Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-064
District Docket No. XIV-2015-0266E

In the Matter of	:
Sunila D. Dutt	:
An Attorney at Law	:

Decision

Argued: September 23, 2021

Decided: October 28, 2021

Colleen L. Burden appeared on behalf of the Office of Attorney Ethics.

Marc D. Garfinkle 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 (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and conviction, in the United States District Court for the District of New Jersey (the DNJ), to one count of conspiracy to commit

visa fraud (18 U.S.C. § 1546(a)) and to obstruct justice (18 U.S.C. § 1519), in violation of 18 U.S.C. § 371. The OAE asserted that this offense constituted a violation of RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to grant the motion for final discipline and impose an eighteen-month term of suspension, retroactive to October 31, 2016, the effective date of respondent's temporary suspension in New Jersey.

Respondent earned admission to the New Jersey bar in 2012 and has no prior discipline. At all relevant times, she was employed as an immigration attorney for two private companies located in Virginia and New Jersey.

On October 31, 2016, the Court temporarily suspended respondent from the practice of law in connection with her criminal conduct detailed below. In re Dutt, 227 N.J. 42 (2016).

We now turn to the facts of this matter.

On October 17, 2016, in the DNJ, respondent waived prosecution by indictment and entered a guilty plea to an information charging her with one

count of conspiracy to commit visa fraud[1] and to obstruct justice,[2] in violation of 18 U.S.C. §§ 371, 1519, and 1546(a).

On May 27, 2020, the Honorable Kevin McNulty, U.S.D.J., sentenced respondent to a four-year term of probation and ordered her to pay $6,100 in fines and assessments.

Respondent's conviction stemmed from events that occurred from November 2014 through April 2015,[3] while she was employed as an immigration attorney with two information technology and staffing companies, SCM Data and MMC Systems (together, the companies), located in New

---

[1] 18 U.S.C. § 1546(a) provides "[w]hoever knowingly forges, counterfeits, alters, or falsely makes any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, or utters, uses, attempts to use, possesses, obtains, accepts, or receives any such visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by means of any false claim or statement, or to have been otherwise procured by fraud or unlawfully obtained … [s]hall be fined under this title or imprisoned . . . ."

[2] 18 U.S.C. § 1519 provides, "[w]hoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both."

[3] Although the information alleged that the criminal conspiracy occurred from 2010 through April 2015, the respondent's misconduct occurred between November 2014 and April 2015. During respondent's May 27, 2020 sentencing, the court stated that the judgment would reflect the amended dates.

Jersey and Virginia, respectively. Respondent confirmed to us, during oral argument, that she no longer works for either company.

Respondent admitted that she, along with her co-conspirators, submitted false information to federal agencies to obtain H-1B visas for foreign workers. That immigration paperwork included misrepresentations regarding the foreign workers' employment statuses and the payment of annual salaries to the workers. Contrary to these misrepresentations, and in violation of the H-1B visa program requirements, respondent and her co-conspirators systematically failed to pay the foreign workers in accordance with the law and, in fact, solicited payments from the foreign workers in exchange for the maintenance of their visa status.

Specifically, the H-1B visa program allows businesses in the United States to temporarily employ foreign workers with specialized or technical fields of expertise. Before hiring a foreign worker under the H-1B visa program, however, the employer must obtain approval from the Department of Labor (the DOL) by filing a labor condition application (LCA). The LCA must include specific information, including the number of foreign workers to be employed, the time period for which the employment is required, and the rate of pay for full-time positions. The LCA also requires the employer to attest that the representations are true and accurate and provides a warning that false

representations could lead to criminal prosecution. The employers are required to keep a signed copy.

Following approval by the DOL, the employer is required to obtain permission from the United States Citizenship and Immigration Services (the USCIS) – an agency within the Department of Homeland Security – to hire a specific individual. The USCIS petition is signed by the employer under penalty of perjury and includes biographical information regarding the foreign worker to be employed, as well as information regarding the job (job title; work location; pay rate; and whether the job is full-time). Once the USCIS approves the petition, the foreign worker may apply for a visa at a United States embassy or consulate or, if the worker is already lawfully in the United States, by requesting a change in immigration status. Once that occurs, the foreign worker may lawfully reside in the United States and work for the employer until the government-approved employment has ended or the visa expires.

