SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. 23-193
District Docket No. XIV-2019-0037E

In the Matter of George R. Gilmore
An Attorney at Law

Argued
November 16, 2023

Decided
February 14, 2024

Amanda W. Figland appeared on behalf of the
Office of Attorney Ethics.

Kevin H. Marino appeared on behalf of respondent.

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Introduction

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Specifically, respondent stipulated to having violated RPC 1.15(b) (failing to promptly deliver funds to an entitled party); RPC 8.4(b) (two instances – committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); and RPC 8.4 (c) (two instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine that a two-year suspension, with a condition, is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1975. During the relevant time, he practiced law as a founding partner and managing attorney of Gilmore & Monahan, P.A., located in Toms River, New Jersey.

In 1986, respondent received a private reprimand (now, an admonition) for engaging in a conflict of interest by representing both the buyer and seller in a real estate transaction. In the Matter of George R. Gilmore, DRB 85-307 (March 31, 1986).

On May 15, 2019, the Court temporarily suspended respondent in connection with his criminal conduct underlying this matter. In re Gilmore, 238 N.J. 28 (2019). On March 25, 2021, the Court reinstated him to the practice of law. In re Gilmore, 245 N.J. 595 (2021).

Facts

The facts of this matter are undisputed.

On April 17, 2019, following a jury trial in the United States District Court for the District of New Jersey, respondent was convicted of two counts of willfully failing to pay over to the Internal Revenue Service (the IRS) payroll taxes, for two fiscal quarters in 2016, on behalf of his law firm, Gilmore & Monahan, P.A. (the Firm), in violation of 26 U.S.C. § 7202 and 18 U.S.C. § 2 (Counts Four and Five), and one count of making false statements on a loan application, in violation of 18 U.S.C. § 1014 and 18 U.S.C. § 2 (Count Six).[1] United States v. Gilmore, Crim. No. 19-29.

[1] 26 U.S.C. § 7202 states:

> Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

18 U.S.C. § 2 states:

The jury was deadlocked on Count One of the indictment, which charged him with willful tax evasion, in violation of 18 U.S.C. § 7201, by failing to report on his personal income tax returns in 2013, 2014, and 2015, receipt of funds he had borrowed from the Firm as a shareholder loan and used to pay many of his personal expenses. The jury found respondent not guilty on Counts Two and Three of the indictment, which charged him with filing false personal income tax returns, based on a theory that he had mischaracterized shareholder loans as income. As a result of the jury's verdict, the OAE determined not to pursue charges against respondent for tax evasion or filing false tax returns.

On January 22, 2020, the Honorable Anne E. Thompson, U.S.D.J., sentenced respondent to a term of imprisonment of one year and one day, for each count, to be served concurrently. In sentencing respondent to a term of

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> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. § 1014 states:

> Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the … ADD … [on a loan application], shall be fined not more than $1,000,000 or imprisoned more than 30 years or both.

prison below the federal sentencing guidelines,[2] Judge Thompson credited substantial weight to the opinion of Dr. Catherine M. Barber, Ph.D., a court-appointed psychologist, discussed below. Judge Thompson also considered the significant character evidence submitted on respondent's behalf.

Respondent was assessed $300 and, following his release from prison, ordered to complete a three-year term of supervised release. Respondent had made full restitution prior to his sentencing, in the amount of $198,380.91 and, thus, restitution was not ordered by the District Court.

Respondent's conviction was affirmed on appeal. United States v. Gilmore, 2020 U.S. App. LEXIS 37861 (3d Cir. 2020).

On January 19, 2021, respondent received a full presidential pardon, via an executive order of clemency. Accordingly, he did not serve his sentence.

The circumstances underpinning respondent's criminal misconduct are as follows.

[2] According to the federal sentencing guidelines, respondent was facing twenty-seven to thirty-three months imprisonment for his crimes. The prosecution opposed any variance from the guidelines.

Failure to Account For and Deposit Payroll Taxes with the IRS

Respondent, as managing partner, exercised exclusive control over the Firm's financial decisions, including expenditures, bills, and taxes. The Firm was required to withhold payroll taxes from its employees' wages, including federal income tax and Social Security and Medicare taxes.[3] The Firm was required to deposit these tax withholdings with the IRS, on a semi-weekly basis, on the 15th and 30th of each month. The Firm also was obligated to pay to the IRS, on a quarterly basis, matching FICA taxes. Further, the Firm was required to file with the IRS a quarterly federal tax return (Form 941).[4]

For years, the Firm was late in depositing the bi-monthly payroll tax withholdings, as well as its own quarterly FICA taxes. In 2011, after having failed to make its payroll tax deposits for two consecutive quarters, the IRS assigned a revenue officer, Miriam Popowitz, to ensure the Firm complied with its tax obligations.

