Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-234
District Docket No. XIV-2017-0670E

In The Matter Of	:
Yohan Choi	:
An Attorney At Law	:

Decision

Argued: November 15, 2018

Decided: December 28, 2018

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

Richard E. Mischel appeared on behalf of respondent.

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), following respondent's guilty plea to one count of conspiracy to commit money laundering (18 U.S.C. § 1956) and one count of knowingly and willfully making a materially false, fictitious, or fraudulent statement or representation

to Homeland Security Investigations (HSI), an arm of the United States Department of Homeland Security (18 U.S.C. § 1001(a)(2)), violations of RPC 8.4(b) (commission of criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE seeks an eighteen-month suspension for respondent's misconduct. Respondent agrees that a suspension is warranted, but does not propose a term. Instead, he asks that the suspension be retroactive to May 2, 2018, the effective date of his temporary suspension in New Jersey.

For the reasons set forth below, we determined to impose a two-year suspension on respondent, retroactive to May 2, 2018.

Respondent was admitted to the New York bar in 2002 and to the New Jersey bar in 2003. At the relevant times, he maintained an office for the practice of law in Flushing, New York.

Effective May 2, 2018, the Court temporarily suspended respondent from the practice of law, based on the federal criminal conviction. In re Choi, 233 N.J. 204 (2018).

Effective November 20, 2017, the Supreme Court of the State of New York, Appellate Division, Second Department (Second Department) suspended respondent from the practice of law until further order of that court. At oral

argument before us, respondent's counsel stated that the Second Department had not yet issued a final order, and, thus, the matter remains pending. Counsel subsequently informed us that respondent voluntarily had offered to resign from the New York Bar, an offer that the appellate court may either accept or reject in connection with its pending review.

On July 15, 2013, the United States Attorney for the Eastern District of New York (U.S. Attorney) issued a two-count information charging respondent with one count of conspiracy to commit money laundering, contrary to 18 U.S.C. § 1956, and one count of making false statements to HSI agents, contrary to 18 U.S.C. § 1001(a)(2).[1] On that same date, respondent appeared before United States Magistrate Judge Roanne L. Mann and pleaded guilty to the charges.

On February 1, 2017, the Honorable Frederic Block, U.S.D.J., sentenced respondent to one year of supervised release on each count, to be served concurrently, and ordered him to pay $1,200 in fines and assessments. On January 31, 2018, respondent was discharged from supervision.

Respondent's conviction stemmed from his four-month relationship with Ernest Sarkisyants, who operated a medical billing company and was involved

[1] Respondent did not report the charges to the OAE, as R. 1:20-13(a)(1) requires.

in a money laundering scheme designed to conceal proceeds acquired through acts of insurance and health care fraud. Sarkisyants also was a runner.

Between January and May 2011, Sarkisyants referred thirty to thirty-five personal injury cases to respondent, for which he received $1,000 per referral. Respondent knew that the medical claims underlying the case referrals were false and fraudulent.

Initially, respondent paid the referral fees in cash. At some point, however, Sarkisyants instructed him to pay the referral fees in the form of business account checks issued to shell corporations in order to disguise the nature and source of the payments.

Respondent also agreed to launder a certain amount of health care fraud proceeds through his business accounts. The funds were deposited in the accounts, and respondent issued checks to the shell corporations. From January 2011 to May 2011, respondent and Sarkisyants concealed the nature, location, source, ownership, and control of $183,000.

On August 22, 2011, HSI questioned respondent about the checks issued to the shell corporations. Respondent falsely asserted that the checks represented payment for "legitimate expenses for services rendered by the payees when in fact the checks represented payment of kickbacks."

In subsequent interviews, respondent admitted that he had lied during the August 2011 interview. He then provided details of the full nature and extent of his own criminal activity. He also agreed to cooperate with the investigation of the criminal enterprise, by arranging and recording meetings with Sarkisyants.

On two occasions in June 2013, respondent recorded conversations in which Sarkisyants instructed respondent to refrain from identifying him to law enforcement or to the grand jury, and to misrepresent the purpose of the checks that respondent had issued to the shell corporations.

Prior to respondent's February 1, 2017 sentencing, the U.S. Attorney asserted that respondent had provided the Government with "substantial assistance" in the arrest and prosecution of others, thus justifying a downward departure from the applicable sentencing guidelines.

