SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-428
District Docket No. XIV-2015-0497E

IN THE MATTER OF	
BARRY O. BOHMUELLER	
AN ATTORNEY AT LAW	

Decision

Argued: March 16, 2017

Decided: July 12, 2017

Reid A. Adler appeared on behalf of the Office of Attorney Ethics.

Carl D. Poplar appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following respondent's disbarment in Pennsylvania on January 23, 2015, for his violation of the Pennsylvania equivalents of New Jersey RPC 1.2(a) (failure to abide by the client's decisions concerning the scope and objectives of the representation); RPC 1.4(c) (failure to explain the matter to allow the client to

make informed decisions about the representation); RPC 1.5(e) (dividing a fee between lawyers not in the same firm); RPC 1.7(a)(2) (conflict of interest); RPC 5.1(c)(1) (ordering or ratifying another lawyer's unethical conduct); RPC 5.5(a)(2) (assisting a nonlawyer in the unauthorized practice of law); RPC 7.1(a)(1) (material misrepresentation about the lawyer's services); RPC 7.3(d) (compensating or giving something of value to a person to recommend the lawyer's employment by a client or as a reward for having made a recommendation resulting in the lawyer's employment by a client); RPC 8.4(a) (violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). The OAE seeks a suspension of one to three years. For the reasons expressed below, we determined to grant the motion and to impose a two-year suspension.

Respondent was admitted to the New Jersey bar in 1996 and the Pennsylvania bar in 1997. He has no history of discipline in New Jersey, but has been ineligible to practice in New Jersey since August 24, 2015, based on his failure to comply with continuing legal education requirements and, subsequently, on his failure to pay his annual assessment to the New Jersey

Lawyers' Fund for Client Protection and to comply with Interest on Lawyers Trust Account (IOLTA) requirements.

A Petition for Discipline was filed on April 8, 2011, by the Office of Disciplinary Counsel of Pennsylvania (ODC), charging respondent with the unauthorized practice of law by allowing lay persons to counsel his clients; failure to communicate with clients; fee sharing; conflict of interest; and conduct involving dishonesty, fraud, deceit and misrepresentation. On May 23, 2011, respondent filed an answer to the petition, denying any misconduct. After a disciplinary hearing, conducted over six days, the hearing committee in Pennsylvania recommended a two-year suspension. On March 3, 2014, the Disciplinary Board of the Supreme Court of Pennsylvania (PADB) issued its report and recommendation with the following findings of fact regarding respondent's conduct.

In 1999, respondent met Brian Newmark (Newmark), a nonlawyer who operated a business known as Estate Planning Advisors (EPA), which made sales presentations to senior citizens about living trusts. Newmark and respondent formed a relationship whereby Newmark promoted, marketed, and sold living trusts on behalf of respondent. Prior to operating EPA, Newmark engaged in similar activities for Advanced Legal Systems (ALS). At the time, Brett B. Weinstein, Esq., was a "referral attorney"

at ALS. Weinstein was a law school classmate of respondent and referred Newmark to him. Respondent partnered with EPA until 2004.

EPA marketed itself (and respondent) through direct mail and held seminars at restaurants where senior citizens were provided a free meal. EPA told attendees that probate was something they should avoid. EPA then would send a nonlawyer to the homes of senior citizens who had expressed an interest in living trusts to discuss estate planning.

Respondent made periodic payments to Newmark for his efforts to market and sell living trusts. Some payments were based on the number of clients EPA sent to respondent, and others were based on the amount of money Newmark "needed." EPA paid sales agents for every trust they sold. Once the living trust was established, EPA then marketed annuities to the client. EPA also paid its employees commissions for selling annuities.

Respondent provided Newmark with two form documents. On one document, titled "Explanation of Trust and Delivery of Trust," Newmark would select the name of the delivery agent (although the document stated that respondent had done so) to explain the trust in detail. The second document, titled "Pennsylvania Delivery Receipt and Checklist," stated that the delivery agent

was a representative of respondent's law office.[1] Respondent, however, did not supervise the agents who contacted the clients and sold the living trusts.

The Pennsylvania disciplinary proceeding contains the following facts in respect of the sale of the living trusts to clients.

