Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-275
District Docket No. XIV-2020-0279E

In the Matter of	:
Young Min Kim	:
An Attorney at Law	:

Decision

Decided: June 21, 2022

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 5.5(a)(1) (knowingly practicing law while suspended); RPC 8.1(b) (two instances – failing to

cooperate with disciplinary authorities);[1] and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine to recommend to the Court that respondent be disbarred.

Respondent earned admission to the New Jersey bar in 2006 and to the New York bar in 2001. At the relevant times, he was suspended from the practice of law in New Jersey. As described in greater detail below, the instant matter is substantively similar to, but does not significantly overlap with, the timeframe underpinning respondent's prior discipline.

In 2015, respondent received a censure, in a default matter, for his failure to cooperate with the OAE's investigation of a $57,968.21 shortage in his trust account, in violation of RPC 8.1(b). In re Young Min Kim, 221 N.J. 438 (2015) (Kim I). Specifically, between October 2012 and December 2013, the OAE made numerous requests for respondent's three-way reconciliations of his attorney trust account.[2] In the Matter of Young Min Kim, DRB 14-131 (August 26, 2014) at 3. However, despite receiving numerous extensions, respondent failed to provide the OAE with the information necessary to explain his trust

[1] Due to respondent's failure to file an answer to the formal ethics complaint, the OAE amended the complaint to include the second RPC 8.1(b) charge.

[2] R. 1:21-6(c)(1) requires attorneys to perform such three-way reconciliations on a monthly basis.

account shortage. Id. at 4. In imposing a censure, we weighed, in aggravation, the default status of the matter and respondent's "attitude of indifference -- defiance even -- toward disciplinary authorities." Id. at 6.

On March 16, 2020, the Court imposed a three-year suspension on respondent for his violations of RPC 1.4(b) (failing to communicate with a client); RPC 5.5(a) (two instances); RPC 8.1(b) (five instances); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). In re Young Min Kim, 241 N.J. 350 (2020) (Kim II).

The facts underlying the Kim II matter began on March 20, 2015, when the OAE docketed an investigation based on an unexplained $145,507.31 negative balance in respondent's trust account, in an effort to determine whether respondent had misappropriated those funds. In the Matter of Young Min Kim, DRB 19-134 (November 27, 2019) at 3. On April 14, 2015, the OAE directed that respondent provide, by May 8, 2015, three-way reconciliations of his attorney trust account, corresponding trust account bank statements and deposit slips, and three specific client files. Ibid. Respondent, however, failed to comply. Ibid. Thereafter, despite the OAE's exhaustive attempts, spanning an entire year, respondent failed to provide the OAE the required financial documents and failed to appear at a demand interview. Ibid. Consequently, on March 9, 2016, the Court ordered that respondent provide to the OAE all

"outstanding records" and trust account reconciliations within forty-five days, warning that, if he failed to comply, he could face immediate temporary suspension. Id. at 3-4. Respondent, however, again failed to comply. Id. at 4. Consequently, effective June 15, 2016, the Court temporarily suspended him from the practice of law. Kim, DRB 19-134 at 2, 4 (citing In re Young Min Kim, 225 N.J. 329 (2016)).

Following his temporary suspension, although the OAE continued to demand that respondent provide the records necessary to complete its investigation, respondent failed to cooperate. Id. at 4. Moreover, respondent neither filed the required R. 1:20-20 affidavit[3] with the OAE nor replied to the OAE's correspondence regarding that failure. Id. at 5.

Making matters worse, respondent continued to practice law in the months following his June 15, 2016 temporary suspension. Id. at 5-7. Specifically, in one matter, respondent continued to represent a client in connection with the purchase of a liquor license and business. Id. at 5. There, respondent failed to advise his client of his suspension, as R. 1:20-20 requires; repeatedly communicated with the seller's attorney regarding the transaction despite his suspended status; and, on July 25, 2016, appeared before the Alcohol Beverage

[3] R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of an Order of suspension, to "file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's [O]rder."

