SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-278
District Docket No. XIV-2017-0073E

IN THE MATTER OF	
GNOLEBA REMY SERI	
AN ATTORNEY AT LAW	

Decision

Argued: October 19, 2017

Decided: January 17, 2018

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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). On June 29, 2016, respondent entered a guilty plea in the United States District Court, Southern District of New York, to one count of fraud and misuse of visa, permits, and other documents, in violation of 18 U.S.C. §§ 2 and 1546(a). The OAE recommended imposition of a two-year prospective suspension.

Respondent requested a shorter period of suspension, or, in the alternative, that the two-year period of suspension be imposed retroactive to December 21, 2016, the date on which the Board of Immigration Appeals suspended him.

For the reasons set forth below, we determined to grant the motion for final discipline and impose an eighteen-month prospective suspension.

Respondent earned admission to the New Jersey bar in 2001 and to the New York bar in 2002. He has no history of discipline in New Jersey. On December 21, 2016, as a consequence of his conviction in federal court, respondent was indefinitely suspended from the practice of law before the Board of Immigration Appeals, the Immigrations Courts, and the Department of Homeland Security.

On June 29, 2016, before the Honorable Alison J. Nathan, U.S.D.J., respondent entered a guilty plea to one count of fraud and misuse of visa, permits, and other documents, contrary to 18 U.S.C. §§ 2 and 1546(a). Respondent entered his guilty plea pursuant to an Information, thus, voluntarily waiving his right to an indictment by a grand jury. Specifically, the Information alleged that respondent, from October 2012 through April 2015, "submitted falsified and forged I-864 Forms in support of

applications for immigration visas and for legal permanent resident status."[1]

During his sparse allocution before the court, respondent admitted that, "from October 2012 through April 2015, in Manhattan, I knowingly submitted falsified I-864 forms in support of applications for immigration visas." He added that, "I know what I did was wrong, and I'm very sorry."

On October 28, 2016, at sentencing, the government requested the imposition of a ten to sixteen-month prison term, citing, in aggravation, respondent's trusted status as an attorney; his abuse of both that trust and his specialized skills, whereby he wrongfully exploited his access to the victims' tax records, social security numbers, and other identifying information; the extended length of time that his misconduct spanned; and the impact of his conduct on public faith in the immigration system.

In turn, respondent's defense counsel stressed that respondent's crime did not result in any negative financial

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[1] According to the website for U.S. Citizenship and Immigration Services, which is part of the official website of the Department of Homeland Security, an I-864 form "is required for most family-based immigrants and some employment-based immigrants to show that they have adequate means of financial support and are not likely to rely on the U.S. government for financial support."

impact on the victims; that respondent did not commit the crimes for pecuniary gain; that respondent enjoyed a reputation for good character, and had, himself, been granted political asylum in our country after being imprisoned and tortured; and that respondent's crime had no impact on the safety and security of our nation, noting that he did not submit false information about the identities of the applicants seeking to immigrate, but, rather, fabricated the applicants' financial support structure by reusing financial sponsor information entrusted to him in connection with prior, legitimate immigration applications.

Judge Nathan sentenced respondent to time served, two-years' supervised release (federal probation), to include a twelve-month period of home confinement, one hundred hours' community service, and mandatory fines and penalties; no restitution was imposed, as the government produced no evidence of financial harm to the victims in the case.

Judge Nathan considered the following mitigating factors: this was respondent's first offense, and, thus, represented aberrant behavior; that he had entered a guilty plea and accepted responsibility for his crime; that he had lived a life dedicated to helping others and to public service; that he had overcome imprisonment and torture, as a political prisoner, in

his home nation of Ivory Coast before emigrating to America; that he exhibited genuine remorse; and that he had already suffered various serious consequences, having shamed his family, and that he "may well lose [his] law license."