Victoria Larson, presumably a delivery agent, a former ALS employee and a nonlawyer employee of EPA, went to the home of senior citizens to explain the benefits of living trusts, which she identified as probate avoidance, tax savings, attorney fee avoidance, and quicker distribution of assets. Larson wrote her name and telephone number on respondent's business card, which she distributed to potential clients, along with respondent's fee agreement. The fee agreement stated that respondent would provide a living trust for the client and contained a "Client Services" phone number. That number was EPA's direct line.

Larson also recorded personal information regarding a client's testamentary wishes and financial information on

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[1] A delivery agent typically "explained in detail to the consumer the meaning and significance of the various legal documents" that were delivered. The delivery agent obtained the client's signature on the two documents obtained from respondent's office.

documents titled "BOHMUELLER LAW OFFICES Confidential Information for Estate Plan." Larson did not obtain these forms from respondent, but, rather, from the EPA office. Larson also assisted clients in determining how to fund the trust. If Larson were asked a question she believed respondent should answer, she would contact him directly, but did so infrequently. Larson received commissions from EPA for the annuities she sold. Larson estimated that she delivered fifty to sixty living trusts over a three-year period, about one or two "in a good week."

One such client was Mary Lynch, who purchased a Bohmueller trust from EPA in 2001, when she was eighty-three-years-old. Lynch also purchased an annuity from Victoria Larson. The annuity would not begin to pay out until 2014, when Lynch would be ninety-six. Lynch was in the early stages of dementia in 2003. In 2004, when Lynch's son prepared her taxes, he realized that her bank account, which previously had a balance of $60,000 to $70,000, had only $104. Lynch could not account to her son for the depleted balance.

In 2001, Victoria Larson visited brothers Thomas and Arthur Walker at their home. She provided them with a brochure titled "Take Control of Tomorrow," and respondent's business card, on which she had written the phone number for EPA. The Walkers purchased a Bohmueller trust from Larson, who used

respondent's letterhead and paperwork. The Walkers never met with or spoke to respondent. Between 2000 and 2005, EPA also employed John Wight (Wight) as a delivery agent. Wight, too, is a former employee of ALS. Wight was the delivery agent for several of respondent's trusts. He received a commission from EPA if he sold an insurance product. Wight delivered the trust to the Walkers and explained some of the provisions to them. The Walkers also purchased over $3,000,000 in annuities.

Also in 2001, when Margie Brennan Trefz's parents, Gilbert and Joanne Brennan, were in their seventies, they obtained a Bohmueller revocable living trust. When Mr. Brennan was hospitalized in 2003, Victoria Larson brought the Brennans' redrafted powers of attorney to the hospital, accompanied by a cover letter, dated March 6, 2003, on Bohmueller letterhead, signed by a member of Weinstein's legal staff. Larson notarized the powers of attorney and discussed the changes with the Brennans. To Trefz's knowledge, her parents never discussed with respondent the changes to the powers of attorney, which stated: "RECORD AND RETURN TO: Weinstein Law Offices." At some point, Weinstein contacted Trefz, told her that "there were going to be potential clients calling" her, and asked whether she minded if "they" gave her phone number to potential clients "so that

[they] could ask questions about the practice and whether [they] should use them."

Glenn Larson (Glenn), a high school graduate, held the title of "Certified Senior Advisor" with EPA. He obtained that title after reading on his own and receiving four days of training. Glenn visited the homes of senior citizens daily to discuss the drawbacks of probate and to determine whether a living trust would be appropriate for them. Glenn referred most of his clients to respondent. He gathered information about the clients and their assets, and collected a check for attorney's fees in the range of $600 to $1,200. He also delivered the trust to, and reviewed the trust with, the clients. Glenn would bring the information about the client's assets to their homes, to discuss "their estate plan" and "any options they may need." His sole source of income was the commission he made on sales of annuities.

In 2001, Michael Ciccone, a nonlawyer employee of EPA, visited Margaret and Felix Miller. He advised them that a living trust was superior to a will. The Millers gave Ciccone a check payable to respondent and provided information on both the "Asset Worksheet" and the "Bohmueller Law Office Confidential Information for Estate Plan." Wight delivered the living trust to the Millers. Although Mrs. Miller did not understand the

documents Wight gave to her, she thought he was a lawyer who worked for respondent and was working for "our good." When the Millers asked Wight for his card, he gave them respondent's law office card with Wight's name and telephone number written on it. Wight did not disclose to the Millers that he was not an attorney and even allowed them to introduce him as a lawyer to their neighbors. The Millers neither met with nor spoke with respondent.