Control Board on behalf of his client. Id. at 5-6. However, prior to the August 1, 2016 closing date for the sale, respondent informed his client and the seller's attorney that, because of his temporary suspension, he could not attend the closing, which was never consummated. Kim, DRB 19-134 at 6-7. Thereafter, not only did the seller sue respondent's client for breach of contract, but the client also claimed to have sustained more than $436,000 in damages as a consequence of respondent's misconduct. Id. at 7.

In a second matter, on July 12, 2016, respondent represented the sellers in a residential real estate closing and failed to inform the parties of his suspended status. Ibid. Moreover, respondent accepted a $950 fee for that improper representation and issued to the buyer a $1,000 check purporting to provide funds from his frozen bank account. Ibid. The buyer could not negotiate that check as a function of the Court's Order. The buyer, ultimately, never received the $1,000 owed to him in connection with the transaction. Id. at 13.

In January and March 2017, the OAE sent respondent three grievances associated with these two matters. Id. at 8. Respondent, however, failed to reply to any of them. Kim, DRB 19-134 at 8.

In imposing a three-year suspension, we weighed, in aggravation, respondent's prior censure, in Kim I, for failing to cooperate with the OAE; his refusal to comply with the Court's March 9, 2016 Order, which warned him that

his continued failure to cooperate would beckon more serious consequences; and the fact that respondent's client, who sought to purchase a liquor license and business, suffered serious financial harm due to respondent's infractions. Id. at 17-18.

In the instant matter, service of process was proper. On November 16, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's last known home address of record. The certified mail was delivered on November 26, 2021, with the notation "Y Kim #4" written on the signature line. The regular mail was not returned.

On December 13, 2021, the OAE sent a second letter to respondent's home address, by regular and electronic mail, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). Neither the regular nor electronic mail were returned to the OAE.

As of December 21, 2021, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

On January 28, 2022, our Chief Counsel sent respondent a letter to his home address, by certified, regular, and electronic mail, informing him that the matter was scheduled before the Board on March 17, 2022, and that any motion to vacate must be filed by February 11, 2022. The certified mail was delivered on January 31, 2022, with the notation "Y Kim" written on the signature line. The regular mail was not returned.

Finally, on January 28, 2022, the Office of Board Counsel published a notice in the New Jersey Law Journal, stating that the matter would be reviewed by us on March 17, 2022. The notice informed respondent that, unless he filed a successful motion to vacate the default by February 11, 2022, his failure to answer the complaint would remain deemed an admission of the allegations of the complaint. Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

As discussed above, effective June 15, 2016, the Court temporarily suspended respondent for his failure to cooperate with the OAE's investigation underlying Kim II. Respondent remains temporarily suspended.

Despite his suspended status, respondent continued to serve as counsel to the Eastern American Certified Development Company (the EACDC), a New Jersey based, United States Small Business Administration (the SBA) certified development company, in connection with the closing of various small business

loans through the SBA's 504 loan program.[4] Specifically, between June 22, 2016 and January 13, 2020, respondent, in an attempt to secure the SBA's one-hundred-percent debt guarantee on behalf of the EACDC, provided the SBA's New Jersey District Office with sixteen legal opinions[5] in connection with the closing of sixteen unique 504 loans for New Jersey small business ventures.[6] In each opinion, respondent commented on the validity of the loan closing documents and the authority of the borrower and the EACDC to participate in the 504 loan program. Although each of the sixteen opinions referenced a unique

[4] The program takes its name from Section 504 of the Small Business Investment Act of 1958. See 15 U.S.C.S. §§ 661-697g. As authorized by Congress, the SBA's 504 loan program was intended to foster economic development by providing financial assistance to small businesses. Bajjani v. United States SBA, 824 Fed. Appx. 725, 726 (11th Cir. 2020); 13 CFR § 120.800. Under the 504 loan program, "a certified development company [. . .] issues a [loan] to fund the borrower's acquisition of [. . .] real property, machinery[,] and equipment needed for a [small] business venture." Bajjani, 824 Fed. Appx. at 726. The loan, in turn, is "guaranteed [one hundred] percent by the [SBA]." Ibid. 504 small business loans, however, are only available through certified development companies, which serve as the SBA's "community-based partners" for providing such loans. Id. at n.1; 504 Loans, U.S. Small Business Administration, https://www.sba.gov/funding-programs/loans/504-loans (last visited June 10, 2020).