In respect of recommended discipline, the OAE correctly noted that convictions for the crimes of immigration fraud or the falsification of immigration documents have resulted in discipline ranging from long-term suspensions to disbarment, citing In re Biederman, 134 N.J. 217 (1993) (eighteen-month suspension for attorney convicted of assisting ten Philippine nationals to enter the United States with fraudulent U.S. passports; the attorney did not procure the phony passports and was not engaged in the practice of law when he assisted the Philippine immigrants); In re Salamanca, 204 N.J. 590 (2011) (two-year suspension for attorney who, as owner of a restaurant, submitted approximately four falsified applications for alien employment, representing, under penalty of perjury, that certain employment conditions were in place when those conditions were not actually in place); In re Brumer, 122 N.J. 294 (1991) (three-year suspension for attorney who filed false labor certifications for foreign nationals seeking to obtain permanent resident visas and then advised clients to hide from Immigration and Naturalization Services (INS) investigators); In re Vargas,

170 N.J. 255 (2002) (three-year suspension for attorney who falsified INS notices of approval from prior clients by altering the names on the documents and then submitted the false documents to the INS); In re Silverblatt, 142 N.J. 635 (1995) (three-year suspension for attorney who obtained employment authorization for ten aliens by falsely stating on immigration forms that the aliens were seeking political asylum); and In re Saint-Preux, 197 N.J. 26 (2008) (disbarment for attorney who falsified hundreds of immigration notices of approval from prior clients by altering the names on the documents and submitting the false documents to INS to illegally obtain residency status for the new clients; the attorney tried to blame his criminal conduct on his paralegal, and showed no remorse).

The OAE acknowledges that, unlike the attorney in Saint-Preux, respondent filed a relatively small number of fraudulent documents (between six and twenty-four), accepted responsibility for his crime, and expressed genuine remorse for his misconduct. The OAE equated respondent's misconduct with that of the attorney in Salamanca. As in Salamanca, respondent's misconduct directly touched upon the practice of law, and attempted to leverage falsified immigration documents to benefit foreign citizens who may not have qualified for certain privileges of the U.S. immigration system.

In turn, respondent requested a shorter period of suspension, or, in the alternative, requested that the two-year period of suspension be imposed retroactively to December 21, 2016, the date on which the Board of Immigration Appeals suspended him. In support of that position, respondent surveyed the same cases examined by the OAE, and emphasized that we should review the "full undistorted picture" of respondent and his misconduct, as provided for in motions for final discipline precedent, citing In re Spina, 121 N.J. 378, 389-90 (1990) and In re Gallo, 178 N.J. 115, 119-20 (2003). In respect of this holistic approach, respondent stressed the compelling mitigation cited by the federal court during his sentencing hearing, including his prior reputation for trustworthiness; his prior good conduct and deeds; and his personal history as a political refugee and rights activist.

Respondent rejected the OAE's comparison of his case to the misconduct committed by the attorney in Salamanca, noting that the attorney in that case was sentenced to a term of prison; did not present compelling mitigation; and committed his crimes for pecuniary gain.

Respondent compared his case to the facts of Biederman, where the attorney received an eighteen-month suspension, noting that, although that attorney's misconduct did not directly

relate to the practice of law, it clearly implicated national security concerns. Specifically, respondent stressed that the immigration applicants that he attempted to fraudulently assist had already been "completely vetted" by immigration authorities, whereas Biederman's "clients" were seeking to enter the country under false identities, thus, circumventing national security protocols.

In summary, respondent asserted that, "in his zeal to relentlessly advocate for his clients," he "cut corners" in his practice, for which he has accepted full responsibility and has already been severely punished.

* * *

Following a review of the record, we determine to grant the OAE's motion for final discipline. 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). Pursuant to that 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." Respondent's conviction establishes violations of RPC 8.4(b) and (c). Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-

13(c)(2); In re Maqid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The following cases guided our determination of the suitable discipline for respondent's misconduct. In In re Saint-Preux, supra, 197 N.J. 26, the Court disbarred the attorney for falsifying hundreds of immigration notices of approval from prior clients by altering the names on the documents and submitting the false documents to the INS in order to illegally obtain residency status for the new clients. In the Matter of Jonathan Saint-Preux, DRB 07-403 (May 7, 2008) (slip op. at 3-4).

In recommending Saint-Preux's disbarment, we relied on several cases. Specifically, in In re Vargas, supra, 170 N.J.

255, the attorney pleaded guilty to a one-count information charging him with making false statements on immigration and naturalization documents, in violation of 18 U.S.C.A. 1001. He was sentenced to a three-year term of probation, and ordered to perform 200 hours of community service.