In 2001, Walter and Susan Gilmour were in their eighties. Their son, Walter Gilmour, Jr., lived with them as their caretaker. Mike Hamilton from an entity called The Patriot Group (TPG) sold the Gilmours a revocable living trust by telling them that, without the trust, only fifteen percent of their estate would remain after taxes and probate.[2] None of the Gilmours ever spoke with respondent. The Gilmours liquidated securities worth $2,800,000 to purchase four annuities. Steve Strope of TPG explained the terms of the trust to the Gilmours, and delivered the revocable living trust and other documents to them. The documents referred to Strope, who was an insurance salesperson, as a "representative of Bohmueller & Associates Law Offices."

[2] There is no further information about TPG in the record.

Mr. Gilmour believed respondent was a lawyer working with TPG, and that Strope was an estate planner and advisor.

From 1999 to 2002, Todd Garry worked for TPG, delivering Bohmueller living trusts. Subsequently, Garry worked as a delivery agent for Weinstein at American Family Heritage (AFH).[3] Garry delivered approximately 600 to 1,000 living trust binders.

Harcourt and Barbara Trimble bought a Bohmueller living trust in 2001, when they were eighty-nine and eighty-four-years-old, respectively. Strope delivered the trust to the Trimbles, who signed the "Pennsylvania Delivery Receipt and Checklist." The Trimbles also purchased an annuity through Strope. After their deaths, the Trimbles' son, Harcourt M. Trimble, III, contacted Strope and inquired whether respondent would handle his parent's estate. Strope explained that respondent was busy and suggested Trimble contact Weinstein. Although Trimble engaged Weinstein and met with him on numerous occasions, Trimble received invoices from Weinstein, for legal services, on respondent's letterhead. Trimble also received correspondence from Weinstein on respondent's letterhead and, although he issued fee checks to Weinstein, Bohmueller Law Offices endorsed

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[3] There is no further information about AFH in the record.

them. Respondent's check register for September 8, 2003, reflects that he paid two checks to Weinstein Law Offices with the notation that they were for the Trimbles' estates.

Between 2001 and 2004, 3,155 checks containing the names of individuals and couples were deposited into respondent's Attorney Trust Account (ATA). At the time, respondent shared office space with Weinstein in King of Prussia, Pennsylvania. Although respondent and Weinstein were not partners, they shared legal fees. Respondent failed to inform his clients that he shared his fees with Weinstein. Weinstein wrote hundreds of checks from respondent's ATA, using respondent's signature stamp, including checks to Weinstein Law Offices, to respondent, and to estate planning businesses. Respondent received $510,000 in compensation during this period. Checks to Weinstein from respondent's ATA and Business Accounts totaled $1,210,000. Respondent did not maintain complete records of his ATA.

When respondent practiced law from Weinstein's office, respondent had four IOLTA accounts and one business operating account at Royal Bank. Between 2000 and 2004, respondent failed to list two of these accounts on his Pennsylvania attorney registration statement. He also failed to maintain complete records of his IOLTA accounts.

In Pennsylvania, probate filing involves only modest fees. Regardless of whether the estate was will-based or living trust-based, the estate settlement process is the same and involves the same legal fees and inheritance tax returns for the estate. Respondent's direct mail advertising was misleading because it falsely implied that there was a significant distinction between settlement of a will-based plan and a living trust-based plan. The advertisement created unfounded negatives associated with a will-based plan. Specifically, respondent advertised the benefits of a living trust as "AVOID PROBATE COURT," "MAINTAIN TOTAL CONTROL of your assets," "AVOID COURT INVOLVEMENT should you become incompetent due to a stroke or Alzheimer's," "PROTECT YOUR ESTATE from unnecessary taxes" and "PROVIDE PRIVACY to your family in this time of emotional distress."

Further, respondent created handwritten charts, presented to the Millers through EPA, that estimated the court costs to probate their estate at $70,000, when the costs would have been $700 to $800. The chart also included an "unfounded estimate" of attorney and executor fees of $35,000.

According to the PADB, the proper method of assisting a client in the preparation of an estate plan consists of assembling and analyzing client information and assets; meeting with the client to discuss intentions; reviewing existing estate

planning documents, the client's tax situation, and prospects for tax planning; and determining the clients' and potential beneficiaries' ages and health, as well as a host of related information and other issues.