[5] Although the regulations promulgated under the Small Business Investment Act of 1958 make certified development companies, like the EACDC, "responsible for [. . .] 504 loan closing[s,]" 13 CFR § 120.960, the regulations do not specifically require such companies to submit opinions of counsel in connection with such closings. However, the SBA's Standard Operating Procedure Manual (the SOP) requires attorneys for certified development companies to prepare such opinions, at closing, in the form available on the SBA's website. See Standard Operating Procedure 50-10(5), Subpart C, Chapter 6 at pp. 349-50. Here, respondent submitted each opinion in the form required by the SOP.

[6] In respondent's June 22, 2016 opinion to the SBA, he indicated that he served as counsel to "Across Nations Pioneers, Inc.[,]" an SBA certified development company. Although not stated in the record, publicly available business records indicate that the EACDC and "Across Nations Pioneers" are the same entity.

borrower, the opinions contained nearly identical language. Significantly, in each opinion, which respondent prepared on his firm's letterhead, he noted that he "acted as [. . .] [c]ounsel to" the EACDC; expressed no opinion "as to the laws of any state other than New Jersey;" and wrote that "[a]s the individual attorney signing this letter, I further certify that I am authorized to do so and am a licensed, active member, in good standing, of the Bar of the State of New Jersey." Respondent signed each opinion as "Young Min Kim, Esq."

On April 9, 2020, the SBA learned of respondent's June 2016 temporary suspension and sent him an e-mail, warning him that, unless he provided immediate proof of his reinstatement, he could not submit any additional 504 loan applications on behalf of the EACDC.

On April 10, 2020, having received no reply from respondent, the SBA sent the EACDC an e-mail, advising it of respondent's suspended status and explaining that the SBA would not accept respondent's submissions regarding two pending EACDC 504 loans that were scheduled to close in May 2020. Later that same date, the EACDC responded to the SBA's e-mail, claiming that it had learned of respondent's suspension only the day before and that they had retained substitute counsel to take respondent's place. Minutes later, however, the SBA advised the EACDC, via reply e-mail, that it would "not proceed with"

their company until the SBA's Office of Credit Risk Management[7] had "resolved" the issues regarding respondent's three and a-half-year scheme of submitting "falsified [o]pinions of [. . .] counsel." Hours later on April 10, respondent replied to the SBA's e-mail, not only claiming that he was unaware of the Court's March 16, 2020 Order[8] imposing a three-year suspension in Kim II, but also rationalizing that he "did not believe" that his June 2016 temporary suspension "restricted [him] from closing SBA loans, similar to practicing immigration law." Respondent then alleged that his "judgment was short sighted and imprudent at best" and requested that the SBA allow the EACDC to close on its pending 504 loans with substitute counsel.

On June 15, 2020, the SBA filed an ethics grievance against respondent for submitting legal opinions, on behalf of the EACDC, in connection with the sixteen 504 loan closings that were consummated in the years following his June 15, 2016 temporary suspension.

On July 21, 2020, the OAE sent respondent a letter, by certified, regular, and electronic mail, to his home, office, and e-mail addresses of record, which

[7] According to the SBA's website, the Office of Credit Risk Management conducts a continuous, risk based, analysis of certified development companies by, among other things, assessing their compliance with SBA program rules and regulations.

[8] Despite respondent's then purported ignorance of the Court's March 16, 2020 Order, the Court attached to the Order a "certification of service[,]" which certified that the Court had sent respondent the Order, via certified, regular, and electronic mail, to his home and e-mail addresses of record.

required that he reply to the SBA's grievance, in writing, by August 4, 2020. Although the certified and regular mail were returned to the OAE, marked "RETURN TO SENDER UNABLE TO FORWARD[,]" the electronic mail was delivered to respondent's e-mail address. Respondent, however, failed to reply.

