Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-316
District Docket No. XIV-2020-0227E

In the Matter of	:
James D. Demetrakis	:
An Attorney at Law	:

Decision

Decided: August 6, 2021

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 (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's 2019 guilty plea and conviction, in the United States District Court for the District of New Jersey (the DNJ), to one count of conspiring to make false entries to deceive a financial institution and the Federal Deposit Insurance Corporation (the FDIC), contrary to 18 U.S.C. § 1005, and in violation of 18 U.S.C. § 371. The OAE asserted that this offense constitutes a violation of RPC

8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer).

For the reasons set forth below, we determine to grant the motion for final discipline and impose a one-year, deferred suspension.

Respondent earned admission to the New Jersey bar in 1967 and has no prior discipline. At the time of the relevant events, he maintained a law office in Edgewater, New Jersey.

Effective November 29, 2018, respondent resigned from the practice of law, without prejudice, pursuant to R. 1:20-22.[1]

The facts of respondent's criminal conduct are as follows. From January 2008 to about December 2013, respondent engaged in a loan-nominee fraud scheme with co-conspirator Fred Daibes.[2] Daibes founded

[1] Pursuant to R. 1:20-1(a), attorneys who have resigned without prejudice remain subject to the Court's disciplinary jurisdiction for misconduct committed prior to such resignation. Accordingly, the Board has imposed a deferred term of suspension.

[2] A third-party or "nominee" loan is a loan in the name of one party that is intended for use by another. A misapplication occurs when a financial institution insider uses his position to secure a nominee loan, either for himself or for another person, and the insider conceals his own interest in the loan from the financial institution. (https://www.justice.gov/archives/jm/criminal-resource-manual-806-nominee-loans).

Mariner's Bank (MB) and, until about 2011, served as Chairman of MB's Board of Directors (BoD).[3]

MB's deposits were insured by the FDIC, and federal and state banking regulations limited the amount of funds that MB could lend to a single borrower. To circumvent MB's lending limits, respondent and Daibes conspired to use illegal, nominee borrowers to secure two loans. In furtherance of their conspiracy, respondent and Daibes falsified MB's financial records to deceive MB's officers and the FDIC agents who examined MB's banking practices. Overall, respondent participated in defrauding MB and the FDIC to secure over $4 million dollars in loans for the benefit of himself and Daibes.

Daibes was a member of the BoD's loan committee, which voted to approve loan applications. An MB lending officer would submit a loan memorandum to the committee, which included information about the loan terms; collateral; borrowers; the primary purpose of the loan proceeds; and the expected source of repayment. The loan committee typically reviewed such memoranda prior to voting on a proposed loan.

[3] Respondent met Daibes when Daibes was sixteen years old and seeking employment as a dishwasher in a restaurant that respondent partially owned. Daibes' father died and respondent and Daibes grew very close, developing a father-son relationship; they later developed real estate projects, both together and separately.

Daibes, as the founder of MB and a BoD member, was personally prohibited from borrowing funds from MB; consequently, Daibes recruited respondent and his children to act as illegal, nominee borrowers to secure two loans from MB. They secured the first of the two loans in respondent's name, and secured the second loan in the names of respondent's children; Daibes, however, provided the funds to make the monthly payments due on the loans.

Specifically, on June 11, 2008, respondent secured the first loan for Daibes, a line of credit in the amount of $1.8 million. The loan memorandum falsely stated that respondent was the borrower; that he sought the loan for "real estate investment;" and that he would repay the loan with personal funds. However, the loan proceeds were for Daibes, and he even voted to approve the loan, in his role on the BoD's loan committee.

On June 12, 2008, MB issued to respondent a $1.8 million check, which respondent endorsed and provided to Daibes, who deposited the funds in a personal bank account. Between 2009 and 2012, Daibes provided respondent with the bulk of the funds required to make the monthly payments on the loan.

Less than a year after securing the $1.8 million loan, respondent and Daibes conspired to procure another illegal loan from MB for Daibes.

