Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-225
District Docket No. XIV-2017-0145E

In The Matter Of :
David L. Quatrella :
An Attorney At Law :

Decision

Argued: September 20, 2018

Decided: December 17, 2018

Johanna Barba Jones appeared on behalf of the Office of Attorney Ethics.

Respondent, who is incarcerated, 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(c)(2). On January 4, 2017, respondent entered a guilty plea in the United States District Court, District of Connecticut, to one count of conspiracy to commit wire fraud, in violation of 18 U.S.C. § 371.

The OAE urges us to recommend respondent's disbarment. In turn, respondent requests the imposition of a term of suspension.

For the reasons set forth below, we determined to grant the motion for final discipline and recommend respondent's disbarment.

Respondent earned admission to the Connecticut bar in 1980 and to the New Jersey and Pennsylvania bars in 1981. He has no history of discipline in New Jersey, but has been temporarily suspended since July 7, 2017, based on his federal felony conviction underlying this motion for final discipline. In re Quatrella, 229 N.J. 520 (2017). He remains suspended to date.

On April 6, 2017, respondent also was temporarily suspended in Pennsylvania in connection with his federal conviction. In re Quatrella, 2017 Pa. LEXIS 784.[1]

On January 4, 2017, before the Honorable Alvin W. Thompson, U.S.D.J., respondent entered a guilty plea to one count of conspiracy to commit wire fraud, contrary to 18 U.S.C. § 371. Respondent entered his guilty plea pursuant to an Information, voluntarily waiving his right to an indictment by a grand jury.

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[1] A LEXIS search revealed no Connecticut disciplinary action to date.

Specifically, respondent admitted that, from June 2008 through January 2016, he committed wire fraud in connection with a scheme to defraud life insurance providers via three stranger-originated life insurance (STOLI) policies. The information described a STOLI as follows:

> In a typical STOLI transaction, the STOLI investor (or the investor's representative) induces a prospective insured, often a senior citizen, to purchase a life insurance policy that he or she likely would not otherwise have purchased. The prospective insured applies for the policy with a prior understanding to cede control of the policy to the investor. The prospective insured and the investor agree that, at the end of a given period, ownership of the policy will be transferred to the investor, or some other third party, who would expect to receive the death benefit when the insured dies.

In the plea agreement, respondent stipulated to the following criminal conduct in connection with obtaining the fraudulent STOLI policies:

> From in or about June 2008 through in or about January 2016, the defendant knowingly and willfully conspired with others to defraud life insurance providers by fraudulently inducing the providers to issue life insurance policies to certain insured persons based on material misrepresentations by the defendant and others as to the purpose of the policies, the means by which the premiums would be paid, and the intent of the insured persons to sell the policies to investors. The defendant's co-conspirators included insurance brokers based in California, New Jersey, and Florida. At all times, the defendant abused his position and skills as an attorney to facilitate the commission of the offense. The defendant acknowledges that he intended to deprive the life insurance providers of information

that was relevant to the providers' discretionary economic decision-making in determining whether, and on what terms, to issue policies.

In one instance, upon the request of a client of the defendant's law firm, D.S., the defendant and certain of his co-conspirators caused D.S. to apply for and obtain a $15 million life insurance policy from Lincoln National Life Insurance Company ("Lincoln"), with an effective date of on or about October 2, 2008. The defendant helped D.S. to complete the application and, in so doing, falsely certified to Lincoln that, among other things, the policy premiums were not being financed by any third party and there was no intention on the part of the insured to sell the policy. The defendant also used his position as D.S.'s attorney to write a letter on his law firm's stationery to Lincoln's agent, in which the defendant falsely represented that the life insurance policy was needed for D.S.'s estate planning purposes. In truth, the defendant knew that the policy premiums were being financed by a pool of investors, many of whom the defendant recruited from among his law firm's clients. Further, it was the defendant's intention to facilitate the sale of D.S.'s policy after two years to other downstream investors at a profit to the initial pool of investors. In furtherance of the scheme, the defendant transmitted premium payments from the initial pool of investors to Lincoln via checks and interstate wire transfers from the defendant's attorney trust account at Bank of America, N.A. Ultimately, however, the defendant and his co-conspirators could not find a buyer for D.S.'s policy, and the policy was permitted to lapse in or about January 2016.