On September 23, 2020, the OAE sent respondent a second letter, by certified, regular, and electronic mail, to a different address (but the same e-mail address) associated with respondent, requiring that he submit a written reply to the SBA's grievance by October 4, 2020. In its letter, the OAE also warned respondent that his failure to comply could result in another temporary suspension for failure to cooperate, in violation of RPC 8.1(b). Although the certified mail was delivered on October 2, 2020, with the notation "Y Kim #4" written on the signature accepting delivery line, respondent failed to reply.

On November 12, 2020, the OAE sent respondent a third letter, again by certified, regular, and electronic mail, to the same addresses listed in the OAE's September 23 correspondence and to another address associated with respondent.[9] As in its prior letters, the OAE required respondent to provide a written reply to the SBA's grievance, this time by November 26, 2020. Also on November 12, 2020, the OAE called several phone numbers associated with

[9] The certified mail was delivered to both addresses on November 19, 2020, with the notation "Y Kim #4" written on the signature accepting delivery lines.

respondent and left voicemail messages instructing him to call the OAE. Respondent, however, again failed to reply to the OAE's communications.

On January 8, 2021, the OAE sent respondent a fourth letter, via certified, regular, and electronic mail, which informed him that the OAE would complete its investigation and file an ethics complaint for his failure to cooperate, in violation of RPC 8.1(b).[10]

On February 25, 2021, the OAE called respondent's office and cellular phone numbers and left voicemail messages directing him to call the OAE regarding his failure to respond to the SBA's grievance. The OAE also called respondent's home telephone number and spoke to his wife, who indicated that she would inform respondent to contact the OAE.

On February 26, 2021, respondent called the OAE, claimed that he was "contemplating" retaining counsel, and requested a two-week extension to provide a written response to the SBA's grievance. The OAE, however, required respondent to make his extension request in writing. Additionally, during the call, respondent confirmed his e-mail address and acknowledged that, since July 21, 2020, he had been receiving the OAE's e-mails but "had not responded to them."

[10] The record is unclear whether the certified, regular, or electronic mail, which were sent to the same addresses listed in the OAE's September 23 correspondence, were returned, as undeliverable, to the OAE.

Later on February 26, 2021, respondent sent the OAE an e-mail, requesting not only an extension, until March 15, 2021, to file a response to the SBA's grievance and to retain counsel, but also copies of his "most recent" trust account "reconciliation records." On March 1, 2021, the OAE sent respondent a final letter, which denied his extension and records requests because of his persistent failure to cooperate with disciplinary authorities.

Ultimately, respondent neither provided the OAE with a written reply to the SBA's grievance nor contacted the OAE in any manner since his February 26, 2021 extension and records request. For practicing law while suspended before the SBA; misrepresenting the status of his New Jersey law license to the SBA and to the EACDC; and for completely failing to cooperate with the OAE's investigation underlying this matter, which respondent has allowed to proceed as a default, the complaint charged respondent with having violated RPC 5.5(a)(1); RPC 8.1(b) (two instances); and RPC 8.4(c).

We find that the facts recited in the formal ethics complaint support all the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Here, despite his June 15, 2016 temporary suspension, respondent continued to serve as counsel to the EACDC in connection with sixteen 504 loan

closings that took place between June 2016 and January 2020. In each of the loan closings, respondent provided the SBA legal opinions, on behalf of the EACDC, and in the form required by the SBA, to assist the SBA in determining whether to guarantee the EACDC's small business loans under the 504 loan program. Not only did respondent prepare the sixteen legal opinions on his firm's letterhead, but he also noted, in each opinion, that he served as counsel to the EACDC; expressed no opinion "as to the laws of any state other than New Jersey;" and certified that he was a "licensed, active member, in good standing, of the Bar of the State of New Jersey." Finally, respondent signed each opinion as "Young Min Kim, Esq."

