SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-350
District Docket No. XIV-2015-0389E

IN THE MATTER OF	:
MAGDY F. ANISE	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 18, 2018

Decided: April 5, 2018

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

Respondent's counsel waived appearance for oral argument.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13, following respondent's guilty plea in the United States District Court, District of New Jersey (DNJ), to having violated 31 U.S.C. § 5324(a)(1) (for purpose of evading reporting requirements, cause a bank to fail to file a required report). The OAE recommends a one-year suspension. Respondent agrees with

that recommendation. For the reasons stated below, we determine to impose a six-month suspension.

Respondent was admitted to the New Jersey bar in 1987. On May 14, 2013, he was placed on disability inactive status. He was reinstated to active status on August 27, 2017.

On January 10, 1992, respondent received a reprimand for having violated RPC 7.3(b)(1) (improper solicitation of a client). Specifically, respondent had sent a solicitation letter to the father of a passenger killed in the Pan Am flight 103 disaster, in Lockerbie, Scotland. In re Anise, 126 N.J. 448 (1992).

* * *

On May 7, 2015, a grand jury for the DNJ returned a two-count indictment against respondent. Count one, to which he pleaded guilty, charged that respondent caused banks where he held accounts to fail to file a currency transaction report (CTR), in violation of 31 U.S.C. § 5324(a)(1). Count two charged respondent with "structuring" multiple bank deposits in increments under $10,000 to avoid the federal reporting requirements, in violation of 31 U.S.C. § 5324(a)(3).[1]

[1] 31 U.S.C. § 5313 requires a financial institution to file a CTR of each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to such financial institution that involves a transaction in currency of more than $10,000.

On March 15, 2016, before the Hon. William H. Walls, Senior U.S. District Judge, respondent pleaded guilty to count two of the indictment. At the sentencing hearing on January 24, 2017, however, the Assistant U.S. Attorney and respondent's counsel agreed that the plea entry was erroneous and that respondent had pleaded guilty to count one of the indictment, a violation of 31 U.S.C. § 5324(a)(1). During the plea hearing, respondent contended that the amount of funds involved in the "structuring" misconduct was less than $200,000 and that this misconduct was not part of a pattern of unlawful activity involving more than $100,000 in a twelve-month period. Specifically, respondent made multiple deposits of less than $10,000 each, totaling almost $200,000, at three different banks, so that the banks would not file the requisite CTRs.

On January 24, 2017, Judge Walls sentenced respondent to four years' probation, including seven months of home confinement. The judge also imposed a $2,000 fine and a $100 assessment. In addition, respondent agreed to forfeit $200,000 to the United States Treasury. Respondent explained that he had structured his deposits, not in an effort to hide any wrongdoing, but because he "didn't want his business made more public than it had to be." Specifically, from 1990 to about 2011, he purchased gold by the ounce, mainly as investments for

his children's college fund. Respondent averred that, when he sold the gold, he paid taxes on the monies he received, but then used the structured deposits "in order to pay bills for his law firm."

In mitigation, respondent's counsel presented respondent's health problems, his charitable work in his church where he serves as a deacon, and his new career in web design.

The OAE argues that respondent's misconduct is most analogous to the companion matters of In re Sommer, 217 N.J. 359 (2014) and In re Engelhart, 217 N.J. 357 (2014). Sommer and Engelhart admitted that, between August 13 and September 22, 2010, they knowingly and purposely received $354,000 from a client, which they deposited into their firm's attorney trust account "in a manner that would not result in the filing of a reporting form," that is, in individual amounts not exceeding $10,000. In the Matters of Edward G. Engelhart and Goldie C. Sommer, DRB Nos. 13-271 and 13-272 (February 11, 2014) (slip op. at 4).

We noted that, in order to structure $354,000, Sommer and Engelhart would have had to arrange for more than thirty deposits. They also used family and friends to assist them in their illegal activities. In mitigation, we recognized that both attorneys had enjoyed unblemished careers of more than thirty

years; readily accepted responsibility for their wrongdoing; expressed contrition and remorse; submitted to the sentencing judge numerous letters attesting to their character; and did not act for pecuniary gain. Engelhart and Sommer were each sentenced to a two-year term of probation, with six months of location monitoring, fined $20,000, and ordered to pay a $100 special assessment.