On another occasion, the defendant and certain co-conspirators arranged for an insured, J.S., to apply for and obtain a $10 million life insurance policy from Lincoln, with an effective date of on or about December 28, 2009. J.S. was not a client of the

> defendant's law firm, and the defendant did not help to complete J.S.'s application. However, the defendant connected J.S. with his co-conspirators for purpose of having J.S. apply for a life insurance policy, and the defendant knew and intended that J.S.'s application contained material misrepresentations as to the policy's purpose, the means by which the premiums would be paid, and the intent to sell the policy to downstream investors after two years. The defendant also recruited the initial pool of investors to pay the policy premiums from among his law firm's clients, and the defendant transmitted premium payments to Lincoln from his attorney trust account. Ultimately, the defendant and his co-conspirators could not find a buyer for J.S.'s policy, and on or about February 24, 2014, the policy lapsed for nonpayment of premiums. On or about March 6, 2014, the defendant directed a paralegal to place an interstate telephone call to Lincoln for the purpose of having the policy reinstated, and instructed the paralegal via email not to "mention anything about the loan of the premium from my clients." The defendant and his co-conspirators were not successful in having the policy reinstated.
>
> For their role in causing the issuance of these policies, the defendant and his co-conspirators shared in substantial commissions from Lincoln. The defendant's share of the commissions, and thus his personal gain from the criminal conduct, was $272,000.

During his plea allocution before the District Court, respondent admitted his central role in obtaining the three fraudulent STOLI policies, his purposeful leveraging of his status as an attorney in respect of the D.S. insurance policy, and his pecuniary gain, in the amount of $272,000, from the

crimes. He added, "I fully acknowledge that my conduct was wrongful, and I accept complete responsibility for this offense."

On May 25, 2017, at sentencing, the government requested imposition of a three-year prison term. In turn, respondent's defense counsel requested "leniency," stressing the good works respondent had engaged in, the severe economic impact of his conviction on his family, and his medical condition.

After considering the arguments of counsel, Judge Thompson sentenced respondent to a three-year term of imprisonment, followed by a three-year period of supervised release, mandatory fines and penalties, forfeiture of the $272,000, and restitution in the amount of $1,976,558.62. In imposing a term of incarceration, Judge Thompson emphasized the impact of respondent's crime on the victims, who thought they were making sound, legal investments rather than financing fraudulent schemes, and had lost $2.7 million; respondent's abuse of his position of trust, as an attorney; and the intended loss to the insurance providers, which would have been over $14 million, had all three STOLI policies been paid. In imposing a term of incarceration below the five-year period set forth under the federal sentencing guidelines, Judge Thompson cited respondent's medical condition, past charitable and public service, and other prior good works.

Following a review of the record, we determine to grant the OAE's motion for final discipline. 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). Respondent's conviction for conspiracy to commit wire fraud, thus, establishes violations of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, misrepresentation, or deceit). Hence, the sole issue is the extent of discipline to be imposed. 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, we must consider the interests of the public, the bar, and the respondent. "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 provide guidance in crafting the suitable penalty for respondent's criminal offense.

In In re Goldberg, 142 N.J. 557, 567 (1995), the Court enumerated aggravating factors that normally lead to disbarment in criminal cases:

> Criminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to theft by deception and fraud, ordinarily result in disbarment. We have emphasized that when a criminal conspiracy evidences 'continuing and prolonged rather than episodic, involvement in crime,' is 'motivated by personal greed,' and involved the use of the lawyer's skills 'to assist in the engineering of the criminal scheme,' the offense merits disbarment.' (citations omitted).

Applying the Goldberg standard, the Court has issued lengthy suspensions or disbarment in cases involving criminal fraud or conspiracy to commit fraud. In In re Mueller, 218 N.J. 3 (2014), (three-year retroactive suspension) the attorney made affirmative misrepresentations to aid his co-conspirators to defraud real estate investors by obtaining funds from them for a real estate development project. Mueller wire-transferred the invested funds (approximately $1 million) from his trust account to the 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 investing in the purported development project was 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 were a false lien and note on which the grantors' names had been forged. Id. at 4-5.

Mueller's counsel asserted that, although, initially, Mueller believed that the development project was legitimate, he later clearly learned otherwise and lent his name and his position of trust to help defraud investors. Id. at 11-12. 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. Id. at 8.

In In re Abrams, 186 N.J. 588 (2006) (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. Id. at 4-5.

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 induced Thermadyne to purchase Woodland's assets for $1.508 million, which was wire-transferred from New York to Philadelphia. Id. at 5.