Although respondent was aware of his suspended status, he attempted to rationalize his misconduct in his April 2020 e-mail to the SBA, claiming that he "did not believe" that his June 2016 temporary suspension restricted him from closing SBA loans, "similar to practicing immigration law." Respondent's excuse, however, not only ignores the fact that each of the sixteen 504 loans were related to a New Jersey small business venture, but also the fact that each of his legal opinions were narrowly tailored to exclude any discussion regarding "the laws of any state other than New Jersey."[11] Respondent, thus, violated the

[11] Although respondent presented himself as a New Jersey attorney in connection with his legal opinions submitted to the SBA's New Jersey District Office, even if he held admission to the United States District Court for the District of New Jersey [the DNJ], generally, "only

(footnote cont'd on next page)

Court's June 15, 2016 Order by continuing to practice law in New Jersey, on sixteen separate occasions before the SBA, for nearly three and a-half years following his temporary suspension, in violation of RPC 5.5(a)(1).

Moreover, respondent violated RPC 8.4(c) by falsely certifying, in his sixteen legal opinions to the SBA, that he was a licensed and active member, in good standing, of the New Jersey bar. Respondent's deception not only interfered with the EACDC's ability to close on its then pending 504 loans, but also jeopardized the EACDC's entire standing with SBA, who noted that it would "not proceed with" the EACDC until the SBA's Office of Credit Risk Management had "resolved" the issues underlying respondent's illicit legal opinions.

Finally, respondent violated RPC 8.1(b) by ignoring the OAE's numerous communications, spanning more than seven months, which required him to respond to the SBA's ethics grievance. Although respondent acknowledged that he had been receiving the OAE's e-mails regarding the SBA's grievance, respondent conceded, during his February 26, 2021 telephone conversation with

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attorneys licensed by the New Jersey Supreme Court may practice law in the [DNJ]." Whiteside v. Empire Plaza, LLC, 2014 U.S. Dist. LEXIS 151860 at 3 (D.N.J. 2014) (citing Local Civil Rule 101.1(c) (noting that, "[a]ny member in good standing [. . .] of the highest court of any state, who is not under suspension or disbarment by any court [. . .] may in the discretion of the [DNJ], on motion, be permitted to appear and participate in a particular case)). See also Local Civil Rule 101.(b) ("Any New Jersey attorney deemed ineligible to practice law by [O]rder of the New Jersey Supreme Court [. . .] shall not be eligible to practice law in [the DNJ] during the period of such ineligibility").

the OAE, that he had failed to reply to any of them. Additionally, respondent violated RPC 8.1(b) a second time by failing to answer the formal ethics complaint, thus, allowing this matter to proceed as a default.

In sum, we find that respondent violated RPC 5.5(a)(1); RPC 8.1(b) (two instances); and RPC 8.4(c). The sole issue left for us to determine is the appropriate quantum of discipline.

Attorneys who practice law while suspended, including those who engage in deceptive conduct or who fail to cooperate with disciplinary authorities in connection thereto, have received discipline ranging from a lengthy term of suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Phillips, 224 N.J. 274 (2016) (one-year suspension imposed on an attorney who stipulated that, while suspended, he had secured consent to an adjournment of a matrimonial motion that was to be heard during the term of suspension, and assisted the client in the matter, in violation of RPC 5.5(a) and RPC 8.4(c); in imposing a one-year suspension, we weighed, in aggravation, the attorney's "contempt" for "his ethics obligations" and his extensive prior discipline, including an admonition for the unauthorized practice of law in Nevada; two censures, in default matters, for lack of diligence, failure to communicate with his clients, and failure to cooperate with disciplinary authorities; and a three-

month suspension, in two consolidated default matters, for practicing law while suspended); In re Choi, 249 N.J. 18 (2021) (two-year suspension imposed on attorney who, following his indefinite suspension in New York, for federal criminal convictions for money laundering and submitting false statements to the United States Department of Homeland Security, represented a client, in New York's Supreme Court, where he filed an "affirmation" that falsely certified that he was "an attorney duly admitted to practice law in the Courts of the State of New York;" the attorney also maintained a law firm website that improperly represented that he was admitted to practice in New York; finally, the attorney failed to comply with New York's affidavit of compliance rule for suspended or disbarred attorneys; violations of RPC 5.5(a)(1); RPC 8.1(b); RPC 8.4(c); and RPC 8.4(d); in imposing a two-year suspension, we weighed the fact that, although the attorney's practice of law while suspended was minimal, he intentionally made false statements to a tribunal, failed to cooperate with disciplinary authorities, and engaged in conduct prejudicial to the administration of justice; in further aggravation, we considered the attorney's prior two-year suspension for his federal criminal convictions and the fact that he practiced law while suspended for those convictions); In re Boyman, 236 N.J. 98 (2018) (three-year suspension imposed on an attorney, in a default matter, who, for more than four years following his temporary suspension, represented the

