Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-222
District Docket No. XIV-2021-0160E

In the Matter of

Milan K. Patel

An Attorney at Law

Decision

Argued: January 20, 2022

Decided: March 25, 2022

Michael S. Fogler 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 (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's convictions, in the United States District Court, District of

Massachusetts, for conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff. The OAE asserted that these offenses constitute a violation of RPC 8.4(b) (commission of 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 OAE's motion for final discipline and recommend to the Court that respondent be disbarred.

Respondent earned admission to the New Jersey bar in 2004 and to the New York bar in 1999. During the relevant timeframe, he was a partner at Anaford AG, which has domestic and foreign offices.

Respondent has no prior discipline in New Jersey. On or about November 29, 2018, he resigned, without prejudice, from the New Jersey bar, pursuant to R. 1:20-22.[1] However, in New York, he was disbarred on May 13, 2021. In re Patel, 145 N.Y.S. 3d 208 (2021).

We now turn to the facts of this matter.

Morrie Tobin (Tobin), respondent's co-conspirator, invested in publicly traded companies and, thereafter, with respondent's assistance, engaged in an

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[1] R. 1:20-22(c) provides that "resignation shall not affect the jurisdiction of the disciplinary system with regard to any unethical conduct that occurred **prior** to resignation." (Emphasis added).

illegal "pump-and-dump" scheme.[2] Specifically, in August 2013, Tobin secretly acquired majority shares of GS Valet, Inc., a public shell company.[3] Tobin subsequently arranged to have the company's name changed to International Metals Streaming Corp. (IMST). From May 2015 through 2017, respondent, Tobin, and others distributed shares of IMST among four separate offshore entities (the offshore nominees), which respondent created solely to hold Tobin's secretly-controlled shares. Stated differently, Tobin utilized the offshore nominees, created by respondent, to hold IMST shares on his behalf, so that his ownership level would not exceed a certain threshold. Tobin, thus, concealed his true control of the company.

Between December 2016 and June 2017, respondent, Tobin, and others prepared to reverse merge[4] Environmental Packaging Technology, Inc. (EPTI), a privately-held company, into IMST, which was publicly-held. On February 1,

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[2] A "pump-and-dump" scheme involves the manipulation of the stock price or trading volume of a public traded company (the pump) so that individuals who control a substantial portion of the company's free-trading stock can sell their shares to other investors (the dump) at an artificially-inflated price. A company is considered "public" when its securities trade on public markets, first through an initial public offering, and the company regularly discloses certain business and financial information to the public. See https://corporatefinanceinstitute.com/resources/knowledge/trading-investing/pump-and-dump/ (visited February 25, 2022).

[3] A shell company is a company with little or no operations or assets.

[4] A reverse merge is a transaction in which a privately-held company acquires a publicly-traded company and, thereby, becomes a publicly-traded company without going through an initial public stock offering.

2017, respondent and Tobin caused IMST to begin trading on the over-the-counter securities market under the ticker symbol EPTI. Later, from April to May 2017, respondent, Tobin, and others caused 10.5 million EPTI shares, held by the offshore nominees, to be transferred to two separate asset management firms. Between April and May 2017, respondent, Tobin, and others raised $2.9 million in a private placement of EPTI shares. Thereafter, between May 20 and May 25, 2017, they transferred $1 million of those funds to Svarna Ltd, an offshore entity created at respondent's direction, and then again transferred funds from Svarna to a third-party stock promoter hired to promote EPTI shares.[5]

On June 9, 2017, the reverse merger of IMST and EPTI closed. A mere three days later, on June 12, 2017, respondent and Tobin engaged in a paid campaign to promote EPTI stock, through the dissemination of false and misleading press releases designed to increase investor interest in the company and to bolster both its share price and trading volume. The deceptive marketing materials were sent to investors in Massachusetts. However, as previously stated, the campaign was a scheme to sell the publicly-traded stock to investors, while respondent and others concealed Tobin's control of EPTI, which enabled

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[5] This use of offshore accounts added another layer of concealment of Tobin's ownership.

him to sell his shares without (1) registering the offers or sales of stock with the Securities and Exchange Commission (the SEC),[6] (2) disclosing to investors accurate information about Tobin's ownership and control of EPTI, and (3) complying with the limitations on the sale of stock by company affiliates. As a result, investors were deceived into believing that neither Tobin nor another single EPTI nominee owned more than five percent of the company's stock, which, pursuant to §13(d) of the Securities Exchange Act of 1983, is the threshold amount required for the public disclosure of ownership reports. This pump-and-dump scheme of EPTI stock was traded over the Silverton trading platform, now known as Wintercap, which was owned by Roger Knox, another of respondent's co-conspirators.