The PADB determined that respondent violated RPC 1.2(a) by allowing non-attorneys to counsel his clients and provide false and misleading information; RPC 1.4(b) by failing to counsel his clients in that, "[r]espondent had no opportunity to personally consider the clients' assets or even know if these clients had the mental capacity to enter into a living trust, nor it seems, did he care;" RPC 1.5(e) by dividing his legal fees with Weinstein without informing his clients; RPC 1.7(a)(2) when his representation of numerous clients was materially limited by his responsibilities to nonlawyer agents with a pecuniary interest in the sale of living trusts, noting that respondent's "pecuniary interests in the living trust businesses permeated his participation in the process, and compromised his ability to act in his clients' best interest;" RPC 5.1(c)(1) when he acted in concert with Weinstein to assist nonlawyers in the practice of law; RPC 5.5(a) by aiding nonlawyers in the unauthorized practice of law through the acceptance of referrals from nonlawyers and using delivery agents whom he knew were providing legal advice and counsel, concluding that respondent "allowed

the nonlawyer agents to step into his attorney role and counsel and advise his clients without his presence or oversight;" RPC 5.7(c) by affiliating with estate planning companies who engaged in the unauthorized practice of law, made misrepresentations about their credentials, and had a conflict of interest;[4] RPC 8.4(a) by acting in concert with Weinstein in aiding nonlawyers in the unauthorized practice of law; and RPC 8.4(c) by knowingly permitting nonlawyers to present incorrect and misleading written and oral information to his clients, using misleading direct mailings, and associating himself with business entities that falsely represented that they were estate planners.

Further, respondent failed to comply with Pa.R.D.E. 203(b)(3) by willfully violating provisions of the Enforcement Rules and Pa.R.D.E. 219(d)(1)iii. Specifically, respondent failed to pay his annual fee by July 1, and to electronically file with the Attorney Registration Office an endorsed form prescribed by the Attorney Registration Office in accordance with procedures that required him to include the name and

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[4] New Jersey does not have a corresponding rule.

account number for each account in which he held [trust] funds, and each IOLTA Account shall be identified as such."[5]

The PADB unanimously recommended that respondent be disbarred. It found that, from 2000 to 2004, respondent's practice was conducted in a "fraudulent manner designed to enrich himself at the expense of his clients, to whom he utterly failed to render the professional and ethical services they were entitled to receive."

The PADB further explained:

> Respondent's status as a lawyer gave legitimacy to the estate planning business. It was the means by which the agents could persuade the potential clients to obtain the living trust, which brought the agents one step closer to their ultimate goal of selling annuities to clients. The agents carried Respondent's business card and his fee agreements, which recited that Respondent would provide a living trust. Not only did these senior citizens believe that the agents were working for Respondent, the evidence demonstrates that at least several believed that the agent was a lawyer.
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> The trust was delivered to each client and explained not by Respondent but by a nonlawyer delivery agent. John Wight explained that the EPA "business model" required that the delivery agent provide an explanation of the trust to the client. Along with this explanation, a letter

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[5] New Jersey does not have a corresponding rule requiring an attorney to register all Attorney Trust Accounts.

> from Respondent was given to the client, which recited that Respondent had asked the delivery agent to explain the trust "in detail." Other documents given to the clients noted that the agents were "representatives" of Respondent's law office.
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> [OAEBp.10;Ex.4.][6]

The PADB found that respondent had not acknowledged or shown remorse for his wrongdoing. In light of respondent's four-year pattern of "misconduct inflicted upon the unsuspecting public, most of whom were elderly citizens" and his lack of remorse, it felt "compelled" to recommend disbarment. On January 23, 2015, the Supreme Court of Pennsylvania issued an order disbarring respondent.

The OAE identified the New Jersey equivalents of the rules respondent violated as RPC 1.2(a); RPC 1.4(c); RPC 1.5(e); RPC 1.7(a)(2); RPC 5.1(c)(1); RPC 5.5(a)(2); RPC 7.1(a)(1); RPC 7.3(d); RPC 8.4(a); and RPC 8.4(c).