borrowers in nineteen predominately commercial real estate transactions involving the same title company; when the title company discovered the attorney's suspended status, the attorney misrepresented to the title company that he had been reinstated to practice; additionally, despite the OAE's numerous attempts, spanning almost nine months, seeking the attorney's written reply to the ethics grievance, the attorney failed to respond, despite acknowledging receipt of the OAE's letters in a telephone conversation; violations of RPC 5.5(a)(1); RPC 8.1(b); and RPC 8.4(c); in imposing a three-year suspension, we weighed, in aggravation, the attorney's 2010 and 2014 censures, in default matters, in which he also failed to cooperate with disciplinary authorities; we also weighed the fact that the attorney's misconduct had continued, unabated, for four years, in numerous high-value matters; finally, we noted his "demonstrated disinterest in his law license, and his apparent disdain for the attorney discipline system"); In re Marra, 183 N.J. 260 (2005) (three-year suspension imposed on an attorney found guilty of practicing law while suspended in three matters in which he held himself out to be an attorney in good standing not only to his clients but also to his adversaries and to the courts, in violation of RPC 5.5(a)(1); RPC 8.4(c); and RPC 8.4(d); the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; in aggravation, we weighed the attorney's

extensive disciplinary history, which included a private reprimand (now, an admonition); a reprimand; two three-month suspensions; a six-month suspension; and a one-year suspension imposed for previously practicing law while suspended); In re Frank, 240 N.J. 46 (2019) (attorney disbarred, in a default matter; the attorney, despite multiple suspensions, continued to represent a client in connection with a loan modification, a foreclosure proceeding, and the enforcement of the client's rights in an earlier class action settlement; the attorney, however, failed to inform the client of his suspensions, the earliest of which became effective four years after the client had retained him; additionally, the attorney continued to bill the client for his services, despite the fact that, for almost five years, he failed to move her matter forward, complete even relatively small tasks, or provide her any guidance or information regarding the status of the foreclosure action, including the issuance of a final judgment and a writ of execution; further, the attorney improperly sought advance fees for the client's loan modification; although the client paid the attorney $10,020 she ultimately lost her home and received nothing from the attorney in return; finally, despite multiple opportunities to do so, the attorney failed to cooperate with the OAE's investigation of the client's ethics grievance and ignored the OAE's repeated requests for a written reply to the grievance; violations of RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.4(c)

(failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.5(a) (unreasonable fee); RPC 1.15(a) (failure to safeguard funds); RPC 1.16(a)(1) (failure to withdraw from the representation if the representation will result in violation of the Rules of Professional Conduct or other law); RPC 5.5(a)(1); RPC 8.1(b), RPC 8.4(b), and RPC 8.4(c); in recommending the attorney's disbarment, we weighed, in aggravation, the attorney's serious disciplinary history, including a 2016 censure, in a default matter, for failure to cooperate, and a one-year suspension, imposed in 2018, in which the attorney, again, defaulted and failed to cooperate; we also emphasized the fact that the attorney repeatedly had failed to cooperate in seven ethics investigations and that the attorney's misconduct resulted in serious financial and emotional consequences to his client); In re Walsh, 202 N.J. 134 (2010) (attorney disbarred, in a default matter, for practicing law while suspended by attending a case conference, negotiating a consent order on behalf of five clients, and making a court appearance on behalf of seven clients; the attorney also was guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of the grievance; the attorney failed to appear on an order to show cause before the Court; violations of RPC 1.1(a) (gross neglect); RPC 1.3; RPC 1.4(b); RPC

5.5(a); and RPC 8.1(b); in recommending the attorney's disbarment, we weighed, in aggravation, his extensive disciplinary history, including a 2006 reprimand, a 2007 censure, and a three and six-month suspension, both of which were imposed in 2008; the attorney had defaulted in each of the prior matters).