Because respondent had reached his lending limit at MB, he recruited two of his children (the Nominees) to secure the loan for the benefit of himself and Daibes.

At the time, Daibes was the sole owner of Liberty Commons II, LLC (LC) and, in February 2009, he transferred that sole ownership of LC to respondent. Respondent then promptly entered into a contract to sell LC to the Nominees for $3.5 million. On or about March 13, 2009, MB approved a $2.625 million loan to the Nominees and LC. The Nominees were listed as guarantors for the loan, and the purported purpose of the loan was to "purchase all existing assets and ownership interests, including subject real estate, from current owner of [LC]." Respondent knew that the purported loan purpose was bogus and that the loan proceeds were intended for the benefit of respondent and Daibes. As part of the criminal conspiracy, neither Nominee was expected to make any payments, and respondent and Daibes failed to disclose to MB that they, and not the Nominees, were the beneficiaries of the loan proceeds. Although the Nominees represented to MB that they would use the $2.625 million loan to pay respondent a portion of the purchase price for LC, the contract to sell LC to the Nominees for $3.5 million was a sham.

In May 2010, respondent and Daibes entered into a contract with a New Jersey municipality to construct a police station on property that LC owned. In December 2010, respondent and Daibes secured a construction loan, from a different financial institution, which they used to partially repay the principal on the $2.625 million LC loan. The Nominees did not expend their own funds to secure or repay the LC loan, and were not involved in the development of the police station.

Respondent ultimately was prosecuted for his crimes. On April 12, 2019, he waived his right to an indictment and pleaded guilty to a federal information charging him with one count of conspiring to make false entries to deceive MB and the FDIC, contrary to 18 U.S.C. § 1005, and in violation of 18 U.S.C. § 371. That same day, at his plea hearing before the Honorable Jose L. Linares, Chief Judge, U.S.D.N.J., he provided a sworn allocution admitting to his role in the nominee loan scheme, including conspiring to create the false entries designed to deceive MB and the FDIC. Specifically, respondent admitted that, between January 2008 and November 2013, he participated in a scheme to obtain the two nominee loans from MB and to falsify MB's financial records for the benefit of Daibes. Notably, respondent admitted that he received a portion of the proceeds of the second, $2.625 million loan.

Pursuant to respondent's negotiated plea agreement, the United States Attorney's Office waived further criminal charges related to respondent's crimes; acknowledged that respondent had accepted responsibility for his criminal conduct; and indicated that it would not oppose a non-custodial sentence due to respondent's "age, physical and medical conditions, and other circumstances."

On November 20, 2019, the Honorable John Michael Vazquez, U.S.D.N.J. sentenced respondent to a two-year term of probation; ordered him to pay a $75,000 fine and a $100 special assessment; and prohibited him from incurring new debt, credit charges, or liquidating interest in any assets unless it was in direct service of the fine or he had obtained prior court approval.[4] The court further prohibited respondent from opening or maintaining any individual or joint financial accounts for personal or business purposes without the prior knowledge and approval of his probation officer.

Judge Vazquez did not order respondent to pay restitution because the loans had been repaid and MB did not suffer any financial loss; he also did

[4] Judge Vazquez adopted the final pre-sentence report as well as the recommendation of the probation department, which were not included in the record. Pursuant to the sentencing guidelines, respondent faced a recommended sentence of thirty-seven to forty-six months' incarceration, but the parties agreed as to the appropriate sentence, which the Judge imposed.

not order community service because of respondent's age and health conditions. Judge Vazquez determined that respondent had committed a "very serious offense" and that "essentially what it boils down to is lying to the bank as to the true borrower [of the loan] for substantial amounts of money."

In crafting the sentence, Judge Vazquez accorded great weight to the fact that the loans were repaid and, thus, MB suffered no financial loss; considered that respondent was over eighty years of age and suffered from numerous, severe health issues, including deteriorating urological; cardiac; diabetic; and lower back issues; and that his wife and daughter also suffered from severe health issues. Judge Vazquez acknowledged that respondent had accepted responsibility for his actions, but determined that, although respondent was not acting in his capacity as a lawyer at the time the criminal conduct occurred, he should have been "acutely aware of the impropriety of lying to get a loan." Judge Vazquez further emphasized that respondent involved his children in the scheme to obtain the second loan. The Judge recognized respondent's service in the Army Reserve, including six months of active duty, and his numerous charitable acts.