On May 23, 2011, Popowitz met with respondent at his office and discussed the outstanding tax liability and the consequences of failing to make

[3] In addition to payroll taxes, the Federal Insurance Contributions Act (FICA) requires employers to withhold Social Security and Medicare taxes.

[4] For the first quarter of the year, ending on March 31, Form 941 is due by April 30; for the second quarter, ending on June 30, Form 941 is due by June 30; for the third quarter, ending on September 30, Form 941 is due by October 31; and for the fourth quarter, ending on December 31, Form 941 is due January 31.

timely deposits. She also provided respondent with a letter of the same date, informing him that the IRS was considering "stricter enforcement procedures" for the Firm, including "requir[ing] you to deposit your withheld taxes in a special bank account within 2 banking days after you pay employees their wages." The letter also warned respondent that he could be criminally charged for failing to comply with the special bank deposit requirements.

Less than three months later, Popowitz again met with respondent in his office and provided him with the following two forms: (1) Notice of Taxpayer Requiring Monthly Filing (Form 941M) and, (2) Notice to Make Special Deposits of Taxes (Form 2481).

Thereafter, beginning on October 1, 2011, the IRS monitored the Firm and required respondent to file, on a monthly basis, a Form 941 on the Firm's behalf. The Firm opened a special bank account, as the IRS required, in which the taxes were deposited. While under IRS monitoring, the Firm remained compliant with payroll taxes for approximately one year. However, in 2013, after the monitoring had concluded, the Firm once again failed to comply with its obligation to deposit withheld taxes on a semi-weekly basis.

On July 8, 2013, Popowitz again met with respondent, reminding him that he risked criminal prosecution by habitually failing to timely deposit the tax withholdings with the IRS, and by failing to pay all the Firm's assessed taxes.

She also advised respondent that the IRS would file a lien if any tax liability, penalty, or interest remained unpaid by the Firm at the conclusion of each quarter. By letter of the same date, the IRS notified respondent that it "may consider pursuing a suit for civil injunction … or criminal prosecution … for willful failure to collect or pay the tax." Respondent signed the letter in acknowledgment.

Despite these warnings, respondent failed to deposit the employees' tax withholdings on a semi-weekly basis. Popowitz described the Firm's failure in this respect as a "flagrant disregard for deposit law requirements."

In 2014 and 2015, respondent failed to timely deposit taxes with the IRS on behalf of the Firm but was able to pay taxes owed by the Firm before the IRS generated a lien for unpaid taxes. On August 13, 2015, Popowitz spoke to respondent over the telephone and, again, warned him that the IRS was commencing a tax fraud investigation that would result in criminal charges against any responsible individuals. Despite the warning, as of December 17, 2015, respondent failed to deposit any funds with the IRS for the third or fourth quarter of 2015. During the first quarter of 2016, the Firm paid wages to its employees and withheld federal income and FICA taxes on behalf of its employees but failed to deposit the taxes with the IRS as it was obligated to do.

On April 22, 2016, the Firm's accountant prepared a Form 941 for the first quarter of the year. According to its Form 941, the Firm withheld $56,177.78 from his employees for federal income taxes and owed $64,850.67 for FICA taxes. The Firm withheld a total of $32,425.33 for FICA taxes from the wages it paid to its employees for FICA taxes. On May 2, 2016, respondent signed the Form 941 and filed it with the IRS. At the time the Firm filed its Form 941, it had not deposited any portion of its employee's income or FICA taxes with the IRS; had not paid any matching FICA taxes to the IRS ($32,425.34 due); and owed the IRS $121,028.45 for payroll taxes.

On July 25, 2016, the Firm's accountant prepared a Form 941 for the second quarter 2016. For this quarter, the Firm represented that it had withheld $73,439.44 from its thirty employees for federal income taxes, and that it owed $72,676.73 for FICA taxes. The Firm should have withheld $36,338.36 in wages paid for its employees for FICA taxes. On July 29, 2016, respondent signed and filed the Form 941 with the IRS. At the time the Firm filed the Form 941, it had not deposited any portion of its employee's income or FICA taxes with the IRS; had failed to pay any matching FICA taxes to the IRS ($36,338.37 due); and owed $146,116.17 to the IRS for payroll taxes. On October 3, 2016, the IRS assessed the unpaid balance of taxes owed by the Firm for the second quarter of 2016 at $149,333.45.