The OAE recommends a suspension ranging from one to three years for respondent's misconduct. In support, it relies primarily on In re Moeller, 177 N.J. 511 (2003), in which the Court imposed a one-year suspension on an attorney who entered

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[6] "OAEB" refers to the OAE's brief in support of its motion, dated February 16, 2016.

into an arrangement with a Texas corporation that marketed and sold living trusts to senior citizens. The corporation retained Moeller as a "referral attorney" to review living trust documents for the corporation's clients. In the Matter of G. Jeffrey Moeller, DRB 02-463 (June 19, 2003). The attorney violated RPC 7.1(a)(1) and RPC 7.1(a)(2) by implementing a direct mail marketing program that contained numerous misleading statements. Although the corporation compensated Moeller for reviewing the documents, he neither consulted with the clients about his fee nor obtained their consent to the fee sharing arrangement, thus violating RPC 1.8(f) and RPC 5.4(d).

Moeller also shared legal fees with the corporation, which included compensation for referrals, in violation of RPC 7.3(d) and RPC 5.4(a), and did not consult with his clients about appropriate estate-planning options, in violation of RPC 1.4(b). He also participated in the unauthorized practice of law and misrepresented the amount of his fee, in violation of RPC 5.5(b), and RPC 8.4(c), respectively. Finally, Moeller engaged in a conflict of interest because his representation of his clients was materially limited by his responsibilities to the corporation, whose goal was to aggressively market living trusts, and by his own interest, due to his referral relationship with the corporation, in violation of RPC 1.7(a).

We considered, in mitigation, the attorney's unblemished twenty-four-year legal career and his service as a deputy attorney general and as president of a county bar association. Additionally, Moeller suffered financially and lost a significant legal position.

In aggravation, we considered that the deceptive advertising was geared toward the elderly, a vulnerable audience; that the attorney was willing to relinquish his professional judgment; and that the attorney had not "recognized the seriousness of his unethical conduct."

Here, the OAE argues that respondent's conduct, is analogous to Moeller's. They were both engaged in a deceptive scheme to market and sell living trusts, regardless of the best interests of their clients, and targeted a vulnerable population, the elderly. Both facilitated the unauthorized practice of law and shared fees with non-attorneys. Both provided fraudulent marketing materials and used the cloak of their status as attorneys to legitimize their agents. Both engaged in conflicts of interests that materially affected their clients, whom they deceived to enrich themselves.

Subsequent to the Moeller decision, however, the Court has made it clear that the victimization of the elderly, a particularly vulnerable segment of the population, will result

in serious consequences. In In re Torre, 223 N.J. 538 (2014), the Court held that, because the attorney's conflict resulted in "substantial harm to a vulnerable, elderly victim" a one-year suspension was warranted, warning that "misconduct of this nature will result in serious consequences going forward." The Court, thus, suspended Torre for one year, based on the egregious harm caused to a vulnerable, eighty-six-year-old victim. Id. at 546-47.

Specifically, Torre "borrowed $89,250 from an elderly, unsophisticated client that he had known for many years." Id. at 539. That sum constituted about seventy percent of the client's life savings. Moreover, Torre provided no security for the loan. He repaid "only a fraction of it during the client's lifetime" and made minimal effort to reimburse her estate. Ibid.

The Court considered Torre's "conduct against the backdrop of the serious and growing problem of elder abuse," noting that the "State's population is steadily aging," and, as more seniors have sought "help to manage their affairs, allegations of physical and financial abuse have also increased." Id. at 547.

Here, although the record does not provide the precise number of clients who were harmed by respondent's conduct, the OAE argues that the harm was much greater than Torre's victimization of one client. Between 2001 and 2004, 3,155 checks

containing the names of individuals and couples were deposited in respondent's ATA. For his efforts, respondent received $510,000 in compensation and, "presumably, thousands of clients were impacted by this scheme."

In aggravation, the OAE notes, respondent has not acknowledged or shown remorse for his wrongdoing. Respondent's advertising targeted the elderly who were planning for the end of life. His victims were vulnerable and relied on their attorney's duty to act in their best interests. Respondent took advantage of this trust to the detriment of his clients. In the words of the PADB, respondent's practice was conducted in a "fraudulent manner designed to enrich himself at the expense of his clients, to whom he utterly failed to render the professional and ethical services they were entitled to receive." Lastly, respondent failed to notify the OAE of his Pennsylvania disbarment, as required by R. 1:20-14(1).

In mitigation, respondent has no prior discipline in New Jersey.

In conclusion, the OAE argues that, in light of respondent's victimization of a vulnerable population, his multiple ethics violations place the appropriate discipline in the range of a one to three-year suspension.