Respondent failed to report either his criminal charge or conviction to the OAE, as R. 1:20-13(a)(1) requires.

The OAE asserted that a one-year to eighteen-month suspended suspension[5] was the appropriate quantum of discipline for respondent's misconduct, relying primarily on In re Alum, 162 N.J. 313 (2000), discussed below. The OAE contended that, in addition to falsifying the loan applications, respondent manipulated the appearance of ownership in LC; secured further funds to construct a police station; and directly benefitted from the $2.625 million loan. The OAE acknowledged that a mistaken sense of loyalty to Daibes appeared to have influenced respondent's actions. The OAE recognized that, in mitigation, respondent has no ethics history in over fifty years at the bar; accepted responsibility for his misconduct; expressed great remorse; and MB did not suffer a financial loss.

The OAE noted, in aggravation, that respondent failed to notify the OAE of either his criminal charge or conviction. The OAE acknowledged that respondent had resigned from the New Jersey bar, without prejudice, and that it is unlikely that he will seek readmission, due to his age and medical conditions.

In his November 24, 2020 letter brief to the Board, respondent requested that the Board accept his resignation from the bar and impose no

[5] The OAE argued that "[a] suspended sentence will ensure that respondent receives the appropriate discipline for his [ethics] infractions in the event that he does seek to practice law again." It is, thus, clear, that the OAE meant a deferred suspension.

discipline, maintaining that he is eighty-one years of age and in poor health; will not pursue reinstatement of his license; will forever be branded a felon; was disgraced in front of his family, business associates, and community; lost his ability to earn a living as an attorney or in business ventures involving banking; did not benefit from the scheme; and resigned from various volunteer positions. He further maintained that he treated Daibes like a son for over forty years; he was not acting as an attorney during the scheme; he now realizes that he should have notified the OAE of his conviction; and he never intended to defraud MB, noting that the loans were paid in full, with interest.

Following our review of the record, we determine to grant the OAE's motion for final discipline. In New Jersey, R. 1:20-13(c) governs final discipline proceedings. 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 guilty plea and conviction to one count of conspiring to make false entries to deceive a financial institution and the FDIC, contrary to 18 U.S.C. § 1005, and in violation of 18 U.S.C. § 371, thus, establishes a violation of RPC 8.4(b). Pursuant to RPC 8.4(b), it is 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).

The Court has noted 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.

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).

In sum, respondent violated RPC 8.4(b). The only remaining issue is the appropriate quantum of discipline to be imposed for his misconduct.

The quantum of discipline for an attorney convicted of a serious criminal offense ranges from lengthy suspensions to disbarment. See, e.g., In re Mueller, 218 N.J. 3 (2014) (three-year suspension); In re Goldberg, 142 N.J. 557 (1995) (disbarment). In Goldberg, 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).

Despite these factors, the Court has imposed suspensions on attorneys whose crimes are less egregious. Considerations for lesser suspensions include the amount of the loss to the victims; the actions taken by the attorney to perpetuate the fraud; the length of the prison sentence, if any, imposed on the attorney; the amount of restitution ordered in the underlying criminal case, and whether the attorney took responsibility for the crime and assisted the government. Compare In re Serrano, 193 N.J. 24 (2007) (eighteen-month suspension) and In re Olewuenyi, 216 N.J. 576 (2014) (two-year suspension) to In re Noce, 179 N.J. 531 (2004) (three-year suspension). Additionally, lesser suspensions have been imposed when a lengthy delay occurs between the conviction and the filing of ethics charges. See, e.g., In re Davis, 230 N.J. 385 (2017) (one-year retroactive suspension due to lengthy delay).