At the sentencing hearing, respondent delivered the following statement:

> This has been a very difficult and humbling experience for me. I've had to accept the fact I have violated both my professional obligations as well as the law. These are things that I never thought I would ever do. To put it simply, I took shortcuts to maintain my business and I did not think of the consequences. I should have exercised better judgment. I should have had the strength to uphold the highest ethical and legal standards but I did not. I accept full responsibility for my actions and I tried to do everything I could to demonstrate my commitment to the law and to never repeating this behavior. I hope that my conduct over

> the past few years and my cooperation with the government illustrates that commitment. Thank you again, Your Honor.
>
> [OAEb,Ex.Dp.11,l.10 to l.23.][2]

In sentencing respondent to supervised release, which was outside the sentencing guidelines, the judge acknowledged that respondent had recognized "the errors of [his] way;" that he was "truly contrite;" that he had cooperated with the Government; and that he had done everything possible to rehabilitate and redeem himself.

Respondent submitted three character letters for our consideration. They were written by his pastor; a New York City police department detective, who also was respondent's friend and client; and a professional colleague. Although it is not clear whether all three witnesses were aware of respondent's criminal activity, the two witnesses who mentioned it attested to respondent's remorse. All three vouched for respondent's good character.

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

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[2] "OAEb,Ex.D" refers to the transcript of sentencing, dated February 1, 2017, which was attached as Exhibit D to the OAE's June 29, 2018 brief and appendix in support of its motion for final discipline.

conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); and In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty plea to, and conviction of, conspiracy to commit money laundering and knowingly and willfully making a materially false, fictitious, or fraudulent statement or representation to HSI establishes a violation of RPC 8.4(b). 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 conduct also violated RPC 8.4(c). Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; and 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).

In this case, we considered respondent's participation in the money laundering conspiracy and his misrepresentations to the Government, the sentence imposed on him, and aggravating and mitigating factors.

Money laundering, and conspiracy to commit money laundering, are serious offenses, which, with one exception, have resulted in disbarment. In re Sinko, 210 N.J. 150 (2012) (three-year suspension imposed on attorney who agreed to permit "John Palmer," an undercover FBI agent, to purchase his condominium as a way to launder funds that Palmer had stolen from his employer; to hide the stolen funds, the attorney and Palmer agreed to falsely represent on the agreement of sale that the purchase price was $100,000 less than the actual price; the attorney was convicted of one count of money laundering and conspiracy to commit money laundering and was sentenced to thirty months' incarceration and three years of supervised release; he was not ordered to make restitution; although we had recommended disbarment, the Court issued an Order, determining that "a prospective three-year term of suspension is the appropriate quantum of discipline for respondent's unethical conduct"); In re Desiderio, 197 N.J. 419 (2009) (disbarment for attorney who pleaded guilty to one count of conspiracy to commit money laundering, which was carried out over an eight-year period; during that time, he leased three properties in New Jersey and purchased a property in Florida, which enabled

the principals of an illegal marijuana distribution organization to launder funds and conceal their criminal activities from law enforcement authorities; the attorney, who received more than $700,000 from the organization, was sentenced to forty-one months in prison, followed by two years' probation; in disbarring him, the Court considered the length of time of his involvement, the magnitude of the criminal plan, and the nature of his efforts to conceal the criminality of the enterprise); In re Harris, 186 N.J. 44 (2006) (disbarment; in connection with the attorney's representation of a real estate developer who engaged in the practice of "flipping" properties, she was convicted, under New Jersey state law, of money laundering, conspiracy to commit money laundering, theft by deception, conspiracy to commit theft by deception, and misapplication of entrusted property; among other things, the attorney had deposited the proceeds from illicit real estate transactions into her trust account, and assisted her accomplices in using those proceeds to fund further fraudulent transactions); In re Denker, 147 N.J. 570 (1997) (disbarment for attorney who pleaded guilty to one count of money laundering for assisting a client in laundering $50,000, the proceeds of drug trafficking, in exchange for a $3,500 fee; he did so by converting the cash into various negotiable instruments, each in denominations less than $10,000, in order to avoid reporting requirements and to conceal the source of the funds; unbeknownst to

the attorney, his client was cooperating with law enforcement authorities; the attorney similarly laundered another $50,000 for a purported associate of the client); and In re Mallon, 118 N.J. 663 (1990) (disbarment; attorney was convicted of one count of conspiracy to defraud the United States and two counts of aiding and abetting the submission of materially false tax returns; the charges evolved from his participation in a conspiracy to hide illegal income from federal tax authorities; he directly participated in the laundering of funds to fabricate two transactions reported on joint tax returns of a couple, a "serious crime of dishonesty;" his crimes were directly related to the practice of law and he used his position as an attorney to further the goals of the conspiracy).