* * *

On review of the full record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of disciplinary proceedings. Therefore, we adopt the findings of the Pennsylvania Disciplinary Review Board and find respondent guilty of violating New Jersey's RPC 1.2(a); RPC 1.4(c); RPC 1.5(e); RPC 1.7(a)(2); RPC 5.1(c)(1); RPC 5.5(a)(2); RPC 7.1(a)(1); RPC 7.3(d); RPC 8.4(a); and RPC 8.4(c).

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking

> in notice or opportunity to be heard as to constitute a deprivation of due process;
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> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). Subsection (E), however, applies in this case because respondent's unethical conduct warrants substantially different discipline in New Jersey from that imposed in Pennsylvania.

Respondent failed to counsel his clients as to the means by which to pursue their objectives. Indeed, as the PADB found, "[r]espondent had no opportunity to personally consider the clients' assets or even know if these clients had the mental capacity to enter into a living trust, nor it seems, did he care." Nothing in the record indicates that respondent had any contact with his clients or performed any actual legal work for them. Instead, he allowed nonlawyers to meet with them and provide false and misleading information. At the end of it all, respondent's involvement with his clients consisted of collecting his fees. Respondent's conduct in this respect violated both RPC 1.2(a) and RPC 1.4(c).

Respondent violated RPC 1.5(e) by dividing his legal fees with Weinstein, without informing his clients. Weinstein and respondent were not law partners and the sharing of fees,

therefore, was not permitted. We find the amount of money exchanged between them and the unfettered access Weinstein had to respondent's trust accounts and signature stamp troubling and indicative of the truly expansive nature of respondent's misconduct.

Further, respondent violated RPC 1.7(a)(2) when his representation of numerous clients was materially limited by his responsibilities to nonlawyer agents with a pecuniary interest in the sale of living trusts. Respondent's "pecuniary interests in the living trust businesses permeated his participation in the process, and compromised his ability to act in his clients' best interest."

Respondent violated RPC 5.1(c)(1) when he acted in concert with Weinstein to assist nonlawyers in the practice of law, and RPC 5.5(a)(2) by aiding nonlawyers in the unauthorized practice of law through the acceptance of referrals from them and using delivery agents whom he knew were providing legal advice and counsel. Respondent "allowed the nonlawyer agents to step into his attorney role and counsel and advise his clients without his presence or oversight."

In addition, by participating in a direct mail marketing program that made material misrepresentations about his services, respondent violated RPC 7.1(a)(1) and by compensating

Newmark and his delivery agents based on their referrals and recommendations that led to respondent's retention by the estate planning clients, he violated RPC 7.3(d).

Respondent violated RPC 8.4(a) by assisting Weinstein in the violation of the RPCs, and by violating the RPCs through the acts of others.

Finally, respondent violated RPC 8.4(c) by knowingly permitting nonlawyers to present incorrect and misleading written and oral information to his clients, using misleading direct mailings, and associating himself with business entities that falsely represented that they were estate planners.

The only issue remaining is the appropriate measure of discipline for respondent's misconduct. When an attorney assists a nonlawyer in the unauthorized practice of law, the discipline ordinarily ranges from a reprimand to a lengthy term of suspension, depending on the severity of the conduct and the presence of other violations or aggravating factors. See, e.g., In re Bevacqua, 174 N.J. 296 (2002) (reprimand for attorney who assigned an unlicensed lawyer to prepare a client for a deposition and to appear on the client's behalf; the attorney committed other violations, including gross neglect, pattern of neglect, and lack of diligence; multiple mitigating factors, including lack of disciplinary history, inexperience as an

attorney, and conduct resulting from poor judgment, rather than venality); In re Ezor, 172 N.J. 235 (2002) (reprimand for attorney who knowingly assisted his father, a disbarred New Jersey attorney, in presenting himself as an attorney in a New Jersey litigation); In re Gottesman, 126 N.J. 376 (1991) (reprimand imposed on attorney who aided in the unauthorized practice of law by allowing a paralegal to advise clients on the merits of claims and permitting the paralegal to exercise sole discretion in formulating settlement offers; he also shared legal fees with the paralegal); In re Gonzalez, 189 N.J. 203 (2007) (three-month suspension for an attorney who "surrendered every one of her responsibilities" to the office manager and bookkeeper by permitting the bookkeeper to use a signature stamp on trust account checks and the office manager/paralegal to interview clients, execute retainer agreements in the attorney's name, and prepare and execute pleadings and releases; unbeknownst to the attorney, the office manager/paralegal also attended depositions and appeared in municipal court on behalf of the attorney's clients, among other things; the attorney also compensated the office manager based on his work as "a lawyer;" once the attorney learned of the full extent of the officer manager/paralegal's actions, she contacted the proper authorities and participated in an investigation that led to his

