Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-081
District Docket No. XIV-2017-0669E

In the Matter of	:
Evgeny Alender Freidman	:
An Attorney at Law	:

Decision

Argued: September 17, 2020

Decided: February 11, 2021

Ashley L. Kolata-Guzik appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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, in the State of New York, to tax fraud, a second-degree felony, in violation of New York Tax Law § 1805. This offense constitutes a

violation of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

For the reasons set forth below, we determine to grant the motion for final discipline and recommend to the Court that respondent be disbarred.

Respondent was admitted to the New Jersey and New York bars in 1997. On July 12, 2018, respondent consented to the temporary suspension of his New Jersey license in connection with his New York criminal matter. In re Freidman, 234 N.J. 129 (2018). He remains suspended to date, and has no other disciplinary history in New Jersey.

On May 1, 2018, the Supreme Court of New York, Appellate Division, First Judicial Department, disbarred respondent in New York for his failure to cooperate with an ethics investigation.

Respondent, referred to in the record as the "Taxi King," once owned and operated 800 taxi medallions in New York. Due to the emergence of Uber and other ride-sharing businesses, the taxi industry struggled, and respondent's businesses were on the brink of financial ruin. In an attempt to save his businesses, respondent began to illegally refrain from remitting to the State of New York and the Metropolitan Transportation Authority (MTA) certain surcharges collected from taxi customers. Moreover, to conceal his theft and tax

evasion, he filed false MTA surcharge tax returns and submitted fraudulent information in his own tax returns.

Consequently, on June 1, 2017, a grand jury for the Supreme Court of New York charged respondent with four counts of first-degree tax fraud, in violation of New York Tax Law § 1806, for his failure to remit more than $1,000,000 owed for tax years 2012 through 2015.[1] The grand jury also charged respondent with one count of first-degree grand larceny, in violation of New York Penal Law § 155.42, for his theft of more than $1,000,000 from the State of New York.

During the pendency of his criminal case, New York disciplinary authorities charged respondent with failure to cooperate in an investigation of irregularities in his attorney trust account (ATA). During a January 23, 2017 interview with New York disciplinary authorities, respondent admitted improperly using his ATA in connection with his taxi businesses. On May 1, 2018, the Supreme Court of New York, Appellate Division, First Judicial Department, disbarred respondent, finding that he had been temporarily

[1] Section 1806 of the New York Tax Law states: "A person commits criminal tax fraud in the first degree when he or she commits a tax fraud act or acts and, with the intent to evade any tax due under this chapter, or to defraud the state or any subdivision of the state, the person pays the state and/or a political subdivision of the state (whether by means of underpayment or receipt of refund or both), in a period of not more than one year in excess of one million dollars less than the tax liability that is due. Criminal tax fraud in the first degree is a class B felony."

suspended for more than six months and had failed to cooperate with disciplinary authorities, including failing to produce required financial records for his ATA.

Thereafter, on May 22, 2018, respondent entered a guilty plea, in the Supreme Court of New York, Albany County, before the Honorable Peter A. Lynch, to a reduced charge of one count of second-degree tax fraud, in violation of New York Tax Law § 1805.[2] The State offered a five-year probationary sentence; however, if respondent failed to comply with the conditions of the plea agreement, he would be subject to a three-to-nine-year term of incarceration and, if he committed any further crimes, he would be subject to a five-to-fifteen-year term of incarceration for the class C felony.

At his plea hearing, respondent admitted that, between January 1, 2015 and February 4, 2016, he was the chief executive officer or a principal of numerous cab companies, and had falsely reported more than $50,000 less than the tax liability that was due to New York for MTA surcharges that his businesses had collected from customers. Respondent further admitted that he

[2] Section 1805 of the New York Tax Law states: "A person commits criminal tax fraud in the second degree when he or she commits a tax fraud act or acts and, with the intent to evade any tax due under this chapter, or to defraud the state or any subdivision of the state, the person pays the state and/or a political subdivision of the state (whether by means of underpayment or receipt of refund or both), in a period of not more than one year in excess of fifty thousand dollars less than the tax liability that is due. Criminal tax fraud in the second degree is a class C felony."

had knowingly and willfully failed to remit the surcharges, with the intent to evade his tax obligations.

