Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-128
District Docket No. XIV-2020-0205E

In the Matter of	:
Douglas M. Long	:
An Attorney at Law	:

Decision

Argued: October 20, 2022

Decided: December 19, 2022

Hillary K. Horton, Esq. appeared on behalf of the Office of Attorney Ethics.

Michael Testa, Esq. appeared on behalf of respondent.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea and conviction, in the United States District Court for the District of New Jersey (the DNJ), for one count of federal income tax

evasion, in violation of 26 U.S.C. § 7201. The OAE asserted that this offense constitutes a violation of RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer) 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 recommend to the Court that respondent be disbarred.

Respondent earned admission to the New Jersey bar in 1999. During the relevant timeframe, he practiced law as the "managing partner" of Long & Marmero, LLP (L&M), which maintained an office in Woodbury, New Jersey.

On November 4, 2016, the Court imposed a reprimand for respondent's stipulated violations of RPC 1.15(a) (failing to safeguard funds and committing negligent misappropriation); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); and RPC 5.3(a) and (b) (failing to supervise a nonlawyer assistant). In re Long, 227 N.J. 49 (2016) (Long I). In that matter, the OAE concluded that, between April 1, 2009 and June 30, 2012, L&M's bookkeeper negligently misappropriated $199,255.42 in entrusted client funds to pay for L&M's liabilities. According to the bookkeeper, who was unaware of the recordkeeping requirements of R. 1:21-6, she never informed respondent that she had used client funds to meet L&M's obligations. Moreover,

respondent's outside accountant never alerted respondent regarding any issue with L&M's recordkeeping practices or the state of its accounts.

In determining that a reprimand was the appropriate quantum of discipline for respondent's misconduct, we weighed, in mitigation, that no clients suffered any harm because respondent's trust account was replenished; that no funds were paid to L&M beyond the ordinary legal fees to which the firm ultimately was entitled; that respondent received no improper personal gain from the transactions; and that respondent was never alerted to the improprieties in L&M's financial practices.

Effective May 28, 2020, the Court temporarily suspended respondent from the practice of law in connection with his criminal conduct underlying this matter. In re Long, 242 N.J. 140 (2020). He remains temporarily suspended.

We now turn to the facts of this matter.

As L&M's managing partner, respondent exercised "primary control" of his firm's finances, regularly reviewing its financial records with his firm's bookkeeper and directing the preparation and filing of L&M's partnership tax forms. Additionally, respondent utilized L&M's attorney business account to pay his personal bills and expenses. In that vein, respondent would bring his personal bills to L&M's bookkeeper to make the appropriate payments. Between 2012 and 2015, however, respondent directed L&M's bookkeeper to falsely

classify his personal expenses as legitimate business expenses in L&M's "books and records."

Specifically, at respondent's direction, L&M's bookkeeper falsely classified respondent's student loan payments; personal debts; private school tuition for his children; day camp and music lessons for his children; and expenses for his principal residence and vacation home as seemingly legitimate firm expenses. Thereafter, respondent failed to report to the Internal Revenue Service (the IRS) those improperly classified "business expenses" as additional personal income. As a result of his scheme, in tax years 2012 through 2015, respondent failed to report to the IRS more than $800,000 in personal income, resulting in an aggregate $388,362 tax loss to the United States Government.

On April 21, 2020, the United States Attorney for the DNJ charged respondent with one count of federal income tax evasion for tax year 2014, in violation of 26 U.S.C. § 7201. Respondent waived indictment and, on April 21, 2020, entered a plea of guilty. As part of his plea agreement with the United States Attorney, respondent admitted that he had evaded personal income taxes for tax years 2012 through 2015, resulting in $855,420 in unreported personal income and a $388,362 tax loss to the government. Respondent also agreed to pay $269,736 in restitution to the IRS.

On April 24, 2020, respondent notified the OAE of his guilty plea and conviction for federal income tax evasion, as R. 1:20-13(a)(1) requires.

On December 14, 2021, respondent appeared for sentencing, where he admitted full responsibility for his crime, acknowledged the pecuniary benefits he reaped from his actions, and apologized to the government. Additionally, respondent emphasized that he brought a check, issued from his defense attorney's trust account and made payable to the IRS, for the full amount of restitution. Respondent also presented numerous character reference letters and the testimony of three community members, who described respondent's significant charitable efforts to assist impoverished children and underrepresented community members. Additionally, the community members highlighted respondent's service as a Cumberland County freeholder[1] and his history of providing pro bono legal services to individuals and charitable organizations.