In Abrams, we considered, in aggravation, (1) the attorney's role as a primary participant in the scheme to defraud Thermadyne out of $200,000; and (2) 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. In the Matters of Philip S. Noce, DRB 03-225 and DRB 03-169 (December 8, 2003) (slip op. at 2). 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. Id. at 5-7. The attorney was paid only his regular fee and cooperated fully with the government. Id. at 9.

In In re Klein, 231 N.J. 123 (2017), the attorney was disbarred for his knowing and intentional participation in an "advanced fee scheme" that lasted approximately eight years and defrauded twenty-one victims of more than $819,000. In the Matter of Eric Alan Klein, DRB 17-039 (July 21, 2017) (slip op. at 19). He and his co-conspirator, a previously convicted federal felon, used bogus companies to dupe clients into paying thousands of dollars in "advanced fees" in exchange for a promise of collateral that could be used to borrow much larger sums of money from well-known financial institutions. Id. at 3-6. Instead of collateral, however, the clients received worthless documents called "Notices of Availability," which were not legitimate financial instruments, and were never accepted by banks as collateral for financing. Id.

at 4. The attorney and his co-conspirator accepted the advanced fees, despite knowing that they would never provide the service promised to the clients. Ibid.

The attorney continued the scheme, undeterred, when his co-conspirator was arrested by federal law enforcement authorities. Id. at 11. His participation was motivated by personal greed - as he conceded during his federal criminal trial, he had twice filed for bankruptcy before meeting his co-conspirator, who then lined his pockets with approximately $2 million over eight years, representing roughly half of his law firm's revenue during the period of their joint criminal enterprise. Id. at 26.

Finally, the attorney actively and knowingly engineered the fraud, leveraging his status as an attorney to provide "a veneer of respectability and legality" to the criminal scheme; drafting specious legal opinions that were included in bogus marketing materials; meeting with clients and identifying himself as a "legal advisor" and "escrow agent" to the bogus companies; and providing false assurances to clients that their advanced fees would remain, inviolate, in his escrow account until their financing transactions closed. Id. at 26-27.

For his crimes, the attorney was sentenced to fifty-one months' imprisonment, followed by three years of supervised release, and ordered to pay $819,779 in restitution. Id. at 18.

In In re Neugeboren, 231 N.J. 14 (2017), the attorney was disbarred after stealing more than $2 million dollars from his corporate client, a home health care and nursing service, over a four-year period. In the Matter of Matthew S. Neugeboren, DRB 16-412 (June 28, 2017) (slip op. at 2-3). The attorney, who was in-house counsel to the client, fraudulently obtained funds from his client to support his gambling addiction. Ibid. Neugeboren instructed his client to deposit the illicitly-obtained funds in his attorney trust account, and then disbursed them for his personal use, yet not claim the stolen funds as income on his tax returns. Id. at 3. His client believed the funds were to pay legitimate expenses on behalf of the company. Ibid.

For his crimes, the attorney was sentenced to eighteen months' imprisonment, followed by three years of supervised release, and ordered to pay $1,404,962 in restitution to his client and $474,814 to the IRS. Id. at 3-4.

In In re Bultmeyer, 224 N.J. 145 (2016), the attorney was disbarred for his knowing and intentional participation in a fraud that resulted in a loss to 179 victims of over $7 million. He and a partner owned Ameripay, LLC, a payroll company that handled payroll and tax withholding services for

numerous public and private entities throughout New Jersey. They also owned Sherbourne Capital Management, Ltd., which purported to be an investment company, and Sherbourne Financial, Ltd. Although Sherbourne was never registered with federal or state regulators to sell any investments, the attorney and his co-conspirator misappropriated monies entrusted to them by Ameripay's payroll clients, as well as by Sherbourne investors, to conceal the shortfalls in Ameripay's payroll and tax withholding accounts. In the Matter of Paul G. Bultmeyer, DRB 15-056 (September 15, 2015) (slip op. at 3).

Bultmeyer and his co-conspirator agreed to divert millions of dollars to satisfy the payroll obligations of other payroll clients or to make unrelated tax payments on behalf of other clients. He was aware that millions of dollars were being diverted to make the inappropriate payments. He also knew that "Sherbourne sent investor funds to Ameripay, which were then used to satisfy the payroll and tax obligations by Ameripay." Id. at 4.

For his crimes, the attorney was sentenced to sixty months' imprisonment, followed by three years of supervised release, and ordered to pay $8,606,413.36 in restitution. Id. at 9.