On October 17, 2016, the IRS filed a federal tax lien with the Ocean County Clerk's Office for the Firm's unpaid taxes for the second quarter of 2016.

Thereafter, on December 26, 2016, the IRS assessed the Firm's first quarter 2016 unpaid taxes at $141,188.76 and filed a second federal tax lien against the Firm.

Throughout 2016, respondent paid credit card bills directly from the Firm's business account for personal expenditures, such as clothing; meals; jewelry; antiques; garden supplies; travel; and college expenses.

The Firm had available funds to pay the payroll taxes it owed to the IRS for the first two quarters of 2016; respondent, however, used the Firm's funds to pay for his and his family's personal expenses.

As of March 7, 2019, when the federal grand jury returned the six-count indictment against respondent, the Firm owed, for the first quarter of 2016, $149,194.85 in unpaid payroll taxes, $22,131.37 in accrued interest, and $15,128.56 in penalties. For the second quarter of 2016, the Firm owed $149,383.45 in unpaid payroll taxes, $25,454.93 in interest, and $21,186.85 in penalties.

On April 17, 2019, the jury found respondent guilty of Counts Four and Five, which charged him for his willful failure to pay over payroll taxes for the

first and second quarters of 2016. Prior to his January 22, 2020 sentencing, respondent paid all outstanding payroll taxes and penalties, totaling $198,380.91.

Based on the foregoing facts, respondent stipulated that he violated RPC 1.15(b) by failing to account for and deposit with the IRS payroll taxes that were withheld from the Firm's employees for two quarters in 2016. Respondent also stipulated that he committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(b) and RPC 8.4(c), by failing to remit the Firm's payroll taxes to the IRS for the first and second quarters of 2016, contrary to 26 U.S.C. § 7202 and 18 U.S.C. § 2.

Making False Statements on a Loan Application

In 2007, respondent and his wife borrowed $450,000, at a ten-percent interest rate, from Dale and Carol Orlovsky. Pursuant to the parties' agreement, respondent was obligated to satisfy the loan through monthly payments. On August 14, 2007, Dale issued a check in the amount of $400,000, payable to the Firm, from his own law firm's attorney trust account. Separately, the Orlovsky's loaned $50,000 to respondent or the Firm. Although Orlovsky's check was made payable to the Firm, the loan was a personal loan to respondent and his wife.

In 2014, respondent and his wife were required to pay $493,526 in income tax for tax year 2013. Respondent knew that if he failed to make this tax payment by October 15, 2014, a lien would be filed within eleven days after the taxes were assessed against him.

On October 8, 2014, respondent and his law partner applied to Two Rivers Community Bank (Two Rivers) for a commercial bridge loan of $665,000, which they both intended to use to pay their outstanding personal income taxes for tax year 2013. The loan was to be repaid in ninety days and was secured by personal guarantees of, and personal real estate owned by, respondent and his law partner.

On October 14, 2014, respondent held $2,434 in the personal joint checking account he maintained with his wife at Ocean First Bank. On October 15, 2014, respondent issued a personal check, payable to the IRS, in the amount of $493,526, toward his and his wife's 2013 income tax liability. Respondent knew his checking account held insufficient funds at the time he issued the check; however, he believed, based upon his communication with an individual at Two Rivers, that the commercial bridge loan would be approved.

On October 29, 2014, the commercial bridge loan was denied due to the Firm's "inconsistencies with tax returns," which precluded the bank from determining "the firm's actual debt service, and the ability to service the debt."

Further, Two Rivers was concerned that the Firm's $5.9 million in assets were owned by a shareholder; thus, the bank believed that "the ability to repay this debt is in question, and if deducted from capital would make the firm insolvent." Respondent was aware, on October 29, 2014, that the bridge loan had been denied.

Respondent's $493,526 check to the IRS toward payment of his personal income taxes was returned for insufficient funds.

On November 21, 2014, respondent spoke to Bradley Hoyt, an employee in Ocean First Bank's residential loan department, regarding a refinance of his existing mortgage on his personal residence, borrowing $1.5 million, and cashing out equity. On the same date, Hoyt drafted a Uniform Residential Loan Application (URLA) on respondent's behalf. Hoyt reviewed with respondent each question contained on the URLA and typed in respondent's answers. On the same date, Hoyt sent respondent a draft URLA for his review and signature, which respondent signed and returned that day. Respondent acknowledged that, by signing the application, all statements contained therein were "true and correct as of the date set forth opposite my signature and that any intentional or negligent misrepresentation of this information contained in this application may result in . . . criminal penalties . . . ."