According to the OAE, like Sommer and Engelhart, respondent pleaded guilty to structuring, accepted full responsibility for his wrongdoing, and received no payment or commission from the structuring. Unlike Sommer and Engelhart, respondent did not plead guilty to a statutory sentencing enhancement for aggravated structuring involving transactions exceeding $100,000 in a twelve-month period, in violation of 31 U.S.C. § 5324(d)(1). In mitigation, Sommer and Engelhart presented no ethics history with unblemished careers of more than thirty years. Respondent, however, received a reprimand in 1992.

In a November 1, 2017 letter to us, respondent's counsel stated that respondent acknowledges and regrets the misconduct to which he pleaded guilty and that he agrees with the OAE's recommendation for the imposition of a one-year suspension.

* * *

Following a review of the record, we determined to grant the OAE's motion.

Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that 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); In re Principato, 139 N.J. 456, 460 (1995). Specifically, the conviction establishes a violation of RPC 8.4(b). The facts underlying respondent's conviction evidence that he was also engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, a violation of RPC 8.4(c). Pursuant to RPC 8.4(b), 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." Hence, the sole issue before us is the extent of discipline to be imposed on respondent for his violation of RPC 8.4(b). R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; In re Principato, 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." In re Principato, 139 N.J. at 460. Rather, we must take into consideration 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). 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 the attorney's clients. In re Schaffer, 140 N.J. 148, 156 (1995). "To the public he is a lawyer whether he acts in a representative capacity or otherwise." In re Gavel, 22 N.J. 248, 265 (1956). Thus, offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, will, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995).

Long-term suspensions typically have been imposed on attorneys who improperly structure cash transactions to avoid reporting requirements. See, e.g., In re Chung, 147 N.J. 559 (1997) (eighteen-month suspension, retroactive to the date of temporary suspension; attorney pleaded guilty to a one-count information charging him with failure to file a report of a cash transaction involving more than $10,000, a misdemeanor, and

failure to file a federal tax return, also a misdemeanor, and was sentenced to one year of probation, six months of which was home confinement, fined $1,000, and ordered to pay a $50 special assessment; for several months, the attorney made fifteen cash deposits of less than $10,000 each, totaling $114,376.69, into five different escrow accounts at five different banks but neither the attorney nor his firm filed an Internal Revenue Service (IRS) Form 8300 and no bank ever filed a CTR; mitigating factors included the attorney's previously unblemished seventeen-year career, his performance of legal services for the poor and community organizations for little or no compensation, the absence of greed, and his son's neurological problems); In re Sommer, 217 N.J. 359 and In re Engelhart, 217 N.J. 357 (companion cases discussed previously), In re Khoudary, 167 N.J. 593 (2001) (two-year suspension, retroactive to the date of temporary suspension; attorney pleaded guilty to structuring; he and a friend had devised a scheme whereby the attorney would deposit stolen checks into his trust account and then purchase cashier's checks in a manner that avoided the required notice to the IRS; in exchange, the attorney received one-half of the friend's commission for doing so; the attorney was unaware that the checks had been stolen; mitigating factors included his acknowledgment of wrongdoing and his remorse); and In re Hausman, 177 N.J. 602

(2003) (five-year suspension, retroactive to the date of temporary suspension; attorney pleaded guilty to four counts of structuring within a ten-month period and was imprisoned for fifteen months, followed by two years of supervised release, and fined $5,000; the attorney knew that the monies had been the product of unlawful activity).[2] But see, In re Richardson, 171 N.J. 227 (2003) (reprimand; attorney pleaded guilty to a one-count information charging him with the knowing and willful failure to keep and maintain IRS Form 8300 (Report of Cash Payments over $10,000 Received in a Trade or Business), in violation of 26 U.S.C. § 7203, a federal misdemeanor; he was sentenced to one year of probation and fined $2,500; on twenty-four occasions, during a three-month period, the attorney's clients, who owned a restaurant, gave him cash amounts ranging from $1,000 to $10,000, for a total of $164,546, which he failed to report, because he suspected that his clients were trying to hide income; the clients used those funds to buy real estate in a transaction where Richardson served as the closing attorney; the attorney resigned from his position as a Superior Court judge in Somerset County as a result of the conviction; we determined that only a reprimand was justified because of the "strong mitigating circumstances,"