In Alum, the case on which the OAE primarily relied, the Court imposed a one-year suspension, but suspended it due to the passage of time since Alum's conduct, his long unblemished legal career, and his community service. Alum fraudulently procured secondary financing (called "silent seconds") in five real estate transactions in which he represented either the buyer or the seller. In the Matter of Luis A. Alum, DRB 98-277 (April 5, 1999) (slip op. at 15). In some

transactions, Alum permitted the purchase price of the property to be inflated to obtain one-hundred percent financing, and then created fictional repair credits that reflected a discount on the sale price. Id. at 4-5. In several of the transactions, the buyer's loan exceeded the full purchase price of the property and the buyer walked away from the transaction with cash. Id. at 6-7. In other transactions, the buyer obtained a second mortgage loan that was not disclosed to the primary mortgage lender. Id. at 4-7. Alum was not charged with any crimes as a result of his misconduct Id. at 3.

In Davis, the attorney was convicted of conspiracy to commit wire and bank fraud for his involvement in a fraudulent real estate investment scheme. He and his co-conspirators recruited individual straw buyers with good credit to purchase residential real estate packaged as "investment opportunities," telling them that other investors would make the mortgage payments for the properties and that the straw buyers eventually would be removed from the title. In the Matter of Robert B. Davis, DRB 16-200 (February 7, 2017) (slip op. at 1-3). The loan applications misrepresented the straw buyers' financial information. Id. at 3. Davis served as an attorney in connection with closing some of the fraudulent real estate transactions. Id. Mortgage payments were never made to the lenders, and the straw buyers were left responsible for the mortgage payments. Id. at 4. The attorney received a $2,500-$5,000 fee per closing. Id.

Davis pleaded guilty, was sentenced to six months' imprisonment, and was ordered to pay joint and several restitution of $5,166,900. Id. at 5. The government acknowledged that Davis had accepted responsibility, and he became a key trial witness in the prosecution of his co-conspirators. Id. at 5-6. The State of New York later indicted Davis for a similar scheme in which he defrauded the Texas Capital Bank of $517,500. Id. at 6-7. He pleaded guilty to this offense and was sentenced to probation and restitution of $22,500. Id. at 7-8.

Relying primarily on Serrano and Noce, we determined that the appropriate quantum of discipline for Davis' misconduct was a three-year suspension. Moreover, considering the five-year passage of time since the attorney reported his convictions, the Board determined that the suspension should be retroactive. Id. at 25-26. However, the Court disagreed, determining that the attorney's conduct would "normally warrant the three-year suspension recommended" by us, but that, "in light of the extraordinary delay in initiating disciplinary proceedings in this matter, the Court will impose only a one-year suspension from practice, retroactive to . . . the date respondent reported his convictions" to the OAE. Id. at 385.

In Serrano (eighteen-month suspension), the attorney knowingly prepared materially false HUD-1 forms to obtain HUD-insured mortgages for unqualified borrowers. In the Matter of Linda M. Serrano, DRB 07-061 (June 29, 2007) (slip op. at 2-4). Specifically, the HUD-1 forms misrepresented that the borrowers had provided Serrano with funds, such as closing costs, at settlement. Id. at 5-7. Serrano received between $20,000 and $40,000 for her illegal conduct in approximately twenty-five closings. Id. at 7, 9. Her lawyer explained that these monies represented her legal fees for all transactions. Id. at 9.

The sentencing court granted the government's motion for a downward departure from the sentencing guidelines, based on the substantial assistance that Serrano had provided when she chose to cooperate with the government's investigation. Id. at 8-9. She was sentenced to a one-year term of probation, fined $5,000, and ordered to pay a $100 special assessment. Id. at 9. In addition, the court stated that, if Serrano paid the fine, it would "entertain a motion within six months" for an early discharge of probation. Ibid.

Our imposition of an eighteen-month retroactive suspension on Serrano was based on a comparison of her conduct to that of the attorney in Noce, who received a three-year suspension for similar misconduct. In making this comparison, we observed that Serrano was involved in approximately half the number of transactions in which Noce was involved, and over a shorter period.