On October 30, 2019, in accordance with the plea agreement, Judge Lynch sentenced respondent to five years of probation. By the time of sentencing, respondent already had paid $1,000,000 in restitution, and had signed a judgment of confession to remit an additional $4,000,000 in restitution to the State of New York.[3]

In its brief, the OAE asserted that there was no mitigation to consider. However, the record reflects that respondent demonstrated remorse for his actions. He also made restitution of at least $1,000,000 and executed the judgment of confession to remit an additional $4,000,000 to New York, thereby exhibiting financial responsibility for his crimes. Finally, respondent cooperated with various state and federal authorities in their ongoing investigations.

In aggravation, respondent failed to promptly report his New York criminal conviction to the OAE, as R. 1:20-13(a)(1) requires. Moreover, according to the OAE, respondent's failure to remit the $5,000,000 in surcharges

[3] On October 30, 2019, during the sentencing proceeding, respondent's attorney inaccurately stated to the New York court that respondent had been "disbarred in New Jersey and New York." As previously stated, on July 12, 2018, the Court temporarily suspended respondent in connection with this matter and his then-pending criminal conduct. Because respondent has not replied to the OAE's motion for final discipline, or to correspondence from the Office of Board Counsel, it is unclear whether respondent believes he has been disbarred in New Jersey.

to the MTA affected 10,000,000 taxicab riders and significantly impacted the MTA, a public entity.

Citing In re Buonopane, 201 N.J. 408 (2007), the OAE urged respondent's disbarment. In Buonopane, the Court disbarred the attorney for failure to pay taxes withheld from his employees, coupled with his tax evasion. The crime amounted to the misapplication of $2,700,000 in entrusted funds over a five-year period. In aggravation, Buonopane's employees were denied benefits by his failure to remit the withholdings to the taxing authorities. The Court found that the magnitude of respondent's criminal offenses warranted disbarment.

In support of disbarment, the OAE also cited the following disbarment cases: In re Bok, 163 N.J. 499 (2000) (attorney convicted of income tax evasion and filing false corporate and personal tax returns; he underreported $200,000 on his personal tax return and $4,000,000 on his corporate tax return, causing a tax revenue loss of nearly $1,500,000); In re Neugeboren, 221 N.J. 507 (2015) (attorney, serving as in-house counsel to a home health care and nursing service, fraudulently obtained money from the company to support his gambling addiction); and In re Bagdis, 228 N.J. 1 (2017) (attorney assisted clients with filing false returns, resulting in the underreporting of $24 million in income; Bagdis had not filed taxes since 1990).

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 of second-degree tax fraud, in violation of New York Tax Law § 1805, thus, 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." 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 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).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse an ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 165, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). 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 his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

The Court has stated that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances" including the "details of the offense, the background of respondent, and the pre-sentence report" before "reaching a decision as to [the] sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

The Court has concluded that attorneys who commit serious crimes or crimes that evidence a total lack of moral fiber must be disbarred in order to

protect the public, the integrity of the bar, and the confidence of the public in the legal profession. See, e.g., In re Quatrella, 237 N.J. 402 (2019) (attorney convicted of conspiracy to commit wire fraud after taking part in a scheme to defraud life insurance providers via three stranger-originated life insurance policies; the victims affected by the crimes lost $2,700,000 and the intended loss to the insurance providers would have exceeded $14,000,000); In re Klein, 231 N.J. 123 (2017) (attorney convicted of wire fraud for engaging in an "advanced fee" scheme that lasted eight years and defrauded twenty-one victims of more than $819,000; Klein leveraged his status as an attorney to provide a veneer of respectability and legality to the criminal scheme, including the use of his attorney escrow account); In re Seltzer, 169 N.J. 590 (2001) (attorney working as a public adjuster committed insurance fraud by taking bribes for submitting falsely inflated claims to insurance companies and failed to report the payments as income on his tax returns; attorney guilty of conspiracy to commit mail fraud, mail fraud, and conspiracy to defraud the Internal Revenue Service (IRS)); In re Lurie, 163 N.J. 83 (2000) (attorney convicted of eight counts of scheming to commit fraud, nine counts of intentional real estate securities fraud, six counts of grand larceny, and one count of offering a false statement for filing); In re Chucas, 156 N.J. 542 (1999) (attorney convicted of wire fraud, unlawful monetary transactions, and conspiracy to commit wire fraud; attorney and co-