Either a long-term suspension or disbarment is imposed on attorneys who knowingly and willfully make false statements of material fact in a matter within the jurisdiction of the United States Government. See, e.g., In re Fox, 221 N.J. 263 (2015) (one-year suspension, retroactive to effective date of temporary suspension, imposed on attorney who pleaded guilty to one count of making a false, fictitious, and fraudulent statement to the Department of Housing and Urban Development (HUD), in violation of 18 U.S.C. §§ 1001 and 1002; the attorney misrepresented on a HUD-1 settlement statement that the seller of a property had received $45,062.85 in proceeds when, to the

contrary, the seller had received nothing because the attorney had diverted the proceeds for the benefit of himself and others; the attorney was granted a downward departure from the sentencing guidelines due to his assistance in bringing "a number of individuals" to justice; he received a six-month prison sentence, followed by two years of supervised release; the confidential presentence investigation report disclosed "a specific number of transactions" conducted during the relevant time period, which we could not reveal other than to note that they resulted in a $603,074.40 restitution order; prior censure, in a default matter, for failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice); In re Serrano, 193 N.J. 24 (2007) (eighteen-month suspension, retroactive to effective date of temporary suspension, imposed on attorney who pleaded guilty to violating 18 U.S.C. §§ 1001 and 1002; the attorney knowingly prepared materially false HUD-1 forms, in order to qualify unqualified borrowers for HUD-insured mortgages in approximately twenty-five closings, for which she received legal fees of $20,000 to $40,000; she was sentenced to one year of probation and fined $5,000; in recommending an eighteen-month suspension, we noted the attorney's cooperation with the government's investigation, which had resulted in a downward departure from the sentencing guidelines); In re Belardi, 172 N.J. 73 (2002) (eighteen-month suspension, retroactive to effective date of

temporary suspension, imposed on attorney who pleaded guilty to three counts of knowingly and willfully making false statements to the Federal Communications Commission, in violation of 18 U.S.C. § 1001; the attorney had filed documents, which falsely represented that construction had been completed on an individual paging transmission facility that was operational, when no paging transmitting facility had been constructed; he was sentenced to five years' probation, fined $15,000, and required to perform 100 hours of community service); In re Vargas, 170 N.J. 255 (2002) (three-year suspension, retroactive to effective date of temporary suspension, imposed on attorney who pleaded guilty to violating 18 U.S.C. §1001, based on his falsification of Immigration and Naturalization Services (INS) documents; the attorney changed the names on INS notices of approval involving former clients to the names of current clients and submitted the falsified documents to the INS for the purpose of obtaining residency status for the current clients; he also lied to investigators, claiming that a paralegal had falsified the documents); In re Silverblatt, 142 N.J. 635 (1995) (on motion for reciprocal discipline from New York, three-year suspension, retroactive to effective date of temporary suspension in New Jersey, imposed on attorney who 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, in violation of 18 U.S.C. § 1001; in behalf of ten foreign nationals, the attorney submitted documents to the INS, falsely stating that the clients were in the U.S. for political reasons; no quantifiable financial harm shown to the federal government); In re Izquierdo, 209 N.J. 5 (2012) (disbarment; attorney pleaded guilty to one count of knowingly and willfully making materially false, fictitious, and fraudulent statements and representations to agents of the Federal Bureau of Investigation (FBI), in violation of 18 U.S.C. § 2002; the attorney provided a local zoning official with multiple cash payments or things of value in exchange for official favors and referrals, which the Court considered acts of public corruption; further, even though the attorney was not charged with bribery, his fraudulent statements and representations to the FBI were related to a number of payments of money or things of value that the attorney had given to an undisclosed co-conspirator public official; thus, in assessing the quantum of discipline, the Court considered that the attorney's conduct equated to bribery); In re Seitel, 197 N.J. 420 (2009) (companion case with In re Desiderio, 197 N.J. 419) (disbarment; attorney pleaded guilty to one count of conspiracy to make a false statement to the FBI and the Internal Revenue Service (IRS) in the course of their investigation of a money laundering scheme, in violation of 18 U.S.C.A. § 371 and § 1001; specifically, he leased three properties in New Jersey and

purchased one property in Florida for the purpose of enabling the principals of a "substantial marijuana distribution organization" to conceal their activities from law enforcement; once the criminal scheme was discovered, he provided false and misleading information to thwart the investigations; he was sentenced to five months in prison, followed by 150 days' home confinement and two years' probation, and fined $30,000); and In re Brown, 186 N.J. 160 (2006) (disbarment; the attorney pleaded guilty to three counts of making a materially false, fictitious, or fraudulent statement or representation, in violation of 18 U.S.C. § 1001; while the attorney was suspended from the practice of law in New Jersey, he served as a Special Assistant U.S. Attorney for the United States Army, at the Picatinny Arsenal, and handled more than 1,500 cases during a three-year period; although he was suspended, in each year, the attorney submitted to the Army an annual attorney qualification statement, certifying that he was licensed and eligible to practice law in New Jersey; he was sentenced to three years' probation on each count, to run concurrently, and fined $1,000; prior six-month and three-year suspensions).