Most recently, on November 30, 2021, we imposed a one-year suspension on an attorney who, during a three-month term of suspension, called the Motor Vehicle Commission (the MVC) on behalf of a friend whose driver's license had been suspended, identified himself as an attorney, and requested information on how to adjourn the friend's MVC hearing. In the Matter of Ralph Alexander Gonzalez, DRB 21-117 (November 30, 2021). Thereafter, the attorney accompanied his friend, in a representative capacity, to the MVC hearing, where the attorney presented an MVC employee with a business card of another lawyer with an active license. Following the attorney's failure to produce his own driver's license or social security number to confirm his identity, the attorney left the MVC, in violation of RPC 3.3(a)(1) (false statement of material fact to a tribunal); RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 5.5(a)(1); and RPC 8.4(c). In imposing a one-year suspension, we weighed the fact that the attorney's misconduct was confined to a singular matter against his

prior discipline, which included a 1995 reprimand for presenting his cousin's driver's license to a police officer; his 2012 admonition for attempting to persuade a former client to withdraw an ethics grievance; and his 2017 three-month suspension arising out of a road rage incident. That matter is pending before the Court.

Here, respondent's misconduct is more severe than the attorneys in Phillips and Gonzalez, who received one-year suspensions, and the attorney in Choi, who received a two-year suspension. Unlike those attorneys, whose practice while suspended was minimal and confined to one client matter, respondent, for almost three and a-half years following his temporary suspension, represented the EACDC in connection with sixteen 504 loans before the SBA. During that protracted period, respondent misrepresented to the SBA, a federal government agency; his client; and sixteen New Jersey small businesses that he was a licensed, active member, in good standing, of the New Jersey bar. Following the SBA's discovery of respondent's suspension, the EACDC promptly attempted to retain substitute counsel to close on its two pending 504 loans. However, because of respondent's prolonged misconduct, the SBA explained that it would no longer proceed with guaranteeing the EACDC's 504 loans until the SBA had completed an internal review regarding respondent's illicit behavior. Respondent's misconduct, thus, not only severely

impacted the EACDC's standing to participate in the SBA's 504 loan program, but also jeopardized two New Jersey small businesses, which entities' pending 504 loans with the EACDC were imperiled by respondent's actions.

Respondent's practice of law while suspended is most similar to that of the attorney in Boyman, who received a three-year suspension, in a default matter. Like Boyman, whose practice while suspended spanned four years and encompassed nineteen separate commercial real estate transactions, respondent practiced law while suspended for three and a-half years in connection with sixteen small business loans. Also like the attorney in Boyman, respondent mispresented the status of his law license to third parties and, despite the OAE's exhaustive attempts, spanning several months, refused to respond to the ethics grievance, even after acknowledging receipt of the OAE's numerous correspondence. Respondent's disciplinary history, however, is more egregious than the attorney in Boyman, who, in his thirty-one-year career at the bar, received two prior censures, in default matters, for failure to cooperate, among other misconduct. By contrast, respondent, in his relatively short sixteen-year legal career, received a 2015 censure, in the Kim I default matter, for failure to cooperate. Five years later, in March 2020, respondent received a three-year suspension, in Kim II, where he, again, refused to cooperate with disciplinary authorities and practiced law while suspended.

Respondent, however, has not utilized his prior experiences with the disciplinary system in Kim I and II as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, [the attorney had] continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system"). Indeed, respondent's defiance of the disciplinary system has continued, almost unabated, since his non-cooperation in Kim I, which began in October 2012, in connection with an OAE investigation of his trust account shortage. Following Kim I, respondent failed, in Kim II, to cooperate with a potential knowing misappropriation investigation, despite the Court's Order that he do so; failed to comply with R. 1:20-20 following his temporary suspension; continued to practice law while suspended in two separate client matters; and again failed to cooperate with the OAE's investigation. Respondent displayed further contempt for the disciplinary system in the instant matter, where he, again, failed to cooperate with the OAE and continued to defy the Court's June 2016 temporary suspension Order, for three and a-half years, by representing an SBA certified development company in connection with sixteen small business loans.

The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such scenarios, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment

of clients and repeated failure to cooperate with the disciplinary system). In further aggravation, as in Kim I, respondent failed to answer the formal ethics complaint and has allowed this matter to proceed as a default. See In re Kivler, 193 N.J. 332, 342 (2008) ("an [attorney's] default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced").

For clarity of the record, we observed that the timeline of this misconduct extends well beyond the misconduct addressed in Kim II. Although there have been unique matters where we have determined that an attorney's conduct, although unethical, did not warrant further discipline, such matters require a close temporal nexus and similarity of misconduct with the attorney's prior discipline. See In re Milara, 241 N.J. 27 (2020) (no additional discipline imposed on an attorney where the misconduct at issue was similar to the misconduct underlying a prior matter and occurred during an overlapping period; we determined that, had the matters been considered together, no greater discipline would have resulted); In re Isa, 239 N.J. 2 (2019) (no additional discipline imposed on attorney where the misconduct at issue pre-dated the unethical conduct for which he had received a three-month suspension; we

determined that, had the matters been considered together, no greater discipline would have resulted).

On October 1, 2021, we transmitted a decision imposing no further discipline on an attorney whose misconduct was not only substantively similar to the misconduct underlying a prior matter, but also occurred during almost the exact same timeframe. In the Matter of Michael Dennis Bolton, DRB 21-115 (October 1, 2021). In that matter, we determined that, had both matters been considered together, no greater discipline would have resulted. Our decision in that matter is pending before the Court.

In the instant matter, respondent practiced law while suspended between June 22, 2016 and January 13, 2020; failed to reply to the OAE's correspondence regarding the ethics grievance between July 21, 2020 and March 1, 2021; and failed to respond to the OAE's November 25, 2021 formal ethics complaint. In Kim II, respondent practiced law while suspended between June 15, 2016 and August 1, 2016, and, thereafter, failed to cooperate with disciplinary authorities between March 2015 and March 2017. Although respondent's June 22 and 24, 2016 legal opinions to the SBA, in the instant matter, overlapped with his practice of law while suspended in Kim II, respondent provided the SBA his remaining fourteen legal opinions between November 10, 2016 and January 13,

2020, well beyond the timeframe in which he practiced law while suspended in Kim II.

Hence, unlike the attorneys in Bolton, Isa, and Milara, respondent's misconduct warrants further discipline. Indeed, because respondent's misconduct underlying the instant matter occurred during the prosecution of Kim II, respondent had a heightened awareness of his obligation to cooperate with disciplinary authorities and to refrain from the practice of law while suspended. Despite his heightened awareness of his ethical obligations, respondent's non-cooperation persisted, and he continued to practice law while suspended, until the SBA discovered the circumstances of his temporary suspension.

In short, respondent has displayed complete disregard for his clients and the disciplinary system and has demonstrated total disinterest in maintaining his law license. He has refused to answer the allegations made against him and has continued, for years, to practice law after having been suspended, demonstrating not only indifference for the Rules governing the practice of law in New Jersey, but also contempt for the attorney disciplinary system designed to protect the public. Respondent, thus, is a danger to the public because he is "[in]capable of meeting the standards that must guide all members of the profession." In re Cammarano, 219 N.J. 415, 421 (2014) (citing In re Harris, 182 N.J. 594, 609

(2005)). Because neither the imposition of a temporary nor a three-year term of suspension have deterred him from committing further misconduct, we determine to recommend that respondent be disbarred in order to effectively protect the public and to preserve confidence in the bar.

Member Campelo 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 Young Min Kim
Docket No. DRB 21-275

Decided: June 21, 2022

Disposition: Disbar

Members	Disbar	Absent
Gallipoli	X	
Singer	X	
Boyer	X	
Campelo		X
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1

Johanna Barba Jones
Chief Counsel