The information alleged that respondent and her co-conspirators falsely represented in the paperwork submitted to the DOL and the USCIS that the foreign workers it sought to employ would hold full-time positions and be paid an annual salary. Contrary to these representations, however, the companies paid the foreign workers only when the worker was placed with a third-party

client. Further, the co-conspirators generated false payroll records to create the appearance that the companies paid full-time wages to the foreign workers. In some instances, the foreign workers were required to pay cash to the companies to remain on the false payroll records and, thus, maintain their H-1B visa status.

At her October 17, 2016 plea hearing, respondent admitted her role in this scheme. Specifically, she acknowledged that she and her co-conspirators submitted one or more filings to the USCIS, misrepresenting that the companies employed foreign workers via in-house positions when, in truth, no such positions existed. Respondent also admitted that, on October 16, 2014, she submitted a petition to the USCIS to extend the H-1B visa status of "individual 1." Respondent also admitted that, on or before January 2015, the company had stopped paying "individual 1," and that "individual 1" had been terminated from third-party employment.

Respondent further admitted that, on January 30, 2015, in an effort to conceal the ongoing criminal conspiracy, she lied to an undercover law enforcement officer (who she believed to be an USCIS employee) that "individual 1" had been residing with a friend or living in a guesthouse controlled by one of the companies. Then, on February 2, 2015, respondent sent an e-mail to "individual 1," providing fictitious proof of residency that

"individual 1" was instructed to give to the USCIS.

Respondent further admitted that, in or around February 2015, in response to an audit, she learned that the companies had submitted fabricated leave slips of foreign workers to the DOL to conceal the fact the workers had been "benched"[4] once their visas were approved and were not paid during those time periods, as federal law requires.

In April 2015, respondent agreed to cooperate with law enforcement and, shortly thereafter, surrendered to law enforcement for her involvement in the scheme. According to the prosecuting attorney, respondent's cooperation was invaluable to the criminal investigation and, eventually, led to the conviction of the owner of the companies.[5] Respondent met regularly with investigators; conducted hours of research to identify relevant communications; provided documentation; provided grand jury testimony; and agreed to testify against her co-conspirators, including the owner of the companies. Moreover, although respondent was never required to testify, she was credited with assisting the prosecution's case against the owner of the companies who, as a result of her

[4] Employers who participate in the H-1B visa program are required to pay foreign workers even if there is a lack of work. This practice is referred to as "benching."

[5] In fact, the government filed a motion at sentencing requesting that the court depart downward from the sentencing guidelines, citing the substantial assistance provided by respondent.

criminal activity, illegally reaped over a million dollars and ultimately pleaded guilty. Further, the prosecuting attorney described respondent as a "model cooperator," and said her assistance was "significant, useful, truthful, complete, reliable, and timely."

Judge McNulty engaged in a lengthy colloquy with respondent before accepting her plea, ensuring that it was knowing, informed, and consensual. Respondent unequivocally admitted to the charged felony.

Respondent submitted a lengthy written statement to the court in anticipation of her sentencing and testified at the hearing. She expressed deep remorse, and added:

> Through this painful experience I have come to immensely respect and get a deeper understanding of the justice system. It has brought me to appreciate and value the responsibility that I have been entrusted with as an attorney, so much more than I realized before.
>
> In the end I want to sincerely apologize to the government of the United States, to the HSI agents, to the justice system, to the New Jersey Bar where I'm admitted to practice law, to the employees of the companies whom I ill-advised to misrepresent. I apologize to my family and everyone I have inadvertently hurt and let down. I am truly and very deeply sorry, Your Honor.
>
> [2T18.][6]

[6] "2T" refers to the May 27, 2020 DNJ sentencing transcript included in the record.

In determining to sentence respondent to probation, a downward departure from the sentencing guidelines, Judge McNulty recognized that respondent's cooperation "played a role in bringing the primary malefactor here to justice;" that she had "not been in any kind of trouble in her life;" that she had "a lot going for her in terms of training and intelligence;" and had done "good work[] in society." In further mitigation, Judge McNulty noted that confidential documentation submitted as part of respondent's presentence report provided insight into why she might have been susceptible to manipulation or pressure by her co-conspirators.

The OAE asserted that the appropriate discipline for respondent's misconduct is a term of suspension ranging from eighteen months to two years, and cited In re Olewuenyi, 216 N.J. 576 (2014) (two-year suspension), In re Seri, 234 N.J. 183 (2018) (eighteen-month suspension), and In re Silverblatt, 142 N.J. 635 (1995) (three-year suspension). The OAE argued that the Seri case (discussed in detail below) was most similar to the instant case and distinguished the Olewuenyi and Silverblatt matters. Specifically, the OAE emphasized that the attorney in Olewuenyi, who received a two-year suspension, had been convicted in two courts, to separate crimes involving banking loans, and had served thirty-three months in prison, and that the attorney in Silverblatt, who received a three-year suspension, had profited

from the misconduct. Unlike the attorneys in Olewuenyi and Silverblatt, respondent was sentenced to probation, had not profited from her misconduct, and was charged with only one count of conspiracy. In further mitigation, the OAE emphasized respondent's lack of disciplinary history and her inexperience as an attorney at the time she engaged in the criminal misconduct.