The pump-and-dump scheme persisted from June 12 through June 27, 2017, when the SEC halted the trading of EPTI shares. During that timeframe, the intermediary brokerages, acting at the direction of respondent, Tobin, and others, sold shares of EPTI held by the offshore nominees, generating $1.5 million in trade proceeds. Of those proceeds, it was agreed that respondent,

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[6] The SEC, an independent agency of the executive branch of the United States government, is responsible for enforcing the federal securities laws and promulgating rules and regulations thereunder to eliminate manipulative and deceptive trading practices. The rules and regulations require individuals to file public reports after acquiring direct or indirect ownership of more than five percent of a class of a company's registered shares, and further requires individuals who directly or indirectly control more than ten percent of a class of a company's registered shares to file public reports after selling some or all those shares.

Tobin and another co-conspirator would be paid 4.5 percent of the group's net trade proceeds. However, the intended loss to investors from the pump-and-dump scheme was $15 million, which respondent and his co-conspirators intended to reap as profit. That loss was only prevented by the SEC's decision to halt the trading of EPTI shares.

In summary, respondent admitted that, for a five-year period spanning from 2013 through 2018, he conspired to commit securities fraud by (1) concealing Tobin's ownership and control of various securities, and (2) employing paid promotional campaigns and manipulative trading techniques to artificially inflate the price and trading volume of those stocks to enable Tobin and others to secretly sell their shares at a substantial profit, thus, defrauding investors. The purpose of this conspiracy was for respondent, Tobin, and others to make a profit from the illegal stock sales and to conceal their actions from regulators, law enforcement, and investors.

On November 7, 2018, respondent entered into a plea agreement with the United States Attorney for the District of Massachusetts to knowingly and willfully violating 18 U.S.C. § 371 and 15 U.S.C. §§ 78j(b) and 78ff.[7] In connection with the plea agreement, respondent agreed to forfeit his interest in

[7] Respondent's counsel executed the plea agreement on November 19, 2018, and respondent executed it on November 21, 2018.

all trade proceeds related to EPTI because those funds either constituted, or were derived from, proceeds from his felonious activity. Respondent waived prosecution by indictment and consented to having the matter proceed by way of an information. Thus, on November 27, 2018, two days prior to his resignation from the New Jersey bar, an information was filed with the United States District Court, District of Massachusetts, detailing the charges against respondent. Thereafter, on February 27, 2019, respondent pleaded guilty to having violated 18 U.S.C. § 371 and 15 U.S.C. §§ 78j(b) and 78ff.

At the August 13, 2020 sentencing hearing, respondent's counsel and the Assistant United States Attorney jointly argued that respondent's term of imprisonment should be substantially reduced based upon his immediate, significant cooperation with the government, which assisted the successful prosecution of respondent's co-conspirators and enabled the government to stop a major securities fraud ring. Respondent was described "as a facilitator, not someone who owned the majority of the shares" but who "helped disguise, knowingly and intentionally, ownership." He was also described as less knowledgeable about the scope of the enterprise than co-conspirator Tobin. Respondent's counsel further noted, in mitigation, that, when the SEC froze EPTI's trading, respondent had control of million-dollar accounts, which he

prevented his co-conspirators from accessing and did not himself access – effectively freezing the accounts.

Respondent accepted responsibility for his crimes, which admittedly were intended to produce total profits of more than $15 million.[8] In discussing his position as an attorney, respondent acknowledged that he "hurt people with [his] skills rather than help[] them" and "deservedly los[t] [his] privilege to practice law, which [he] underst[oo]d and accept[ed] as a consequence of [his] actions."

Also at the August 13, 2020 sentencing hearing, the District Judge stated that respondent "didn't make a mistake [. . . .] [He] committed a crime, and there is a major difference between a mistake and a crime." The Judge further addressed the seriousness of respondent's crime, in consideration of his legal background, stating:

> You were an attorney at law, a noble professional. You not only have a juris doctor, but a master of law, both from prestigious law schools. You studied the law. You know the nuances of the law. You know what is or isn't a fraudulent deal. You were in a position of trust.
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> Because you were a lawyer, your case needs to be reviewed carefully for specific deterrence. You and any other lawyer who would engage in such securities fraud crimes needs to be sent a clear and stern message. You are not only going to lose your license to practice. You are going to go to jail.

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[8] The individual investors, who were the victims of respondent's scheme, were not identified.

[2T26-2T27.] [9]

The District Judge considered, in mitigation, respondent's substantial cooperation with the prosecution of his co-conspirators; his assistance with related financial crime investigations; his family circumstances; and his remorse. In consideration of the mitigating factors, respondent's sentence was reduced by seventy-five percent, and he was sentenced to two fifteen-month terms in federal prison, one term for each count, to be served concurrently.[10] Consequently, on May 13, 2021, respondent was disbarred in New York.[11]

Respondent failed to report his criminal charges to the OAE, as R. 1:20-13(a)(1) requires, or to report his subsequent discipline in New York, as R. 1:20-14(a)(1) requires. On June 9, 2021, more than two years after the entry of his

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[9] "2T" refers to the August 13, 2020 transcript from respondent's sentencing hearing.

[10] According to the Federal Bureau of Prisons' website, respondent was released on April 21, 2021.

[11] The Supreme Court of New York noted that respondent did not reply to motion of the Attorney Grievance Committee (AGC) for the Third Judicial Department of New York, which sought his disbarment. Patel, 145 N.Y.S. at 210. It found, in aggravation, that, in November 2018, respondent applied for leave to resign for non-disciplinary reasons, a mere eight days prior to the filing of criminal charges against him – at which time, respondent had already been presented with a plea agreement from the United States – and he made no effort to advise of the federal criminal charges. Id. at 212. Indeed, the Supreme Court of New York learned of respondent's criminal matter through its own investigation. Ibid. Accordingly, it concluded "that respondent's actions were undertaken in a misguided attempt to avoid disclosing to [the Supreme] Court [of New York] and AGC that he was facing charges for his federal criminal activity, and [it found] that his deceptive behavior severely aggravate[d] his already serious conduct." Id. at 212-213. As we note below, respondent was similarly deceptive in the course of his resignation in our state.

guilty plea, the OAE learned of respondent's New York discipline and reminded him of his obligation to inform the Director of the OAE, in writing, of the disposition of any disciplinary proceedings, as R. 1:20-13 requires. On June 11, 2021, the OAE docketed this matter. Respondent never contacted the OAE. As in the New York disciplinary proceedings, respondent did not reply to the OAE's motion urging his disbarment.

In support of disbarment, the OAE cited New Jersey disciplinary precedent discussed below.

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 or adjudication is 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). 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." Thus, respondent's guilty plea and conviction of the federal charges of conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff, establishes his violation of RPC 8.4(b). Furthermore, the underlying facts of respondent's guilty plea evidence that he engaged in conduct that "involved

dishonesty, fraud, deceit or misrepresentation," in violation of RPC 8.4(c). Thus, respondent also violated RPC 8.4(c).

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." 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.

In sum, we find that respondent violated RPC 8.4(b) and RPC 8.4(c). The

sole issue for us is to determine 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.

Financial crimes, including securities fraud, are serious ethics transgressions. The quantum of discipline for an attorney convicted of securities fraud crimes has ranged from a lengthy term of suspension to disbarment. See, e.g., In re Mueller, 218 N.J. 3 (2014) (three-year suspension; the attorney pleaded guilty to conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349 and, thus, he violated RPC 8.4(b)); In re Manoff, 205 N.J. 74 (2011) (three-year suspension; the attorney was involved in a three-month long scheme to bribe brokers to purchase shares of stocks to create the appearance of active trading; no actual loss, because the trades were settled using funds from undercover Federal Bureau of Investigation officers; we specifically noted that, although serious, the attorney's misconduct was not so pervasive or protracted as to warrant disbarment, as in Lurie (one-year long scheme involving $1.8 million), Sprecher (six-year long scheme involving $1.3 million), and Messinger (four-year long scheme involving $225 million) (discussed below)); and In re Kundrat, 195 N.J. 4 (2008) (three-year suspension; the attorney committed securities fraud after arranging for straw buyers to purchase shares in a new bank at a discounted rate, directing them to transfer shares to him and lie about their

ownership, funding, and retention of shares; the Court noted that the attorney escaped disbarment because his conduct was limited to a single transaction).

Further, the Court routinely has found that attorneys who commit serious crimes or crimes that evidence a total lack of "moral fiber" must be disbarred 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) (the attorney was 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 $2.7 million and the intended loss to the insurance providers would have been more than $14 million); In re Marino, 217 N.J. 351 (2014) (the attorney participated in a fraud that resulted in a loss of more than $309 million to investors; assisted his brother and another co-conspirator in the fraud, which involved the creation of a false financial history for a failing hedge fund used to persuade contributions from potential investors); In re Seltzer, 169 N.J. 590 (2001) (the attorney, who was working as a public adjuster, committed insurance fraud by taking bribes in return for submitting falsely inflated claims to insurance companies; he also failed to report the payments as income on his tax returns; the attorney was guilty of conspiracy to commit mail fraud, mail fraud, and conspiracy to defraud the Internal Revenue Service); In re Lurie, 163 N.J. 83 (2000) (the attorney was

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) (the attorney was convicted of wire fraud, unlawful monetary transactions, and conspiracy to commit wire fraud; the attorney and a co-defendant used for their own purposes $238,000 collected from numerous victims for the false purpose of buying stock); In re Goldberg, 142 N.J. 557 (1995) (two separate convictions for mail fraud and conspiracy to defraud the United States); In re Sprecher, 142 N.J. 432 (1995) (the attorney was convicted of conspiracy to commit securities fraud, conspiracy to defraud the United States, and obstruction of justice); and In re Messinger, 133 N.J. 173 (1993) (the attorney was convicted of conspiracy to defraud the United States by engaging in fraudulent securities transactions to generate tax losses, seven counts of aiding in the filing of false tax returns for various partnerships, and one count of 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).

Moreover, the Court has emphasized that, when an attorney "actively utilized his professional license and his legal skills as an attorney to violate the law [. . .] the misconduct is even more egregious in the disciplinary context" and disbarment is mandated in order "to preserve the integrity of the bar." In re

[Gerald M.] Goldberg 105 N.J. 278, 282-83 (1987). Later, in In re [Arthur Abba] Goldberg, 142 N.J. 557, 567 (1995), the Court enumerated aggravating factors that normally lead to disbarment in criminal cases:

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

Recently, in In the Matter of Angelo M. Perrucci, DRB 21-032 (August 25, 2021), the attorney was convicted of five counts of felony wire fraud, in violation of 18 U.S.C. § 1343, which was committed through his legal work as administrator of an estate. Id. at 3. At his sentencing hearing, it was determined that the loss was between $250,000 and $500,000. Id. at 7. We granted the OAE's motion for final discipline and recommended the attorney's disbarment, based upon his conviction and violations of RPC 1.15(a) (knowing misappropriation of client funds and the principles of In re Wilson, 81 N.J. 451 (1979)); RPC 1.15(b) (failure to promptly deliver to the client property that the client is entitled to receive); RPC 1.15(c) (failure to keep disputed funds separate

and intact); RPC 8.4(b); and RPC 8.4(c). Id. at 9-10. The Court agreed and Perrucci was disbarred. In re Perrucci, __ N.J. __ (January 18, 2022).

Just like the attorneys in Marino, Sprecher, and Messinger, who were disbarred, respondent conspired to commit securities fraud. Like the attorneys in Lurie (one-year long scheme involving $1.8 million), Sprecher (six-year long scheme involving $1.3 million), and Messinger (four-year long scheme involving $225 million), respondent's fraud was pervasive and protracted, lasting five years. Also, just like the disbarred attorneys in Quatrella, Marino, and Perrucci, respondent's criminal conduct resulted in substantial losses ($1.5 million) and intended losses ($15 million) suffered by investors. Like Perrucci, respondent's misconduct was perpetrated with the use of his law license.

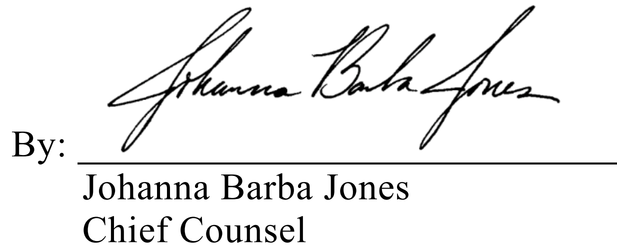
In our view, respondent's misconduct involved all the aggravating factors enumerated by the Court in Goldberg and, thus, warrants his disbarment. Specifically, respondent's misconduct was prolonged, spanning five years. He was motivated by greed, as evidenced by the profits generated from the fraud and his agreement to participate in the fraud in exchange for significant payment for his services. Most abhorrently, and as recognized by the sentencing judge, respondent's misconduct was perpetrated with the use of his law license. Respondent intentionally abused both his position of trust and his status as an attorney.

In further aggravation, just as he did in New York, on November 29, 2018, respondent resigned, without prejudice, from the New Jersey bar, a mere two days prior to the filing of the information against him. At the time of his resignation in New Jersey, respondent already had been presented with a plea agreement from the federal government. Respondent executed that plea agreement prior to submitting his application to resign from the New Jersey bar, and he made no effort to advise the OAE of the federal criminal charges, in violation of R. 1:20-13(a)(1). Respondent's deceptive behavior, whereby he attempted to conceal his criminal charges from the disciplinary authorities in two states, aggravated his already serious unethical conduct.

Respondent's misconduct evidenced a total lack of "moral fiber." He also acknowledged that he "deservedly" lost his privilege to practice law in New York. His failure to respond to the OAE's motion exhibited his disinterest in defending his New Jersey license. Thus, to protect the public and preserve confidence in the bar, and consistent with New Jersey disciplinary precedent, we determine 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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair



By: ______________________________
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Milan K. Patel
Docket No. DRB 21-222

Argued: January 20, 2022

Decided: March 25, 2022

Disposition: Disbar

Members	Disbar
Gallipoli	X
Singer	X
Boyer	X
Campelo	X
Hoberman	X
Joseph	X
Menaker	X
Petrou	X
Rivera	X
Total:	9

Johanna Barba Jones
Chief Counsel