Moreover, from the standpoint of sentencing, Noce's conduct was treated much more harshly: a five-year probationary period together with nine months of home confinement, as opposed to a one-year probationary period. Although both attorneys were fined $5,000, Noce was required to reimburse HUD more than $2 million, whereas Serrano was not required to make any reimbursements. Thus, we considered Serrano's criminal conduct to be less serious than Noce's. Given these distinctions, we determined that the three-year suspension imposed in Noce was too severe for Serrano. Serrano's full cooperation with the government's investigation, including her willingness to testify against her co-conspirators, persuaded us that an eighteen-month suspension, retroactive to the date of her temporary suspension, was appropriate discipline for her offenses. The Court agreed.

In Olewuenyi (two-year retroactive suspension), the attorney prepared and submitted documents containing materially false and fraudulent information. In the Matter of Chris C. Olewuenyi, DRB 13-119 (October 30, 2013) (slip op. at 3-4). The attorney pleaded guilty to one count of conspiracy to defraud the United States, was sentenced to a thirty-three-month term of imprisonment, and was ordered to make restitution of $131,489, followed by three years of supervised release. Id. at 5-6. Later, the State of New Jersey indicted the attorney for identity theft and conspiracy to commit identity theft when he, and another

attorney, served as real estate attorneys for various transactions involving straw buyers. Id. at 6-8. The attorney pleaded guilty and was sentenced to three years' imprisonment to run concurrently with his federal sentence. Id. 7-8. In imposing a two-year suspension, we considered Olewuenyi's conduct in relation to that of the attorneys in Noce and Serrano, compared the lengths of the attorneys' sentences, and took into account that respondent's misconduct was "not limited to the misrepresentation of numbers" but also included identity theft. Id. at 14-16.

In Mueller (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 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 wrote a letter misrepresenting that he was holding $834,000 in his trust account. He also sent to an investor a

false trust account statement that misrepresented that he held a balance of $612,461 in his trust account. In addition, he notarized documents although he had not witnessed their execution. The documents were a false lien and note on which the grantors' names had been forged. Id. at 4-5. Mueller pleaded guilty to the charged offenses. Id. at 1-2. His 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 Noce (three-year retroactive suspension), the attorney was convicted 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 took part in a scheme to defraud HUD by assisting in the procurement of home mortgage loans for unqualified buyers, from which HUD suffered losses of more than $2.4 million. Noce 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) (disbarment), the attorney knowingly and intentionally participated 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. Klein 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 federal law enforcement authorities arrested his co-conspirator. 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, Klein 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 false 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 Marino, 217 N.J. 351 (2014) (disbarment), the attorney participated in a fraud that resulted in a loss of over $309 million to 288 investors. 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 induce contributions from potential investors. Marino's participation in the fraud included assisting in the concealment of the fraud perpetrated on investors by creating a fraudulent accounting firm that hid the fund's significant losses, obscuring 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 sentenced to twenty-one months' imprisonment, followed by one year of supervised release, and 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.

In In re Ellis, 208 N.J. 350 (2011) (disbarment), the attorney was employed as a real estate attorney responsible for handling closings and distributing the proceeds of real estate transactions. In the Matter of Daniel Ellis, DRB 11-075 (August 16, 2011) (slip op. at 3). Ellis knowingly and intentionally falsely inflated purchase prices, resulting in loan amounts that greatly exceeded the actual sale price of the properties. Id. at 3-4. After the sale price was paid to

the seller, the attorney distributed the remaining monies to several others. Ibid. For his part, Ellis pocketed $80,400, and received a $30,000 Volkswagen Passat. Id. at 4. We determined disbarment was appropriate because the loss was substantial and the attorney used his status as a lawyer to facilitate the fraud, was motivated by greed, and had an extensive disciplinary history. Id. 11-13. For his crime, the attorney pleaded guilty to conspiracy to commit bank fraud, was sentenced to prison for twenty-four months, and was ordered to pay $12,487,227.51 in restitution. Id. at 4.

