Thermadyne out of $200,000; and his motivation of self-gain. In mitigation, Abrams had no disciplinary history in New Jersey, cooperated fully with the federal government, and repaid Thermadyne.

In In re Noce, 179 N.J. 531 (2004), the attorney received a three-year retroactive suspension based on his conviction of conspiracy to commit mail fraud. The attorney and others participated in a scheme to defraud the Department of Housing and Urban Development (HUD) by assisting in the procurement of home mortgage loans for unqualified buyers, from which HUD suffered losses of more than $2.4 million. The attorney was the settlement agent and closing attorney for unqualified buyers in fifty closings. He knowingly certified HUD-1 statements and gift transfer certifications that contained misrepresentations. The attorney was paid only his regular fee and cooperated fully with the government.

In In re Marino, supra, 217 N.J. 351, the attorney was disbarred for his participation in a fraud that resulted in a loss of over $309 million to 288 investors. Marino affirmatively assisted his brother and another co-conspirator in the fraud, which involved, among other things, the creation of a false financial history for a failing hedge fund to procure contributions from potential investors. Marino's participation included assisting in the concealment of the fraud perpetrated on investors by administering a fraudulent accounting firm that hid the fund's significant losses, camouflaging the fund's true financial information, and drafting versions of a phony purchase and sale agreement for the non-existent accounting firm. In the

Matter of Matthew A. Marino, DRB 13-135 (December 10, 2013) (slip op. at 3-8).

The sentencing judge found that Marino was aware of the fraud as it was being perpetrated on the investors, that he helped conceal it rather than report it to the authorities, and that the losses could have been avoided or significantly limited if he had reported the fraudulent activity to law enforcement. The judge pointed out that Marino's actions "left individuals, some 'in the twilight of their life, suddenly destitute.'"

Marino was ordered to make restitution of $60 million, jointly and severally with the other defendants involved in the fraud. That amount was the sum that investors had been induced to contribute to the failing hedge fund during the period that Marino admitted knowing about and concealing the fraud.

In In re Bultmeyer, supra, 224 N.J. 145, the attorney owned and operated a payroll company, Ameripay, LLC, that handled payroll and tax withholding services for a number of private and public entities throughout New Jersey. Ameripay solicited customers to use its payroll and tax withholding services. In the Matter of Paul G. Bultmeyer, DRB 15-056 (September 15, 2015) (slip op. at 3-4). Public and private entities entrusted Ameripay with millions of dollars to pay their obligations. Bultmeyer and another principal also owned a

company, Sherbourne Capital Management, purporting to be an investment company.

Bultmeyer was aware that millions of dollars were diverted from Ameripay and that Sherbourne investor funds were diverted to Ameripay to satisfy payroll and tax obligations. Thus, Sherbourne funds were misappropriated to satisfy Ameripay's shortfall.

Bultmeyer actively participated in the diversion of millions of dollars of public and private payroll, tax funds, and investor funds to subsidize the obligations of other clients and to pay Sherbourne's investors. He also purposefully provided false information to prospective investors to persuade them to invest monies with an unregistered investment company. His misconduct spanned a period of at least four-and-one-half years and resulted in substantial harm — particularly to various public entities.

Losses totaled more than seven million dollars and 179 victims were impacted by the scheme. Bultmeyer was ordered to pay restitution of $8,606,413. Bultmeyer's ongoing fraud did not stop until the SEC launched an investigation into Sherbourne's/Ameripay's activities. Bultmeyer's role in the improper diversion of Sherbourne's and Ameripay's funds had a far-reaching effect, impacting not only a number of public entities, including towns, but also the residents of those towns, who would be required to cover the shortfalls that were generated by his misconduct. In recommending Bultmeyer's disbarment,

we found that his conduct evinced such a defect of character that a period of suspension could not restore the public's trust in him.

Here, respondent's conduct resulted in losses totaling more than two million dollars and affected more than 200 individuals. His conduct was callous and merciless. Thus, respondent's character is as defective as Bultmeyer's. Indeed, respondent's conduct is even more egregious than Bultmeyer's because he preyed on individuals who were already experiencing financial problems. Rather than improve their financial circumstances, he plunged them deeper into debt. Respondent's motivation was sheer greed. Clearly, no period of suspension could restore the public's trust in respondent. Thus, we recommend respondent's disbarment.

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 Michael Levitis
Docket No. DRB 16-328

Decided: May 12, 2017

Disposition: Disbar

Members	Disbar	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