Judge Hillman sentenced respondent to a fourteen-month term of imprisonment, followed by a three-year term of supervised release. Judge Hillman further ordered respondent to pay $10,100 in fines and assessments, in addition to the $269,736 in restitution that respondent had paid to the IRS that

[1] Respondent served as a Cumberland County freeholder from January 1, 2013 through December 31, 2015, the same timeframe underlying his criminal tax evasion scheme.

same day. In imposing the sentence, Judge Hillman noted that, despite respondent's charitable acts as an elected official and community leader, respondent had engaged in a years-long scheme to avoid paying hundreds of thousands of dollars in personal income taxes to fund his "luxurious lifestyle." Judge Hillman, thus, found that respondent's actions were motivated by "greed[,] "an unwillingness to pay his fair share[,]" and "a sense that he just paid too much."

Additionally, Judge Hillman emphasized that, as an attorney, a community leader, and an elected official, respondent should have had a "higher appreciation of the importance [. . .] to pay [his] full [. . .] share in taxes." Judge Hillman noted that respondent still owed between $600,000 and $700,000 in unpaid taxes, interest, and penalties for tax years 2012 through 2018.

Moreover, Judge Hillman found that respondent compounded his criminal conduct by involving L&M's bookkeeper, an "unsophisticated" "subordinate," whom respondent "easily manipulated [. . .] over the course of many years" by directing her to falsify L&M's records to fund his "lavish lifestyle." Finally, Judge Hillman noted that, although respondent took full responsibility for his actions during the sentencing hearing, he previously "was willing to frustrate" the government's investigation of L&M's finances and had failed, despite

numerous opportunities, to express contrition, take responsibility, and cease his criminal actions.

In support of its recommendation for a three-year retroactive suspension, the OAE analogized respondent's criminal conduct to the attorney in In re Gottesman, 222 N.J. 28 (2015), who received a three-year retroactive suspension based on his convictions for one count of federal income tax evasion, in violation of 26 U.S.C. § 7201, and one count of failure to remit payroll taxes, in violation of 26 U.S.C. § 7202.

As detailed further below, in Gottesman, the attorney admitted that, although he owed more than $24,400 in income taxes to the IRS for the 2006 tax year, he failed to file an income tax return. In the Matter of Lee D. Gottesman, DRB 14-341 (April 28, 2015) at 3. The attorney further admitted that he paid only $1,612.73 toward his tax liability and that he used his attorney trust account to conceal the true extent of his income. Ibid. Additionally, the attorney admitted that, in 2009, he willfully failed to remit to the IRS $2,395.99 in payroll taxes that he had withheld from his employees' wages. Ibid. The attorney's criminal actions resulted in tax loss to the IRS of between $80,000 and $200,000. Ibid. The attorney received two concurrent six-month prison terms for his criminal misconduct. Id. at 3. Moreover, the attorney previously

had received a 2005 censure, in a default matter, for his gross mishandling of a client matter. Id. at 2.

The OAE argued that, like the attorney in Gottesman, respondent concealed from the government a significant sum of his personal income, which resulted in a substantial tax loss to the IRS. Additionally, the OAE argued that Gottesman and respondent have similar disciplinary histories and received similar prison sentences for their crimes. The OAE also emphasized that respondent had implicated his bookkeeper in his criminal conduct by directing her to misclassify his personal expenses as seemingly legitimate firm expenses. Finally, the OAE argued that, despite respondent's charitable acts, his criminal conduct was motivated by greed.

At oral argument and in his August 18, 2022 brief to us, respondent urged the imposition of the OAE's recommended sanction. He argued that a three-year retroactive suspension is sufficient to preserve public confidence in the bar given his lack of prior criminal convictions; his exemplary reputation as an attorney; his sincere remorse for his misconduct; and his service as a community member who has dedicated himself to charitable causes. Respondent also maintained that his "character and attitude are not indicative of a repeat offender." Additionally, respondent emphasized that he had paid the required $269,736 in restitution on the date of his sentence.

Respondent analogized his criminal conduct to the attorney in Gottesman and the attorney in In re Rich, 234 N.J. (2018), who received a two-year suspension for his conviction for one count of fifth-degree criminal tax fraud, in New York, based on his failures to file New York State personal income tax returns for six years. The attorney in Rich was required to pay $1.2 million in back taxes, penalties, and interest. In the Matter of Stuart I. Rich, DRB 17-321 (February 26, 2018) at 4.