On April 7, 2021, respondent's counsel submitted a letter in support of the OAE's motion (Rl), in which he agreed with the recommended quantum of discipline and reiterated, in mitigation, that respondent "admitted her misdeeds, acknowledged responsibility, and cooperated with law enforcement in an important way." He added:

> Respondent continues . . . to enhance her sense of accountability for her actions. She wants to return to the practice for the right reasons. She has demonstrated her dedication to the profession by offering insightful educational programs, presentations, and talks designed to keep other lawyers from falling into the same traps. She obviously knows how to be a productive, responsible member of the profession, and is anxious to prove that.
>
> [Rlp1.]

In conclusion, respondent's attorney stated, "[w]e join the OAE in recommending a period of suspension of 18 months to two years, and to impose it retroactively so as to accommodate [r]espondent's effort to have her

license reinstated at the earliest possible time."

Following a 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 for conspiracy to commit visa fraud and to obstruct justice, contrary to 18 U.S.C. § 371, thus, establishes a violation of RPC 8.4(b). Pursuant to that Rule, 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." Moreover, respondent's criminal conduct violated RPC 8.4(c).

In sum, we find that respondent violated RPC 8.4(b) and RPC 8.4(c). The sole issue left for determination is the appropriate quantum of discipline for respondent's misconduct.

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." In re Magid, 139 N.J. at 452 (citation omitted); In re Principato, 139 N.J. at 460. 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.

Convictions for crimes of immigration fraud or the falsification of immigration documents have resulted in discipline ranging from long-term suspensions to disbarment. See, e.g., In re Seri, 234 N.J. 183 (2018) (eighteen-month suspension for attorney convicted of one count of visa fraud, in violation of 18 U.S.C. §§ 2 and 1546(a), for submitting false I-864 forms in support of applications for immigration visas; the attorney was sentenced to time served and two years of supervised release, with no restitution ordered;

significant mitigation included no pecuniary gain stemming from misconduct, attorney exhibited genuine remorse; and no disciplinary history); In re Biederman, 134 N.J. 217 (1993) (eighteen-month suspension for attorney convicted of assisting ten Philippine nationals to enter the United States with fraudulent U.S. passports; the attorney did not procure the phony passports and was not engaged in the practice of law when he assisted the immigrants); In re Salamanca, 204 N.J. 590 (2011) (two-year suspension for attorney who, as the owner of a restaurant, submitted approximately four falsified applications for alien employment, representing, under penalty of perjury, that certain employment conditions were in place when those conditions were not actually in place); In re Vargas, 170 N.J. 255 (2002) (three-year suspension for attorney who falsified INS notices of approval from prior clients by altering the names on the documents and then submitted the false documents to the INS); In re Silverblatt, 142 N.J. 635 (1995) (three-year suspension for attorney who obtained employment authorization for ten aliens by falsely stating on immigration forms that the aliens were seeking political asylum); In re Brumer, 122 N.J. 294 (1991) (three-year suspension for attorney who filed false labor certifications for foreign nationals seeking to obtain permanent resident visas and then advised clients to hide from Immigration and Naturalization Services (INS) investigators); and In re Saint-Preux, 197 N.J.

26 (2008) (disbarment for attorney who falsified hundreds of immigration notices of approval from prior clients by altering the names on the documents and submitting the false documents to INS to illegally obtain residency status for the new clients; the attorney tried to blame his criminal conduct on his paralegal, and showed no remorse).