In the course of his representation of two individuals, who wished to establish permanent residence in the United States, Vargas submitted to the INS two notices of action bearing the individuals' names. Those documents actually had been issued for prior clients. In falsifying the forms, Vargas' purpose was to further his misrepresentation that he had previously forwarded them to the INS.

Initially, Vargas lied to ethics investigators about forging the INS documents, claiming that a paralegal in his office had done so. He later admitted that he had falsified the documents. Vargas was suspended for three years.

Three-year suspensions were also imposed in In re Silverblatt, supra, 142 N.J. 635 (attorney disbarred in New York after he pleaded guilty to one count of a federal indictment charging him with ten counts of willfully and knowingly presenting documents containing false statements of material fact to the INS, a violation of 18 U.S.C.A. 1001; the attorney had also misrepresented to the INS the reasons for changes in

the official alien status of a number of clients, resulting in employment authorization forms issued to those clients) and In re Brumer, supra, 122 N.J. 294, (attorney pleaded guilty to a two-count federal information charging him with knowingly and willfully encouraging and inducing aliens to reside in the United States, violations of 8 U.S.C.A. 1324(a)(1)(D) and 18 U.S.C.A. 2, and was sentenced to five years' probation, fined $50,000, and ordered to perform 1,000 hours of community service). See also In re Biederman, supra, 134 N.J. 217 (eighteen-month suspension for helping ten Philippine nationals gain entry into the United States using fake passports; Biederman received a five-year term of probation and was ordered to pay a $1,000 fine; in mitigation, we considered that Biederman had enjoyed an illustrious career, spanning three decades. In the Matter of David A. Biederman, DRB 92-424 (April 19, 1993) (slip op. at 4-6)).

Here, respondent's misconduct was objectively less egregious than that committed by the attorneys in Vargas, Silverblatt, and Brumer, where three-year suspensions were imposed, and by the attorney in Saint-Preux, who was disbarred. Specifically, respondent's fraud was limited to fewer than twenty-five cases; was not committed for pecuniary gain; had no negative financial impact on the victims; and did not touch upon

issues of national security. We find, as determined by Judge Nathan, that respondent's conduct was aberrant, unlikely to reoccur, and is a singular blemish in both a commendable life and legal practice. We also find that, akin to Biederman, respondent's case presents compelling mitigation.

Unlike the facts of Biederman, however, respondent's misconduct directly related to the practice of law, an aggravating factor enumerated under the Lunetta framework and given substantial weight in crafting the two-year suspension imposed on the attorney in Salamanca. Yet, respondent exhibits compelling mitigation not present in Salamanca. On balance, therefore, we determine that a prospective eighteen-month suspension is the appropriate quantum of discipline for respondent's immigration fraud.

Member Singer voted to impose a six-month prospective suspension because of the unusually compelling mitigation present in this case, which she determined to be unmatched in any other decision cited by the majority, for which the majority gives substantial but insufficient credit. As recognized by the federal judge in imposing sentence, respondent's offense was "aberrant behavior" in "a life dedicated to efforts in large measure to help others and to public service . . . . [He] has a long history of working on behalf of those less fortunate and in

the public good. . . ." Moreover, respondent himself overcame what the judge characterized as "truly horrendous treatment and suffering" including imprisonment and torture in his home country, the Ivory Coast, the result of political persecution, as detailed in the confidential presentence report considered by the federal court when imposing sentence. Respondent worked for two years for Amnesty International after being granted political asylum in the United States and established or helped to establish multiple non-profit entities focused on promoting human rights and democracy in Africa. Significantly, respondent's crime was not motivated by personal gain but was an attempt to help others, and, as the majority opinion notes, "did not touch upon issues of national security." The sentencing judge found him to have accepted responsibility for his actions and to be genuinely remorseful. For his aberrant behavior motivated by a desire to help others, an 18-month suspension is too severe.

Vice-Chair Baugh and Member Boyer did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Gnoleba Remy Seri
Docket No. DRB 17-278

Argued: October 19, 2017

Decided: January 17, 2018

Disposition: 18-Month Suspension

Members	Eighteen-Month Suspension	Six-month Suspension	Did not participate
Frost	X		
Baugh			X
Boyer			X
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer		X	
Zmirich	X		
Total:	6	1	2

Ellen A. Brodsky
Chief Counsel