Finally, respondent urged us to consider that his criminal conduct occurred between seven and twelve years ago and, since then, he has served a substantial portion of his sentence.

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 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). Respondent's guilty plea and conviction for federal income tax evasion, in violation of 26 U.S.C. § 7201, thus, establishes violations of RPC 8.4(b) and RPC 8.4(c). Pursuant to those respective Rules, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness,

or fitness as a lawyer" or to "engage in conduct involving dishonesty, fraud, deceit[,] or misrepresentation."

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." Principato, 139 N.J. at 460 (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances" including the "details of the offense, the background of respondent, and the pre-sentence report" before "reaching a decision as to [the] sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

It is well-settled that a violation of either state or federal tax law is a serious ethics breach. In re Queenan, 61 N.J. 579, 580 (1972), and In re Duthie, 121 N.J. 545 (1990). "[D]erelictions of this kind by members of the bar cannot be overlooked." In re Gurnik, 45 N.J. 115, 116 (1965). "A lawyer's training obliges him to be acutely sensitive of the need to fulfill his personal obligations under the federal income tax law." Ibid.

Cases involving an attorney's attempted or actual income tax evasion typically result in a substantial term of suspension, the length of which depends on the tax loss to the government, the duration of the misconduct, and the presence of other criminal offenses or aggravating factors. See, e.g., In re Kirnan, 181 N.J. 337 (2004) (eighteen-month retroactive suspension for attorney who pleaded guilty to filing a false federal income tax return; for tax years 1999 and 2000, the attorney utilized law firm funds to pay for his personal expenses; however, the attorney deliberately failed to report the receipt of that income on his personal income tax returns, resulting in a $31,000 tax loss to the IRS; the attorney received a three-year probationary sentence and a $3,000 fine; we weighed, in mitigation, the attorney's prompt cooperation with criminal authorities); In re Burger, 244 N.J. 269 (2020) (two-year suspension for attorney who, between 2010 and 2016, willfully evaded income taxes by filing false income tax returns; during that timeframe, the attorney received $2,732 in

monthly interest income from his client, to whom he previously had loaned a total of $410,000; the attorney gave the monthly cash interest payments to his wife and failed to report that income to New Jersey tax authorities or to the IRS; the attorney paid his back-tax obligations only after an ethics grievance was filed against him); In re Pomper, 244 N.J. 317 (2020) (two-year retroactive suspension for attorney who intentionally concealed his receipt of a $5,675 legal fee in order to evade income taxes; the attorney admitted that he had engaged in similar conduct in prior years; the attorney also engaged in insurance fraud by fabricating a $14,000 invoice, purportedly from a water damage remediation company, which falsely indicated that the attorney had paid the company for work performed on his home; the attorney arranged for his employee to send the fabricated invoice to his insurance company as part of his insurance claim; in imposing a two-year retroactive suspension, we determined that a six-month to a one-year suspension was warranted for the attorney's tax evasion and an additional one-year suspension was warranted for his insurance fraud); In re Rubin, 227 N.J. 229 (2016) (two-year suspension for attorney who pleaded guilty to one count of tax evasion; the attorney admitted that, during a three-year period, he failed to remit a total of $26,742 in taxes to the State of New York; we rejected the attorney's proffered mitigation that he had engaged in pro bono work, noting that most New Jersey attorneys are already required to

perform such services; in aggravation, we emphasized that the attorney had failed to inform the OAE of his criminal conviction and his resulting disbarment in New York; additionally, the attorney failed to cooperate with the OAE and failed to inform New York disciplinary authorities of his conviction); In re Gottesman, 222 N.J. 28 (2015) (three-year retroactive suspension for attorney who pleaded guilty to one count of tax evasion and one count of willful failure to remit payroll taxes; although the attorney owed more than $24,400 in income taxes for the 2006 tax year, he failed to file an income tax return and paid only $1,612.73 toward his tax liability; the attorney used his attorney trust account to conceal the true extent of his income from the IRS; in 2009, the attorney willfully failed to remit to the IRS $2,395.99 in payroll taxes that he had withheld from his employees' wages; the attorney's criminal conducted resulted in tax loss to the IRS of between $80,000 and $200,000; in imposing a three-year suspension, we weighed, in aggravation, the fact that, although the attorney initially admitted his misconduct to the IRS, he did nothing to cooperate with the government, requiring the matter to be indicted in order to come to resolution; we also rejected, as insufficient mitigation, the attorney's reporting of his crimes to the OAE, his prior good reputation, and his performance of pro bono legal services; the attorney had a prior censure for his gross mishandling of a client matter); In re Bozeman, 217 N.J. 613 (2014) (three-year suspension