Not every attorney found guilty of egregious fraud has been disbarred, however. Recently, in In re Campos, 241 N.J. 544 (2020), the Court imposed a three-year prospective suspension for such misconduct. The attorney in Campos was tried and convicted of wire fraud, bank fraud, and conspiracy to commit wire and bank fraud, in a scheme involving the use of straw purchasers to illegally purchase new vehicles for a livery taxi business. In the Matter of Christopher Campos, DRB 19-262 (March 3, 2020) (slip op. at 1-2). He had no ethics history. Ibid. His conviction and sentence, thirty months in prison plus $533,669.12 in restitution, were affirmed on appeal. Id. at 12. Campos's role was to solicit straw buyers, and his misconduct involved false statements used to defraud banks, his friends, and his family. Id. at 6, 26. In total, the loss amount was between $250,000 and $550,000, and involved more than ten victims. Id. at

12. Moreover, Campos perjured himself at trial, lacked remorse, and failed to accept responsibility for his crimes. Id. at 11-12, 26. We concluded that, considering the Goldberg factors, disbarment was the appropriate quantum of discipline. Id. at 27. The Court disagreed, however, and determined that a three-year prospective suspension was the appropriate quantum of discipline.

Here, respondent's misconduct is distinguishable from that of the disbarred attorneys. In Klein, over an eight-year period, the attorney defrauded twenty-one victims out of more than $819,000 and was sentenced to fifty-one months' imprisonment. The attorney in Marino was sentenced to twenty-one months' imprisonment after causing 288 investors to lose more than $309 million. In Ellis, the attorney was ordered to pay restitution of $12,487,227.51, and was sentenced to two years' imprisonment. He also had an extensive disciplinary history. Thus, these attorneys' crimes were considerably more egregious than respondent's, and included demonstrable harm to the victims of the fraud, a factor not present here.

Moreover, respondent's misconduct was not as extensive as that of the attorney in Campos, and he presents none of the aggravating factors considered in that case. Rather, his misconduct was most akin to that of the attorneys in Alum and Serrano. Alum received a one-year suspension for fraudulently obtaining secondary financing to secure surplus funds for borrowers. Similarly,

respondent fraudulently secured nominee loans for Daibes. In addition, like Alum, in which we considered the attorney's candor and his unblemished ethics record in the ten years between his misconduct and the ethics proceeding, here, respondent admitted his guilt, and had no ethics history in over fifty years at the bar. Further, similar to the attorney in Serrano, who received an eighteen-month suspension, respondent took responsibility for his crimes, was sentenced to probation, and was not ordered to pay restitution. Unlike the attorneys in Serrano and Alum, however, respondent's crimes resulted in no financial loss to any party.

To craft the appropriate discipline in this case, we also considered the aggravating and mitigating circumstances. In aggravation, the two illegal loans totaled over $4 million; respondent benefitted from the proceeds of the second loan; he failed to report the criminal charges and conviction to the OAE; and he had a heightened awareness of the illegality of his conduct, given his experience as an attorney and real estate developer.

In mitigation, respondent has no prior discipline in over fifty years at the bar; served in the military; performed community service; expressed genuine remorse; accepted responsibility for his misconduct; MB suffered no financial harm; and he has resigned from the bar.

On balance, we determine that a one-year suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar. Because respondent has resigned from the New Jersey bar, without prejudice, the suspension will be deferred until respondent seeks reinstatement to the practice of law in New Jersey.

Vice-Chair Gallipoli and Members Petrou, Rivera, and Zmirich voted to recommend to the Court that respondent be disbarred.

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 James D. Demetrakis
Docket No. DRB 20-316

Decided: August 6, 2021

Disposition: One-Year Suspension

Members	One-Year Suspension	Disbar
Clark	X	
Gallipoli		X
Boyer	X	
Hoberman	X	
Joseph	X	
Petrou		X
Rivera		X
Singer	X	
Zmirich		X
Total:	5	4

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