As the OAE correctly pointed out, respondent's misconduct is substantially similar to the misconduct addressed in Seri, where we imposed an eighteen-month suspension, and the Court agreed. See In re Seri, 234 N.J. 183. In Seri, the OAE filed a motion for final discipline, recommending a two-year suspension following Seri's guilty plea to one count of visa fraud. We noted that convictions for crimes involving immigration fraud or falsification of immigration documents ordinarily result in a long-term suspension or disbarment citing, inter alia, In re Vargas, 170 N.J. 255; In re Silverblatt, 142 N.J. 635; In re Brumer, 122 N.J. 294; and In re Saint-Preux, 197 N.J. 26. In the Matter of Gnoleba Remy Seri, DRB 17-278 (January 17, 2018) (slip op. at 5-6). Relying heavily upon our decision in In re Biederman, 134 N.J. 217, we determined that an eighteen-month suspension was more appropriate, in view of the particular facts of the case. Id. at 11-12. Specifically, we balanced the presence of strong mitigating factors (the attorney's fraud was limited to fewer than twenty-five cases; was not committed for pecuniary gain; no financial

impact on victims; the attorney's conduct was aberrant; no disciplinary history) with the fact that Seri's misconduct directly related to the practice of law (an aggravating factor enumerated under the Lunetta framework) and determined lesser discipline than what we imposed in Vargas, Silverblatt, and Brumer was appropriate. Ibid. We accorded significant weight, however, to the fact that Seri's criminal activity directly related to his practice of the law and, as a result, denied his request that the suspension be imposed retroactively. Ibid. Although we reasoned that the substantial mitigation necessitated a lesser discipline than the two-year suspension recommended by the OAE, the presence of such a strong aggravating factor required that the suspension be imposed prospectively. Ibid. Notably, Seri was not temporarily suspended in New Jersey as a result of his criminal conduct.

Here, like the attorney in Seri, respondent was charged with conspiracy to commit visa fraud; she acknowledged her misconduct and pleaded guilty to one count of criminal misconduct; she was not sentenced to prison, a downward departure from the sentencing guidelines; she was not ordered to pay restitution; she expressed genuine remorse; and the sentencing judge found substantial mitigation that resulted in her noncustodial sentence. These are the same factors that we relied upon in Seri when we recommended an eighteen-month suspension.

Although respondent's criminal activity, like Seri's, was directly related to her role as counsel for the two companies and, according to Lunetta, should be afforded significant consideration, several other factors are present that support imposition of a retroactive eighteen-month suspension. First, unlike the attorney in Seri, respondent was temporarily suspended in New Jersey in connection with her criminal conduct, effective October 31, 2016, almost five years ago. Second, respondent's cooperation in the underlying criminal investigation – cooperation that was lauded by the prosecuting attorney and the sentencing court – resulted in the conviction of the owner of the companies, who was viewed as the mastermind of the immigration scheme and who, according to the prosecuting attorney, significantly profited from the scheme. Next, in Seri, the OAE recommended that we impose a two-year prospective suspension, but Seri argued for imposition of a retroactive suspension. Here, the OAE and respondent both agree that a retroactive eighteen-month to two-year suspension is the appropriate quantum of discipline to preserve the integrity of the bar and protect the interests of the public. The lapse of time between her criminal conduct, her sentencing (May 27, 2020), and these disciplinary proceedings further justifies the imposition of a retroactive suspension. See In re Verdiramo, 96 N.J. 183 (1984) (finding mitigation where events occurred more than eight years earlier, holding that "the public interest

in proper and prompt discipline is necessarily and irretrievably diluted by the passage of time") and In re Davis, 230 N.J. 385 (2017) (imposing significantly lesser discipline than otherwise warranted because, as stated in the Court's Order, there was "extraordinary delay in initiating disciplinary proceedings").

We also consider both mitigating and aggravating factors to craft the appropriate discipline. In mitigation, we consider respondent's lack of prior discipline, In re Convery, 166 N.J. 298, 308 (2001), and the fact that she was a practicing attorney for only approximately three years prior to engaging in the criminal conduct. In re Pena, 162 N.J. 15, 26 (1999). Moreover, respondent accepted responsibility for her misconduct by pleading guilty and expressing sincere remorse at her sentencing hearing. Further, as she reiterated during oral argument, respondent's misconduct was limited in time and scope. Her criminal behavior occurred from November 2014 through April 2015, a six-month period. In addition to her limited involvement in the criminal scheme, she was not the leader and did not profit from her involvement in the scheme.

On balance, we determine that an eighteen-month suspension, retroactive to October 31, 2016, the effective date of respondent's temporary suspension, is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli voted to recommend respondent's disbarment, finding her participation in the immigration fraud scheme so incongruent with the practice of law that she should be barred from practicing law in New Jersey.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
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 Sunila D. Dutt
Docket No. DRB 21-064

Argued: September 23, 2021

Decided: October 28, 2021

Disposition: Eighteen-month suspension

Members	Eighteen-month suspension	Disbar
Gallipoli		X
Singer	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1

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