The money laundering aspect of this case is similar to the facts in In re Denker. There, the attorney received two cash payments of $50,000, which he knew to have been generated by drug trafficking. In the Matter of Aaron D. Denker, DRB 96-144 (November 18, 1996) (slip op. at 2). In exchange for a

$3,500 fee, Denker agreed to launder $50,000 by converting the money into various negotiable instruments in denominations of less than $10,000. Ibid. He laundered another $50,000 in cash by converting it to money orders and checks, in return for a $3,000 fee. Ibid. The transactions were three months apart. Id. at 4. In total, the attorney obtained 117 separate negotiable instruments and received a $6,500 fee. Id. at 5.

According to Denker's counsel, his client had agreed to launder the money "in hopes of widening his client base and building his criminal practice." Id. at 3. We determined that disbarment was the only appropriate discipline, given the severity of the criminal activity. Id. at 4. The Court accepted our recommendation and disbarred the attorney. In re Denker, 147 N.J. 570.

Here, although respondent had disguised the referral fees by paying them to the shell corporations, he was not charged with his own money laundering scheme and did not charge a fee for his misdeeds.

Further, unlike Denker, who was sentenced to a twenty-seven month prison term and fined $20,000, respondent was sentenced to one year of supervised release and fined $1,200. Finally, our decision in Denker mentioned no factors that mitigated his criminal conduct, whereas in respondent's case, the sentencing judge cited multiple mitigating factors and granted the

Government's request for a significant downward departure from the sentencing guidelines on that basis. Thus, although Denker is closest in facts to this case, as shown below, respondent's conduct and the mitigation do not justify disbarment[3].

Specifically, Denker and Sinko were directly involved in the money laundering schemes from the outset, whereas respondent became involved only after Sarkisyants took advantage of their "referral" arrangement, and used respondent to funnel illegal gains through his trust account, albeit with respondent's knowledge and consent. Thus, in our view, disbarment is unwarranted for the money laundering conspiracy.

In respect of respondent's misrepresentations to HSI, his conduct is most akin to that of the attorneys in Serrano and Belardi, each of whom received an eighteen-month suspension.

Serrano falsified HUD-1 documents in twenty-five closings and received $20,000 to $40,000 in those transactions. She received a downward departure based on her cooperation with the government, was sentenced to one year of probation, and paid a $5,000 fine.

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[3] Although the Court determined to impose a three-year suspension on Sinko, instead of disbarment, it did so through the issuance of an Order without an opinion. Thus, it is difficult to discern the determining factor(s) the Court might have considered in reaching its determination.

Belardi completed three false forms regarding a single transmission facility and received five years' probation, was fined $15,000, and was required to perform 100 hours of community service.

Like Serrano and Belardi, respondent's misrepresentations to HSI were limited. He received no prison time and was not required to pay restitution. Like Serrano, respondent cooperated with the government in its investigation of the money laundering scheme. Further, neither respondent nor Serrano and Belardi had a disciplinary record.

Moreover, respondent's misconduct was limited in time and scope. His criminal behavior occurred between January and May 2011, a four- to five-month period. In respect of the referral fees, the record does not identify the number of payments made in cash or the number of payments made by checks issued to the shell corporations. However, the total was no more than $35,000.

In addition to the limited time and scope of respondent's involvement in the criminal scheme, he was not a ringleader, and there is no evidence that, aside from receiving the referrals, he benefitted financially from the money laundering scheme. Moreover, respondent has an unblemished disciplinary record in both New Jersey and New York (save the temporary suspensions arising from the conviction). He provided substantial assistance to the Government in its prosecution of the criminal enterprise. As the sentencing

judge observed, and respondent testified, he has accepted responsibility for his criminal conduct and expressed remorse. He received supervised release and was not ordered to pay restitution.

In our view, the mitigation justifies a two-year suspension.

Member Gallipoli voted to disbar respondent. Member Singer voted to impose a one-year suspension, retroactive to May 2, 2018, the effective date of his temporary suspension in New Jersey. Member Rivera 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: Paula D'Amuzzo
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Yohan Choi
Docket No. DRB 18-234

Argued: November 15, 2018

Decided: December 28, 2018

Disposition: Two-Year Retroactive Suspension

Members	Two-Year Retroactive Suspension	One-Year Retroactive Suspension	Disbar	Recused	Did Not Participate
Frost	X				
Clark	X				
Boyer	X				
Gallipoli			X		
Hoberman	X				
Joseph	X				
Rivera					X
Singer		X			
Zmirich	X				
Total:	6	1	1	0	1

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