for attorney who pleaded guilty to one count of conspiracy to defraud the United States; between 1999 and 2007, the attorney arranged to have his bi-weekly salary from one company deposited directly in a separate, defunct company's bank account in order to conceal his income from the IRS; the attorney's eight-year scheme resulted in more than $830,000 in unreported personal income, which resulted in a $137,635 tax loss to the IRS; we weighed, in aggravation, the fact that the attorney showed no remorse for his tax evasion scheme, which became an integral part of his life as he honed his attorney skills in law school, his internship with a prosecutor's office, and his judicial clerkship; we also emphasized the attorney's failure to cooperate with the government's investigation); In re Klein, 209 N.J. 234 (2012) (three-year suspension for attorney who pleaded guilty to one count of tax evasion and one count of conspiracy to defraud the United States; between 1995 and 2003, the attorney arranged to have his law firm salary paid directly to his business's bank account in order to evade personal income tax obligations; the attorney received a five-year term of probation for his misconduct and was ordered to pay $74,446 in restitution; aggravation included the attorney's failure to report his indictment to the OAE and his assistance of other clients in similar criminal conduct).

Attorneys who commit egregious acts of tax evasion have been disbarred. See, e.g., In re Freidman, 246 N.J. 59 (2021) (the attorney attempted to salvage

his New York taxi business by failing, for a three-year period, to remit more than $5 million in surcharges collected from taxi customers to the State of New York and to the Metropolitan Transit Authority (the MTA); to conceal his theft and tax evasion, the attorney filed false MTA surcharge tax returns and submitted fraudulent information in his own tax returns; the attorney's actions affected more than 10 million taxicab riders and significantly impacted the MTA; in recommending the attorney's disbarment, we found that the attorney committed egregious tax fraud, over a number of years, for his own personal gain); In re Bagdis, 228 N.J. 1 (2017) (the attorney served as the "instigator" of a long-spanning tax evasion conspiracy, resulting in approximately $34 million in unreported income and approximately $4.9 million in tax losses to the IRS; the attorney helped his clients create "nominee entities" to conceal their income by funneling money through the bank accounts of the nominee entities; the attorney also arranged for the clients' bills to be paid out of the nominee entities' bank accounts and the bank accounts of other corporations that he controlled; to hinder the IRS's ability to trace the funds, the attorney used aliases, false social security numbers, and phony employer identification numbers; the attorney recruited other individuals, including doctors, small business owners, and other lawyers to engage in his tax evasion scheme; the attorney ruined the lives of the other participants in his scheme, showed no remorse at sentencing, and did not

admit wrongdoing); In re Cardone, 175 N.J. 155 (2003) (the attorney pleaded guilty to attempted income tax evasion; the attorney filed income tax returns acknowledging taxes owed but, thereafter, took various steps designed to prevent the IRS from collecting the taxes; specifically, the attorney opened at least two bank accounts, one in the name of a fictious business and the other in the name of his secretary, and deposited substantial sums of his law firm's income in the accounts; the attorney issued checks made payable to cash from the accounts and disbursed only enough funds from the accounts to pay for his law firm's operating expenses; in recommending the attorney's disbarment, we weighed, in aggravation, the attorney's prior three-year suspension for engaging in fraudulent conduct in connection with three separate business transactions with a client); In re Bok, 163 N.J. 499 (2000) (attorney convicted of income tax evasion and filing false corporate and personal tax returns; he underreported $200,000 on his personal tax return and $4 million on his corporate tax return, causing a tax loss of nearly $1.5 million).