Finally, in In re Marino, 217 N.J. 351 (2014), the attorney was disbarred for his participation in a fraud that resulted in a loss to 288 investors of over $309 million. He 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 persuade contributions from potential investors. Marino's participation in the fraud included assisting in the concealment of the fraud perpetrated on investors by administering a fraudulent accounting firm that concealed the fund's significant losses, hiding the fund's true financial information, and drafting versions of a phony purchase and sale agreement of 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 either avoided or significantly limited if he had reported the fraudulent activity to law enforcement. Id. at 12-13. The judge pointed out that Marino's actions "left individuals, some 'in the twilight of their life, suddenly destitute.'" Id. at 13.

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. Id. at 13-14.

As previously noted, the OAE urges respondent's disbarment, pursuant to the Goldberg standard. In turn, respondent's submission to us was considerably late, pursuant to R. 1:20-13. We gave it full consideration, however, in light of the potential recommendation for disbarment and the likely limitations faced by respondent due to his incarceration. In support of his request for leniency, respondent emphasized that the state and federal bars of Connecticut might impose six-year terms of suspension for his federal conviction, retroactive to July 28, 2017, the date he was temporarily suspended in that state. Respondent conceded that, as of the date of his submission, final discipline has not been rendered in either Connecticut or Pennsylvania, where he also maintains a license to practice law.

Respondent also offered, in respect of mitigation, his unblemished records in New Jersey, Connecticut, and Pennsylvania, after over thirty years at those respective bars; his excellent reputation in the community, and prior, extensive charitable and pro bono contributions; his anticipated age at the time of his release from prison (sixty-four) and the resulting challenges he will face seeking employment, should he be disbarred; the $2 million dollar restitution order and $272,000 forfeiture imposed in connection with his conviction, and the financial hardship that those levies add to his family's burden; and his wife and daughter's dependent status on him, as the sole family wage earner.

Respondent's submission, however, neither addresses nor distinguishes the New Jersey disciplinary precedent applicable to his federal conviction for a crime involving fraud.

In our view, the record clearly establishes that respondent's misconduct fulfilled every aggravating factor set forth in Goldberg, and that disbarment is warranted for his criminal conviction for fraud. Specifically, his central role in the STOLI scheme was prolonged, lasting eight years. Next, his participation was motivated by personal greed, evidenced by the $272,000 in commissions, paid to him by the insurance providers he had duped, that the federal court forced him to repay as restitution. Finally, respondent purposefully leveraged his status as an attorney to engineer the scheme, especially in the D.S. case, where he induced a client of his firm to make misrepresentations to secure the insurance policy, bolstering the false application with correspondence on his firm's letterhead.

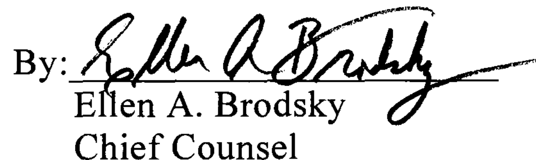
Moreover, most of the compelling mitigating factors present in Mueller, Abrams, or Noce are inapplicable here. Mueller's misconduct began with a belief that the development project was legitimate, and lasted only eleven months. Abrams's misconduct involved only $200,000. Noce was paid only his regular fee in return for sanctioning the fraud in question. To his credit, respondent did promptly plead guilty to his crime.

On balance, respondent's misconduct was much more serious than that of the attorneys who received terms of suspension. The District Court calculated the intended loss to the insurance providers to be $14 million, and the investors whom respondent duped, which included clients of his law firm, lost approximately $2.7 million. Although his wrongdoing was not of the financial magnitude of the attorneys in Bultmeyer or Marino, the record clearly evidences respondent's knowing participation, as a central player, in a calculated STOLI scheme spanning eight years. Respondent's misconduct evidences such defective character that disbarment is required to protect the public and to preserve confidence in the bar.

Member Hoberman 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

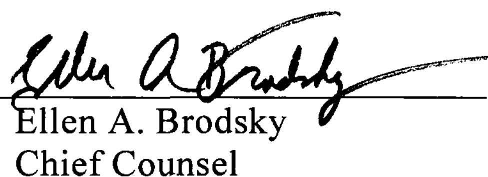
In the Matter of David L. Quatrella
Docket No. DRB 18-225

Argued: September 20, 2018

Decided: December 17, 2018

Disposition: Disbar

Members	Disbar	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman			X
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1



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