arrest; no prior discipline); In re Chulak, 152 N.J. 553 (1998) (three-month suspension for attorney who allowed a nonlawyer to prepare and sign pleadings in the attorney's name and to be designated as "Esq." on the attorney's business account; the attorney then misrepresented to the court his knowledge of these facts); In re Cermack, 174 N.J. 560 (2003) (on motion for discipline by consent, attorney received a six-month suspension for entering into an agreement with a suspended lawyer that allowed him to continue to represent clients, while the attorney appeared as the attorney of record and handled court appearances; in some cases, the attorney took over the suspended lawyer's cases with the clients' consent and with the understanding that the cases would be returned to the suspended lawyer upon his reinstatement; no prior discipline); In re Carracino, 156 N.J. 477 (1998) (six-month suspension for attorney who entered into a law partnership agreement with a nonlawyer; the attorney also agreed to share fees with the nonlawyer, engaged in a conflict of interest, displayed gross neglect, failed to communicate with a client, and failed to cooperate with disciplinary authorities; prior admonition); In re Moeller, supra, 177 N.J. 511 (one-year suspension); and In re Rubin, 150 N.J. 207 (1997) (one-year suspension, in a default matter, for attorney who assisted a nonlawyer in the

unauthorized practice of law; the attorney also improperly divided fees without the client's consent, engaged in fee overreaching, violated the terms of an escrow agreement, and misrepresented to the clients both the purchase price of a house and the amount of his fee).

The OAE aptly asserts that respondent's conduct is most similar to that of the attorney in Moeller, who received a one-year suspension after he entered into an arrangement with a Texas corporation that marketed and sold living trusts to senior citizens; filed a certificate of incorporation in New Jersey on behalf of the corporation; acted as its registered agent; allowed his name to be used in its mailings; and was an integral part of its marketing campaign, which contained many misrepresentations; was compensated by the corporation for reviewing the documents, but never consulted with the clients about his fee or obtained their consent to the arrangement; assisted the corporation in the unauthorized practice of law; misrepresented the amount of his fee; and charged an excessive fee. In re Moeller, supra, 177 N.J. 511.

Since Moeller, the Court has signaled harsher discipline for attorneys who victimize the elderly. In re Torre, supra, 223 N.J. 538. The OAE correctly notes that Torre normally would inform us as to the appropriate quantum of discipline in cases

involving the victimization of the elderly population. Torre borrowed $89,250 from an elderly, unsophisticated client he had known for many years, repaid only a fraction of it during the client's lifetime, and barely reimbursed her estate. Ibid. Citing the protection of the public as a laudable goal of the attorney disciplinary system, the Court suspended Torre for one year. Id. at 548-50. It warned, however, that "misconduct of this nature will result in serious consequences going forward." Id. at 546-47 (emphasis added).

Torre, however, was decided in 2014. Pennsylvania disbarred respondent in 2015 for misconduct that occurred between 2000 and 2004. The Court in Torre made it clear that misconduct such as that committed by respondent would receive enhanced discipline "going forward." Therefore, the guidance offered by Torre is inapplicable to the instant matter based on that temporal discrepancy.

In aggravation, however, we considered the number of individuals impacted by respondent's misconduct, the massive sums of money involved, and the fact that his scheme targeted the elderly, a particularly vulnerable segment of the population.

In mitigation, respondent has no history of discipline in New Jersey.

Based on the considerable aggravating factors, we determine to impose a two-year suspension. Because respondent failed to promptly report his Pennsylvania discipline, the suspension should be prospective.

Members Gallipoli and Rivera voted for 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Barry O. Bohmueller
Docket No. DRB 16-428

Argued: March 16, 2017

Decided: July 12, 2017

Disposition: Two-year suspension

Members	Disbar	Two-year suspension	Did not participate
Frost		X	
Baugh		X	
Clark		X	
Gallipoli	X		
Hoberman		X	
Rivera	X		
Singer		X	
Zmirich		X	
Total:	2	7	

Ellen A. Brodsky
Chief Counsel