Here, respondent's tax evasion scheme spanned at least four years and resulted in an aggregate $388,362 tax loss to the federal government, a loss far greater than that of the attorneys who received terms of suspension for their misconduct, including Gottesman. Moreover, like the disbarred attorney in Bagdis, who lured others into his web of illegal conduct, respondent convinced

L&M's bookkeeper, his subordinate whom he "easily manipulated" for many years, to systematically falsify L&M's records in order to conceal the true extent of his personal income. Specifically, respondent directed the bookkeeper to misclassify the funds L&M used to pay for his personal expenses, including private school tuition for his children and the costs associated with his personal residence and vacation home, as seemingly legitimate business expenses. As a result of his misconduct, respondent concealed from the IRS $855,420 of his personal income, enabling him to live a lavish lifestyle while callously placing the bookkeeper and her liberty in jeopardy.

As described by a federal judge, respondent's prolonged tax evasion scheme was motivated by his "greed" and his personal view that he "just paid too much" in taxes. Although respondent eventually accepted full responsibility for his actions at sentencing, the federal judge noted that respondent previously "was willing to frustrate" the government's investigation of L&M's finances and failed, despite numerous opportunities, to express contrition and to cease his criminal activities.

Additionally, unlike Gottesman and the other attorneys who received terms of suspension for their tax evasion, respondent, who served as a county freeholder during the same timeframe underlying his criminal conduct, had a higher appreciation of his obligation to pay his fair share in taxes. See In re

Magid, 139 N.J. 449, 455 (1995) ("[a]ttorneys who hold public office are invested with a public trust and are thereby more visible to the public. Such attorneys are held to the highest of standards."). In that vein, "the quantum of discipline typically is enhanced when the attorney is a [. . .] public servant at the time of the [criminal offense]." In the Matter of David Andrew Ten Broeck, DRB 19-236 (January 23, 2020) at 8, so ordered, 242 N.J. 152 (2020).

Moreover, In re Rich, 234 N.J. 21 (2018), on which respondent relied in support of his recommendation for a three-year retroactive suspension, is distinguishable from the instant matter. In Rich, the attorney failed to file New York State personal income tax returns for tax years 2008 through 2013 and, for each of those years, he had a tax liability of more than $50,000. In the Matter of Stuart I. Rich, DRB 17-321 (February 26, 2018) at 3. The attorney agreed to pay almost $1.2 million in back taxes, penalties, and interest, and he was sentenced to a one-year term of "conditional discharge."[2] Id. at 4. In determining that a two-year suspension was the appropriate quantum of discipline, we found that the attorney's conduct was similar to that of attorneys who failed to remit the appropriate taxes and was distinguishable from that of attorneys who attempted

[2] In New York, a "conditional discharge" is a non-custodial and a non-probationary sentence that a court may impose if it determines that, based on the nature of the offense and the history and character of the defendant, neither the "public interest" nor the interests of justice "would be served by a sentence of imprisonment [or] probation[.]" See New York Penal Law § 65.05.

to conceal income from tax authorities or who had other aggravating factors. Id. at 11.

Unlike the attorney in Rich, respondent did not simply fail to report his income to the IRS, but rather engaged in a scheme to direct his subordinate to conceal from the IRS more than $800,000 of his personal income. Respondent's misconduct, thus, is far more egregious than that of Rich.

In respect of mitigation, although respondent paid the full amount of restitution required in connection with his guilty plea, that fact is offset by respondent's admission to the DNJ that he still owed to the IRS between $600,000 and $700,000 in unpaid taxes, interest, and penalties for additional tax years. Finally, just as we found in Gottesman, respondent's significant pro bono work and community involvement are insufficient to mitigate the seriousness of his crime.

Additionally, our recommendation also is based on significant confidential information contained in the record, information which respondent adopted in connection with the criminal proceedings.

In light of the significant loss to the government that resulted from respondent's prolonged tax evasion scheme, his decision to direct his subordinate to commit the offense, on his behalf, for his own pecuniary benefit, and his initial willingness to frustrate the government's investigation of L&M's

finances, we determine that respondent 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)). Thus, to effectively protect the public and preserve confidence in the bar, we recommend to the Court that respondent be disbarred.

Vice-Chair Boyer and Member Campelo voted for a three-year suspension.

Chair Gallipoli was recused.

Member Menaker 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
Peter J. Boyer, Esq.,
Vice-Chair

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Douglas M. Long
Docket No. DRB 22-128

Argued: October 20, 2022

Decided: December 19, 2022

Disposition: Disbar

Members	Disbar	Three-Year Suspension	Recused	Absent
Gallipoli			X	
Boyer		X		
Campelo		X		
Hoberman	X			
Joseph	X			
Menaker				X
Petrou	X			
Rivera	X			
Total:	4	2	1	1

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