defendant used for their own purposes $238,000 collected from numerous victims for the false purpose of buying stock); In re Hasbrouck, 152 N.J. 366 (1998) (attorney pleaded guilty to several counts of burglary and theft by unlawful taking, which she had committed to support her addiction to pain-killing drugs); In re Goldberg, 142 N.J. 557 (1995) (two separate convictions for mail fraud and conspiracy to defraud the United States); In re Messinger, 133 N.J. 173 (1993) (attorney convicted of conspiracy to defraud the United States by engaging in fraudulent securities transactions to generate tax losses, aiding in the filing of false tax returns for various partnerships, and filing a false personal tax return; the attorney was involved in the conspiracy for three years, directly benefited from the false tax deductions, and was motivated by personal gain); and In re Mallon, 118 N.J. 663 (1990) (attorney convicted of conspiracy to defraud the United States and aiding and abetting the submission of false tax returns; attorney directly participated in the laundering of funds to fabricate two transactions reported on two tax returns in 1983 and 1984).

In its 1995 Goldberg opinion, the Court listed aggravating factors that typically will lead to the disbarment of attorneys convicted of crimes:

> 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).
>
> [In re Goldberg, 142 N.J. at 567.]

Moreover, attorneys previously have been disbarred for egregious tax evasion. See, e.g., In re Cardone, 175 N.J. 155 (2003) (attorney pleaded guilty to attempted income tax evasion, in violation of 26 U.S.C. § 7201; Cardone had filed income tax returns acknowledging taxes owed, but thereafter took various steps designed to prevent the IRS from collecting the taxes; previous three-year suspension for engaging in fraudulent conduct in three separate business transactions with a client) and In re Braun, 149 N.J. 414 (1997) (although attorney pleaded guilty to one count of income tax evasion, in violation of 26 U.S.C. § 7201, resulting in a total tax loss of $116,310 for 1987 to 1991, he also stipulated to additional offenses; disbarment was warranted because his actions were motivated by personal greed and involved a criminal conspiracy to evade taxes extending over a long period of time; Braun had received a prior three-month suspension for his conviction for recklessly endangering another person, in violation of 18 Pa.C.S.A. § 2705, resulting from the installation of a gas meter in a reversed position in an apartment building that he owned to allow the gas

to flow through without registering; and he failed to report his federal conviction to the OAE).

Here, like the attorney in Buonopane, respondent committed tax fraud over a number of years, for his own personal gain, and, thus, the discipline imposed must be severe. The record reveals that his motivation to withhold the taxes was "desperation" to save his taxi businesses. Although respondent pleaded guilty to only one reduced charge and did not admit the remaining charges in the indictment, we may consider all the facts in the record in fashioning respondent's discipline. The State of New York charged respondent with underreporting more than $1,000,000 in taxes, per year, for the tax years of 2012 through 2015. Respondent's commitment to remit $5,000,000 in restitution supports the indictment's accusations in respect of the extent of his tax fraud. Despite the mitigating factors of remorse and restitution, respondent's admission that he knowingly evaded taxes with the intent to defraud the state is egregious. As the Court held in In re Hasbrouck, 152 N.J. at 371-72, "[s]ome criminal conduct is so utterly incompatible with the standard of honesty and integrity that we require of attorneys that the most severe discipline is justified by the seriousness of the offense alone."

Based on the breadth and scope of respondent's misconduct in this matter, we determine to recommend to the Court that he be disbarred.

Vice-Chair Gallipoli was recused. Members Joseph and 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
Bruce W. Clark, Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Evgeny Alender Freidman
Docket No. DRB 20-081

Argued: September 17, 2020

Decided: February 11, 2021

Disposition: Disbar

Members	Disbar	Recused	Did Not Participate
Clark	X		
Boyer	X		
Gallipoli		X	
Hoberman	X		
Joseph			X
Petrou	X		
Rivera			X
Singer	X		
Zmirich	X		
Total:	6	1	2

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel