Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-263
District Docket No. XIV-2021-0142E

In the Matter of	:
Martin E. Kofman	:
An Attorney at Law	:

Decision

Argued: February 17, 2022

Decided: June 7, 2022

Michael S. Fogler appeared on behalf of the Office of Attorney Ethics.

Kim D. Ringler 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), following respondent's guilty plea and conviction, in the United States District Court for the Southern District of New York (the SDNY), to one count of conspiracy to

make false statements to lenders, 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 a two-year term of suspension, retroactive to November 19, 2021, the effective date of respondent's temporary suspension in New Jersey.

Respondent earned admission to the New Jersey and New York bars in 1986. He has no prior discipline in New Jersey. At all relevant times, he was a partner with the law firm Lowenthal & Kofman, P.C., in Brooklyn, New York.

Effective June 4, 2018, the Court declared respondent administratively ineligible to practice law for failure to pay his annual assessment to the Lawyers' Fund for Client Protection (the Fund), as R. 1:28-2 requires. Respondent remained administratively ineligible until May 19, 2021, when the Court reinstated him.

Additionally, effective November 5, 2018, the Court declared respondent administratively ineligible to practice law for failure to comply with continuing legal education requirements. Respondent remained administratively ineligible

until October 25, 2021, when the Court reinstated him.

On November 19, 2021, the Court temporarily suspended respondent from the practice of law in connection with his criminal conduct, detailed below. In re Kofman, 249 N.J. 9 (2021).

We now turn to the facts of this matter.

On August 9, 2017, in the SDNY, respondent entered a guilty plea to one count of an indictment charging him with conspiracy to make false statements to lenders, in violation of 18 U.S.C. § 371.

On April 10, 2018, the Honorable Kenneth M. Karas, U.S.D.J., sentenced respondent to a two-year term of probation and ordered him to pay $600 in fines and assessments.

The facts underlying respondent's criminal conviction are as follows. Notably, respondent's criminal conduct involved only one transaction, one client, and one financial institution. However, fifteen individuals, including respondent, were charged with participating in a conspiracy to fraudulently obtain more than $20 million in various types of loans, including mortgages and home equity loans, from lenders insured by the Federal Deposit Insurance Corporation. The conspiracy spanned ten years, from 2004 to 2014. The indictment alleged that respondent and his co-conspirators, in order to secure the loans, made false statements and misrepresentations to the financial

institutions about the borrowers' employment, income, assets, liabilities, bank accounts, and primary residences. The majority of the loans went into default, and millions of dollars in loan proceeds were not repaid.

The indictment further alleged that some of the co-conspirators used the fraudulent loan proceeds to enrich themselves. For instance, it was alleged that the loan proceeds were used to pay credit card debt and home mortgage obligations; to invest in other real estate development projects including projects from which the co-conspirators derived rental income; and to pay debts arising from other fraudulently obtained loans that were secured only to conceal the fraudulent nature of the original loans.

At his August 9, 2017 plea hearing, respondent admitted to his role in this conspiracy and entered a guilty plea to one count of the indictment, charging him with conspiracy to make false statements, in violation of 18 U.S.C. § 371. Specifically, respondent admitted that he served as the real estate attorney and knowingly and willfully became a member of the conspiracy – again, however, only in connection with one transaction. Specifically, respondent acknowledged that, in June 2009, one of the co-conspirators, Samuel Rubin, sought a $7.2 million loan from Capital One Bank in connection with property located in Brooklyn, New York. Rubin and his family had been long-time clients of respondent.

To secure the loan, Capital One Bank required that Rubin, the borrower, invest equity of approximately twenty-five percent of the value of the property. Respondent testified that he understood the lender's purpose for this requirement was to demonstrate Rubin's credit worthiness. Thus, as part of the loan application, Rubin, as borrower, was required to make a $2 million down payment, which would be held in escrow by respondent.

In order to satisfy Capital One Bank's condition precedent for the issuance of the loan, respondent submitted, at Rubin's behest, a letter to Capital One Bank, in which he falsely represented that Rubin had deposited the required $2 million in his escrow account. Although the funds were, in fact, deposited in respondent's escrow account, they were paid by a third party and not Rubin; further, the funds were removed from respondent's escrow account within four days of the deposit, well prior to the closing. Respondent intentionally failed to notify Capital One Bank that the funds had been withdrawn.

Subsequently, on the very day of the closing, the third party again sent $2 million to respondent, representing Rubin's required down payment. Immediately after the closing, respondent again returned the funds to the third party. See also In the Matter of Martin E. Kofman, 198 A.D.3d 9, 12-13 (N.Y. App. Div. 2021).

Ultimately, Rubin's loan was paid off and Capital One Bank did not suffer a loss.

The Honorable Lisa Margaret Smith, U.S.M.J., engaged in a lengthy colloquy with respondent before accepting his plea, ensuring it was knowing, informed, and voluntary. Respondent unequivocally admitted having committed the charged felony.

During his sentencing hearing before Judge Karas, respondent expressed deep remorse:

> there has almost never passed a day that I have not imparted the lessons that I have learned since the beginning of this ordeal, whether it be to fellow attorneys, clients, lay people and even the young impressionable teenagers with whom I am involved, the lesson is a simple one, do not be involved in anything that is even slightly gray. If it is not 100 percent on the up and up, run from it as if it were the devil you were running from. It does not pay to be involved. Crime does not pay.
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> [2T21-2T22.][1]

Respondent continued by stating "I take full responsibility for my actions and regret it every day, and I preach to anyone that wants to listen that they avoid getting even remotely involved in any shenanigans not 100 percent above board."

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[1] "2T" refers to the April 10, 2018 sentencing transcript.

Respondent denied, through his counsel, that he was motivated by greed, stating that, other than being paid his "customary legal fee," he did not otherwise profit from the conspiracy.[2] The prosecution, however, rejected this notion, referencing a $187,112.41 disbursement of loan proceeds to Title Issues Agency, a title company affiliated with respondent's former law firm. Respondent disagreed, arguing that the disbursement to the title company could not be categorized as income because it included funds that were used for city taxes, recording fees, and other expenses.

Judge Karas determined to sentence respondent to probation rather than a period of incarceration, which was within the applicable sentencing guidelines, because he found that respondent's misconduct likely was aberrant.[3] Judge Karas stated:

> Why on earth would an individual who gave so much to children, beyond his own, of course, who gave so much to his community, who had, as I said, a successful law practice, I read your law partner's letter, why would you do this for, as [respondent's counsel] says, an ordinary fee.
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> And I say this not really to answer the question but I think to make the point that the record at least before

[2] In response to our questioning at oral argument, respondent, through his counsel, submitted a letter explaining that his customary fee for a commercial real estate closing in 2009, when the transaction took place, was approximately $7,500. Respondent was unable, however, to retrieve documents from 2009 and did not recall how much he had actually been paid.

[3] The maximum term of imprisonment for a conviction pursuant to 18 U.S.C. § 371 is five years.

> the Court suggests that there is such a disconnect that this is almost aberrant behavior . . . And I think it is very important at any sentencing to not focus on the relatively insignificant amount of time someone spent committing crime and to focus on the big picture and evaluate the whole story, the whole person. And that's really what the factors are supposed to do.
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> So I think this factors [sic] cuts substantially in [respondent's] favor.
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> [2T25-26.]

In further mitigation, Judge Karas found that the likelihood of repeat behavior was "about as close to zero as it can be." Judge Karas also recognized respondent's genuine commitment to his community and to charitable work, evidenced by the many letters written on respondent's behalf, and his acceptance of responsibility for his conduct.

In aggravation, Judge Karas recognized that respondent's status as a lawyer necessitated serious punishment because, "from the bank's perspective, when a lawyer makes a representation, that carries weight," but, here, "they were fooled." Judge Karas did not reach a conclusion on whether respondent's misconduct was motivated by greed, stating only "whether it was motivated by these additional monies that went into the title company, whether it was motivated by wanting to make a client happy so they would give you more business or it was motivated by just the fee that was charged here, this was serious misconduct that nobody should engage in, but let alone an attorney." In

further aggravation, the court acknowledged that the conspiracy involved planning, coordination, and scheming.

In view of the totality of the circumstances, including respondent's positive impact on his community and his family, along with his limited but illegal role in the conspiracy, Judge Karas determined to impose a two-year term of probation, rejecting the lengthier probationary period that was recommended by the probation office. Judge Karas also determined to impose a $500 fine, rather than the recommended $5,000 fine, and imposed no community service hours.

On July 28, 2021, the Supreme Court of New York, Appellate Division, Second Judicial Department, suspended respondent from the practice of law for a term of two years as a result of this criminal conviction, retroactive to July 31, 2019, the date of his temporary suspension in New York. In the Matter of Martin E. Kofman, 198 A.D.3d at 10.

In fashioning its discipline, the court found:

> that the respondent's actions in securing a loan for his client by knowingly misleading the lender as to his client's financial status is misconduct involving fraud and deceit. Such conduct strikes at the heart of the public's trust and is antithetical to the foundation of what is required of lawyers. Notwithstanding, the Court has considered that there is extraordinary evidence here in mitigation. The respondent has demonstrated an impressive and laudable commitment to public service through the multiple charitable organizations with

> which he is involved, including some dealing with the most vulnerable members of his community. This commitment to community service was not just spawned after suddenly facing criminal or disciplinary penalties, but rather was found by both the criminal sentencing judge and by the Special Referee to be a genuine and longstanding part of the respondent's life. Additionally, among other things, the Court notes that the respondent has expressed genuine remorse for his conduct and has no prior disciplinary history.
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> [Id. at 13-14.]

Respondent failed to promptly notify the OAE of his criminal charge and conviction, as R. 1:20-13(a)(1) requires. Rather, on May 7, 2021, nearly four years after his guilty plea, respondent, through his counsel, notified the OAE of his suspension from the New York bar. The OAE docketed the matter upon receipt of that notice.

In its brief in support of this motion, the OAE asserted that the appropriate discipline for respondent's misconduct is a three-year term of suspension. To do so, the OAE relied upon a number of cases where attorneys convicted of crimes involving false statements in the procurement of loans received discipline ranging from a lengthy suspension to disbarment. In re Daly, 195 N.J. 12 (2008) (eighteen-month retroactive suspension); In re Serrano, 193 N.J. 24 (2007) (eighteen-month retroactive suspension); In re Mederos, 191 N.J. 85 (2007) (eighteen-month retroactive suspension); In re Jimenez, 187 N.J. 86 (2006) (eighteen-month retroactive suspension); In re Panepinto, 157 N.J. 458 (1999)

(two-year suspension); In re Capone, 147 N.J. 590 (1997) (two-year retroactive suspension); In re Bateman, 132 N.J. 297 (1993) (two-year retroactive suspension); In re Solomon, 110 N.J. 56 (1988) (two-year retroactive suspension); In re Noce, 179 N.J. 531 (2004) (three-year retroactive suspension); and In re Goldberg, 142 N.J. 557 (1995) (disbarment). That body of case law is discussed in greater detail below.

The OAE asserted that, viewing the facts of this case through the lens of Goldberg, the ultimate sanction of disbarment was not required. Specifically, the OAE emphasized that respondent's misconduct was not motivated by greed or pecuniary gain. In support of a lengthy suspension, the OAE argued:

> respondent was guilty of serious misconduct when he participated in a conspiracy to defraud the Bank, knowing his conduct was illegal, thereby demonstrating dishonesty and disrespect for the legal system. While his misconduct did not result in a tangible, monetary loss, and although Respondent has no prior disciplinary history, Respondent abused a position of private trust in a manner that facilitated significantly the commission of the offensive conduct, and his misconduct must be distinguished as even more serious because he acted in his capacity as an attorney while undertaking same.
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> [OAEb12.][4]

[4] "OAEb" refers to the OAE's November 29, 2021 brief in support of its motion for final discipline.

The OAE stated, however, that a three-year suspension was necessary because respondent, as an attorney in the transaction, had abused his position of trust. Further, the OAE contended that a term of suspension was required, regardless of whether respondent's misconduct was motivated by personal or financial gain. In this respect, the OAE cited In re Gassaro, 124 N.J. 395 (1991) (two-year suspension; although deriving no pecuniary gain, attorney was suspended following his conviction for conspiracy to defraud the Internal Revenue Service on behalf of his client), and In re Gillespie, 124 N.J. 81 (1991) (three-year suspension; although deriving no pecuniary gain, attorney was suspended for aiding and abetting a construction company in preparing false tax returns).

The OAE also noted that respondent's failure to promptly report to the OAE the pendency of his criminal charges, as R. 1:20-13(a)(1) requires, militated against imposition of a retroactive sentence. Moreover, the OAE requested that respondent's period of administrative ineligibility to practice law should not be credited in connection with any retroactive application of a term of suspension. Respondent was temporarily suspended by the Court for his criminal misconduct on November 19, 2021 and, thus, the OAE urged that the suspension be applied prospectively or, at most, retroactive to May 7, 2021, the date he reported his conviction to the OAE.

Respondent, through his counsel, submitted a letter brief to us in support of the OAE's motion but urged us to impose a two-year suspension, retroactive to one of three alternative dates: (1) June 4, 2018, the date respondent became administratively ineligible to practice law in New Jersey; (2) July 31, 2019, the date of respondent's temporary suspension in New York; or (3) November 19, 2021, the date of respondent's temporary suspension in New Jersey.

In support of a two-year term of suspension, respondent cited much of the same disciplinary precedent cited by the OAE, noting variation within a range of discipline for similar misconduct, dependent upon the particular facts and circumstances presented. Respondent invited us to view as analogous Serrano and Mederos, discussed below. In view of the presence of substantial mitigation, including respondent's sincere remorse, his acceptance of responsibility, and the voluminous character evidence that was submitted to the sentencing judge and the New York disciplinary authorities, respondent urged us to impose a retroactive two-year suspension, rather than the prospective three-year suspension sought by the OAE.

In further support, respondent submitted his own affirmation, dated December 13, 2021, in which he expressed deep remorse to us, stating that his "misconduct is a source of continuing shame" and that he lives "with the stain on [his] reputation and with the angst caused by [his] actions." For his

misconduct, respondent stated that he has accepted "full responsibility for [his] failure to abide by [his] professional responsibilities." During oral argument, respondent again expressed his deep remorse to us and acknowledged that he should have risen above the criminal conduct, even if that meant losing a long-standing client.

Respondent provided us with the twelve letters written on his behalf for the New York disciplinary authorities and the eighty letters presented to the sentencing judge, all of which speak to respondent's reputation for honesty, trustworthiness, and good character. These character letters are from family members; friends; professional colleagues; and members of respondent's community. Respondent contended that they constitute significant mitigation meriting consideration in fashioning the discipline. See In re Gillespie, 124 N.J. at 87 (approximately eighty letters of good character and reputation considered in mitigation).

Respondent urged that a prospective term of suspension was unnecessary to protect the public as there was "no basis for concern in the record that he presents a risk to the public or will deviate from scrupulous adherence to the applicable rules regarding handling funds." Further, respondent argued that his cessation of all law practice since July 31, 2019, when he was temporarily suspended in New York, should be considered in determining whether to impose

the discipline retroactively. Respondent cited In the Matter of Yana Shtindler, DRB 16-029 (September 29, 2016), so ordered 227 N.J. 457 (2017), and In the Matter of Scott Michael Berger, DRB 05-192 (September 15, 2005), so ordered 185 N.J 269 (2005), in which we granted the OAE's motions for reciprocal discipline and imposed retroactive suspensions where the attorneys had not engaged in the practice of law for a period preceding the imposition of discipline. Respondent also urged us to consider, in further mitigation, the passage of time since the events underlying his criminal conviction took place, in 2009, citing In re Jay, 148 N.J. 79 (1997) (retroactive three-month suspension for possession of cocaine and marijuana to date of temporary suspension), and In re Kotok, 108 N.J. 314 (1987) (retroactive suspension due to passage of 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 make false statements to lenders, 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, which constituted fraud, 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 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 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." 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."

The quantum of discipline for an attorney convicted of a serious criminal offense ranges from a term of suspension to disbarment. See, e.g., In re Mueller, 218 N.J. 3 (2014) (three-year suspension for attorney who pleaded guilty to conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349); In re Goldberg, 142 N.J. 557 (disbarment for attorney who pleaded guilty, in separate jurisdictions, to three counts of mail fraud, in violation of 18 U.S.C. §§ 2, 1341 and 1343; and conspiracy to defraud the United States, in violation of 18 U.S.C. § 371). 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.
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> [Id. at 567 (internal quotations omitted).]

Applying these factors, terms of suspension have been imposed on attorneys whose crimes are less egregious. Crucial considerations include the

amount of loss, if any, to the victims; the actions taken by the attorney to perpetrate the fraud; the length of the prison sentence received, if any; the amount of restitution ordered in the underlying criminal case; cooperation with the government; and whether the attorney took responsibility for the crime. Compare, e.g., In re Serrano, 193 N.J. 24 (eighteen-month suspension), In re Olewuenyi, 216 N.J. 576 (2014) (two-year suspension), and In re Noce, 179 N.J. 531 (three-year suspension). Additionally, lesser suspensions have been imposed when a lengthy delay occurs between the conviction and the filing of ethics charges, through no fault of the attorney. See, e.g., In re Davis, 230 N.J. 385 (2017) (one-year retroactive suspension imposed after consideration of the lengthy delay between the attorney's report of his conviction to the OAE and the filing of the motion for final discipline).

As the OAE correctly noted, convictions for crimes involving the falsification of statements in the procurement of loans have resulted in discipline ranging from long-term suspensions to disbarment. See, e.g., In re Daly, 195 N.J. 12 (eighteen-month retroactive suspension for attorney who was sentenced to probation after pleading guilty to an information charging him with conspiracy to submit false statements, in violation of 18 U.S.C. § 371, in four real estate transactions; specifically, the attorney prepared settlement statements containing material misrepresentations about the sale price of the properties, the

amount of funds brought by the buyers to the closings, the amount of the deposits, and the disbursements made to the sellers, the real estate and mortgage brokers, and the attorney himself; prior discipline considered in aggravation; in mitigation, the attorney cooperated with the government's investigation); In re Serrano, 193 N.J. 24 (eighteen-month retroactive suspension for attorney who received a one-year term of probation after pleading guilty to a federal information charging her with making a false statement to a federal agency, in violation of 18 U.S.C. § 1001; the attorney profited from a scheme to fraudulently induce the Federal Housing Administration to insure certain mortgage loans by acting as the closing agent for residential mortgages and preparing fraudulent HUD-1 settlement statements to "qualify unqualified borrowers" for HUD-insured mortgages, knowing HUD would rely on the forms to determine whether to insure the mortgages; the attorney was involved in approximately twenty-five closings, five of which ended in foreclosure; she was paid between $20,000 to $40,000 in legal fees from the scheme; in mitigation, the attorney provided substantial cooperation to the government's criminal investigation); In re Mederos, 191 N.J. 85 (eighteen-month retroactive suspension for attorney who played a minor role in a mortgage fraud scheme by submitting false loan documents in three transactions; in particular, the attorney prepared settlement statements that contained materially false information about

the financial status of the borrowers; the attorney was paid $900 per closing; after pleading guilty to mail-fraud conspiracy, the attorney was sentenced to a three-year term of probation and fined $2,000; in sentencing the attorney, the court considered his extensive cooperation with the government); In re Jimenez, 187 N.J. 86 (eighteen-month retroactive suspension for attorney who played a minor role in a major mortgage fraud scheme; the attorney was sentenced to six months in prison after his conviction of mail fraud and conspiracy to commit mail fraud for preparing false documents, including tax returns, W-2s, pay stubs, and bank statements; the attorney also wrote false information on verification of employment forms and forged employers' signatures, even resorting to the use of a "light box" to lend authenticity to the forgeries; the attorney was a law student at the time of his criminal offenses); In re Panepinto, 157 N.J. 458 (two-year retroactive suspension for attorney who received probation after pleading guilty to conspiracy to commit bank fraud in connection with a fraudulent loan from the attorney to his client, the intent of which was to deceive a mortgage company; the attorney drafted a real estate contract with an artificially inflated purchase price; the attorney then misrepresented to the bank that the borrower had sufficient funds for the down payment when, in fact, the attorney loaned the funds to the borrower in order to deceive the bank into believing the borrower made the down payment; in mitigation, no prior discipline and full cooperation

with criminal investigation); In re Capone, 147 N.J. 590 (attorney received a two-year suspension for making misrepresentations to a bank in order to obtain a mortgage loan, on which the attorney later defaulted; ultimately, he pleaded guilty to a charge of knowingly making false statements on a loan application and was placed on four months' house arrest; although the attorney had no prior discipline, his misconduct harmed the bank in the amount of approximately $169,000 and was motivated by self-gain); In re Bateman, 132 N.J. 297 (two-year suspension following attorney's conviction of mail fraud conspiracy for making false statements on a loan application and thereby assisting a client in obtaining an inflated appraisal value for property; the attorney was sentenced to a suspended five-year prison term, fined $15,000, ordered to perform three hundred hours of community service, and was placed on probation for three years); In re Noce, 179 N.J. 531 (three-year suspension for attorney who pleaded guilty to one count of conspiracy to commit mail fraud; the attorney participated in a scheme to defraud the United States Department of Housing and Urban Development (HUD) through the fraudulent procurement of home mortgage loans for unqualified buyers resulting in a loss of more than $2,400,000 to HUD; the attorney performed the title work and acted as the settlement agent in more than fifty closings; the attorney received only his regular closing fee for the transactions, was sentenced to five-years' probation, was confined to his

residence for nine months, was ordered to make restitution in the amount of $2,408,614, and was fined $5,000; mitigating factors included his minor role in the conspiracy, lack of substantial profit from it, and his cooperation, which was so substantial that he received a reduced sentence); In re Ellis, 208 N.J. 350 (2011) (disbarment; attorney was employed as a real estate attorney responsible for handling closings and distributing the proceeds of real estate transactions; he knowingly and intentionally falsely inflated purchase prices, resulting in loan amounts that greatly exceeded the actual sale price of the properties; after the sale price was paid to the seller, the attorney distributed the remaining monies to several others; for his part, the attorney pocketed $80,400, and received a $30,000 Volkswagen Passat; in view of the substantial loss and the fact that the attorney used his status as a lawyer to facilitate the fraud, was motivated by greed, and had an extensive disciplinary history, disbarment was appropriate).

Respondent's misconduct closely resembles that of the attorneys in Panepinto and Capone. In each case, we imposed a two-year suspension, retroactive to the date of each respondent's R. 1:20-13(b) temporary suspension for his underlying crime, and the Court agreed.

Cases imposing a shorter term of suspension are distinguishable. Unlike the attorney in Daly, who received an eighteen-month term of suspension, respondent did not provide significant cooperation in the underlying criminal

investigation. Like the facts of Daly, however, there was no financial loss attributable to respondent's misconduct and he has no prior discipline.

Although respondent's misconduct also resembles that of the attorney in Noce, the aggravating factors present in that matter, upon which we relied to impose a three-year suspension, are not present here. Specifically, Noce defrauded a government agency in more than fifty transactions, was ordered to make restitution in the amount of $2,408,614, and was fined $5,000. Here, respondent was involved in only one fraudulent transaction. Given these distinctions, the three-year suspension imposed in Noce would be too severe.

However, based upon the above precedent, respondent's misconduct should be addressed with a significant term of suspension. We also consider both aggravating and mitigating factors when crafting discipline.

In aggravation, respondent's criminal activity was directly related to the law and his expertise as a real estate attorney. Application of legal expertise to achieve the ends of a criminal enterprise ordinarily has an aggravating effect. We accord this factor significant consideration. In the Matter of Eric Alan Klein, DRB 17-039 (July 21, 2017) at 26 (we weighed, in aggravation, that respondent had leveraged his status as an attorney to provide a veneer of respectability and legality to the criminal scheme), so ordered, In re Klein, 231 N.J. 123 (2017).

The aggravating effect of respondent's exploitation of his expertise for criminal ends, however, is offset by substantial mitigating factors. Specifically, we consider that respondent has had an unblemished legal career with more than thirty years at the bar. In re Convery, 166 N.J. 298, 308 (2001). Respondent accepted responsibility for his misconduct by pleading guilty. Further, his misconduct was limited in time and scope, constituting a single loan transaction that took place in 2009. As noted by Judge Karas, his misconduct is unlikely to recur. In re Barbour, 109 N.J. 143, 161 (1988) (considering in mitigation that there was "little or no likelihood that the attorney will repeat the transgressions"). Finally, respondent has provided us with ninety-two letters that attest to his moral character, good reputation, and his commitment to his community and to charitable contributions.

On balance, although the seriousness of the underlying offense must be accorded significant weight, in light of the presence of compelling and substantial mitigation, we determine to impose a two-year suspension, retroactive to November 19, 2021, the date respondent was temporarily suspended from the practice of law in New Jersey.[5]

[5] In motions for final discipline in which a R. 1:20-13(b) automatic temporary suspension (ATS) has been imposed for the same criminal conduct, discipline is generally imposed retroactive to the effective date of that ATS. See, e.g., In re Dutt, 250 N.J. 181 (2022) (in which the Court imposed an eighteen-month suspension retroactive to the date of the

(Footnote cont'd on next page)

We further agree with the OAE that respondent's period of administrative ineligibility, effective June 4, 2018, should not be credited in calculating retroactivity. Respondent's administrative ineligibility status was the result of his voluntary decision to neglect his required annual assessment and continuing legal education obligations. Suspended attorneys do not receive "credit" for periods of administrative ineligibility. See generally, In re Farr, 115 N.J. 231, 238 (1989) (the Court expressly declined to consider "voluntary" suspension as a mitigating factor, unless imposed by order of the Court). Further, administrative ineligibility is not equivalent to a suspension inasmuch as it is founded upon neglect of annual duties and does not impose the same public safeguards. See R. 1:20-20. Consistently, here, respondent took no affirmative steps to remove himself from the practice of law in New Jersey. Thus, to impose such a retroactive suspension would amount to no meaningful sanction on respondent in his New Jersey practice for his misconduct. It might instead encourage other attorneys facing suspension to neglect the Court's mandatory

attorney's prior ATS for her participation in a conspiracy to commit visa fraud and obstruct justice); In re Daly, 195 N.J. 12 (in which the Court imposed an eighteen-month suspension retroactive to the date of the attorney's prior ATS for his participation in a conspiracy to submit false statements); In re Noce, 179 N.J. 531 (in which the Court imposed a three-year suspension retroactive to the date of the attorney's prior ATS for his participation in a conspiracy to commit mail fraud); In re Konigsberg, 132 N.J. 263 (1993) (in which the Court imposed a thirty-three-month suspension retroactive to the date of the attorney's prior ATS); In re Gillespie, 124 N.J. 81, 88-89 (1991) (in which the Court suspended respondent for three years retroactive to the date of his ATS for willfully aiding and assisting in the presentation of false corporate tax returns).

Rules governing all attorneys' annual duties, disserving the reputational and protective purposes of the disciplinary system overall.

Moreover, the cases cited by respondent in support of a retroactive sentence are inapplicable. For instance, in Shtindler, the matter was before us on a motion for reciprocal discipline following an out-of-state finding of misconduct for ethics violations equivalent to New Jersey's RPC 1.15(a) (failure to safeguard client funds); RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6); RPC 5.3 (failure to supervise a non-lawyer assistant); RPC 8.1(a) (knowingly making false statements of material fact in connection with a disciplinary matter); RPC 8.4(c); and RPC 8.4(d) (conduct prejudicial to the administration of justice). For her misconduct, Shtindler's license to practice law in New York was suspended for one year. Shtindler promptly reported her suspension in New York to the OAE, pursuant to R. 1:20-14(a)(1); the OAE, however, did not file its motion for reciprocal discipline for well over two years following Shtindler's notification. In the Matter of Yana Shtindler, DRB 16-029 (slip op. at 1).

Here, unlike the attorney in Shtindler, respondent failed to notify the OAE of his conviction or sentencing until May 7, 2021, nearly four years after pleading guilty to his crime, notwithstanding his obligation to promptly do so, as R. 1:20-13(a)(1) requires. He never reported his indictment, as the same Rule

requires. If respondent had promptly notified the OAE of his indictment or his August 9, 2017 guilty plea, as he was required to do, the OAE could have earlier moved for his temporary suspension in New Jersey, thereby protecting the public through the application of R. 1:20-13(b)(1).

Respondent's reliance upon Berger is equally misplaced. In Berger, which also was before us on a motion for reciprocal discipline, the attorney failed to promptly report to the OAE the suspension of his license to practice law in New York. In the Matter of Scott Michael Berger, DRB 05-192 at 1. Despite Berger's belated notice of suspension, we determined to impose a term of suspension retroactive to the date of his New York suspension based on the fact that respondent's failure to report was, in part, due to his reliance upon his own attorney who failed to notify him of his reporting obligation. Further, respondent had already been suspended in New York for a period of four years; any additional time, we reasoned, would have been unnecessarily harsh. Id. at 18.

Respondent also cited In re Jay, 148 N.J. 79 (1997), and In re Kotok, 108 N.J. 314 (1987), where the Court imposed retroactive or probationary suspensions, rather than prospective suspensions. Both cases are distinguishable. In Jay, unlike respondent, the attorney consented to his temporary suspension by the Court and was obligated to comply with R. 1:20-20, governing suspended, disbarred, or resigned attorneys. In Kotok, the

attorney's misconduct occurred ten years prior when he had just entered the legal profession. The Court determined that, in the intervening ten years, Kotok had "achieved a commendable level of professional competence and recognition as evidenced by his appointment and service as a municipal court judge." In re Kotok, 108 N.J. at 331. Thus, the Court reasoned that the passage of time had accomplished one of the primary purposes of discipline; namely, to rehabilitate the offending lawyer and that a suspension would not further that purpose. The Court determined, "under the limited circumstances presented in this case," to impose a probationary sanction with a suspended one-year suspension, pending the completion of probationary conditions that included community service. 108 N.J. at 331-332.

Unlike the attorney in Berger, respondent has proffered no credible excuse for his four-year delay in reporting his criminal guilty plea.

On balance, we determine that a two-year suspension, retroactive to the date of respondent's November 19, 2021 temporary suspension in New Jersey, is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli and Member Campelo voted to impose a three-year suspension, retroactive to the date of respondent's November 19, 2021 temporary suspension.

Member Hoberman was absent.

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 Martin E. Kofman
Docket No. DRB 21-263

Argued: February 17, 2022

Decided: June 7, 2022

Disposition: Two-year suspension

Members	Two-Year Suspension	Three-Year Suspension	Absent
Gallipoli		X	
Singer	X		
Boyer	X		
Campelo		X	
Hoberman			X
Joseph	X		
Menaker	X		
Petrou	X		
Rivera	X		
Total:	6	2	1

Johanna Barba Jones
Chief Counsel