[2] Hausman had been temporarily suspended for four years; hence, he served part of his suspension prospectively.

which included an unblemished legal career of more than thirty years, the attorney's resignation from the bench, lack of pecuniary gain, and the fact that he had "suffered enough for his wrongdoing") and In re Maycher, 172 N.J. 317 (2002) (three-month suspension; attorney pleaded guilty to failing to maintain records of transactions regarding the establishment of letters of credit of more than $10,000, in violation of 12 U.S.C. § 1956, a misdemeanor, and was sentenced to one year of probation and fined $20,000; at his plea hearing, the attorney admitted that he not only failed to retain documentation of a $100,000 letter of credit and two $200,000 letters of credit, but he also directed an employee to make nineteen separate deposits into his attorney trust account, at different bank branches, in order to avoid the filing of a CTR; mitigating factors included numerous letters attesting to the attorney's good character, his unblemished twenty-eight-year legal career, and his active involvement in professional, civic, and charitable organizations).

In our view, Maycher and Richardson are inapplicable, as those attorneys were convicted of misdemeanor offenses and offered special, compelling mitigation. Here, respondent pleaded guilty to a felony.

Similarly, the periods of suspension in Hausman (five years) and Khoudary (two years) also are disproportionate for

respondent's misconduct. In Hausman, the structuring took place over ten months and Hausman was aware that the money was the fruit of illegal activity. In contrast, respondent's conduct involved his own, legally obtained monies. Hausman also pleaded guilty to four counts, unlike respondent, who pleaded to only one. In Khoudary, unlike respondent, the attorney engaged in structuring misconduct that was part of a larger criminal scheme, and his misconduct was motivated by pecuniary gain.

We also consider the eighteen-month suspension imposed in Chung too severe. Like respondent, Chung pleaded guilty to a felony offense of structuring, and presented substantial mitigation. Respondent, however, deposited his own, legally obtained, personal funds after cashing in gold that he owned and on which he had paid the appropriate taxes. Conversely, as a favor to a client, Chung made structured deposits that were directly related to his practice of law, and failed to file a tax report for the transaction.

We disagree with the OAE's assessment that respondent's conduct is akin to that of Engelhart and Sommer. Those attorneys admitted that, during the course of a single month, they knowingly and purposely received $354,000 from a client, which they agreed to deposit, and did deposit, into their firm's attorney trust account "in a manner that would not result in the filing of a

reporting form," that is, in individual amounts not exceeding $10,000. In the Matters of Edward G. Engelhart and Goldie C. Sommer, DRB Nos. 13-271 and 13-272 (slip op. at 4). That endeavor required at least thirty different deposits, and the attorneys used the help of family and friends to accomplish the scheme. Id. at 12.

On its face, Engelhart and Sommer's misconduct is more serious than that of respondent. It involved a significantly larger amount of money and the perpetration of a fraud on behalf of a client. In fact, they pleaded guilty to aggravated structuring, because their conduct involved transactions greater than $100,000, which occurred over the course of less than one year.

Respondent's conduct was less serious than that of Engelhart and Sommer because it involved less money, was committed with his own funds, and was not part of a scheme to hide a client's money during a divorce proceeding. In turn, respondent's conduct was more severe than that of the attorney in Maycher, who pleaded guilty to a misdemeanor and offered significant mitigation. Respondent has offered little in the way of mitigation.

Hence, on balance, we determine to impose a six-month prospective suspension. Although respondent has not practiced since his conviction, his inactivity was due to a medical reason,

leading to his placement on disability inactive status, which occurred well before he was indicted for the misconduct in this matter. Sommer and Engelhart received retroactive suspensions, because they were temporarily suspended immediately upon pleading guilty. Respondent must now face the consequences of his behavior in the instant matter.

Chair Frost and Member Zmirich did not participate. Member Gallipoli was recused.

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
Bruce W. Clark, Vice-Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Magdy F. Anise
Docket No. DRB 17-350

Argued: January 18, 2018

Decided: April 5, 2018

Disposition: Six-month Suspension

Members	Six-month Suspension	Recused	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