The URLA contained false information because it misrepresented respondent's liabilities. Specifically, respondent failed to inform Hoyt that he and his wife owed the Orlovskys approximately $400,000. Further, he failed to tell Hoyt that he and his wife owed the IRS $493,526 and had been unable to pay those income taxes by the October 15, 2014 deadline. Instead, he answered "no" in response to the question of whether he was "presently delinquent or in default on any federal debt."

On November 24, 2014, respondent signed and returned a letter to Ocean First Bank stating that "the purpose of refinancing the property" was to "pay construction costs, reimburse for construction costs, pay taxes, pay off existing debt."

Two days later, on November 26, 2014, respondent and his wife signed a promissory note with the Orlovskys, modifying and superseding the terms of the 2007 promissory note. The promissory note documented the $400,000 loan balance and reduced the interest rate from ten to five percent. Respondent failed to inform Hoyt that he had renegotiated his loan with the Orlovskys.

As part of the refinance application, respondent executed IRS Form 4506-T, authorizing Ocean First Bank to obtain his federal income tax returns for years 2012 and 2013. Although Ocean First obtained and reviewed respondent's federal income tax returns for 2012 and 2013, it did not discover from a review

of those documents that respondent still owed $493,526 to the IRS; further, respondent failed to disclose his tax liability prior to the closing of the loan.

On January 22, 2015, Ocean First Bank provided respondent with a second URLA for the closing of the $1.5 million loan, and the $567,265.32 equity cash out. Again, the URLA stated "no" in response to the question of whether respondent was "presently delinquent or in default on any federal debt." Respondent failed to correct this statement despite the fact he owed $493,526 in federal income taxes. Further, the URLA failed to identify the $400,000 personal loan from the Orlovskys.

Respondent misrepresented his liabilities on the loan application so that he could cash out $567,354.32 of equity from his primary residence. The loan closed on January 22, 2015.

On April 17, 2019, the jury found respondent guilty of Count Six of the indictment, which charged him with making false statements in a loan application.

Based on the foregoing facts, respondent stipulated that he committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(b) and RPC 8.4(c), by making false statements on his mortgage loan application, contrary to 18 U.S.C. § 1014 and 18 U.S.C. § 2.

Respondent's Criminal Sentencing

Following the criminal jury trial, respondent agreed to submit to a psychological assessment by a Court-appointed psychologist. Judge Thompson's request for the psychological evaluation stemmed, in part, from trial testimony regarding respondent's bizarre spending habits and conduct that she described as "irregular" and "perplexing." Although the psychologist's opinion was not offered in defense of the criminal charges, it was accepted by Judge Thompson in mitigation.

Judge Thompson also weighed, in mitigation, respondent's service to the community and the numerous character letters submitted on his behalf. Judge Thompson described respondent, as follows:

> This defendant, a political figure, a member of the election board for many years certainly knew his obligations as a citizen to pay the taxes due and owing. Phi Beta Kappa graduate of a major state university, an accomplished lawyer from Rutgers, our state university, name partner of his own law firm, highly regarded in the community, there's no question that this is a defendant who understood his obligations as a citizen and understood how serious these charges were.
>
> Now, the Court did receive many letters of support referred to by both sides. Perhaps some 42 letters of support and they were not just form letters. There were long letters, two and three pages in some cases, detailed letters and I did read the letters and I did think about what the writers of those letters were saying. They weren't just saying that the defendant seemed to be a respected man in the community. They spoke of his

> generosity, more than material generosity but generosity as a person, not only a letter from his present wife of some 28 years but of his previous wife who spoke of how kind he had been when she suffered a serious medical illness. That kind of family oriented devotion which the writers of those letters describe were meaningful. They seemed sincere and they were detailed. The spirit of generosity that they described and the kindness should not be overlooked.
>
> [Ex8pp30-31.][5]

Based upon the substantial mitigation, Judge Thompson sentenced respondent to one year and one day in prison, well below the sentencing guidelines and the prosecutor's recommendation, stating:

> The nature of his behavior is odd in a man of his personal strengths. He would meet regularly with an IRS revenue officer and seemed to recognize his indebtedness yet he writes a check that bounces of almost a half million dollars to the Internal Revenue Service and does nothing to make up for it. I'm not factoring in that fact, however, in his sentence. Those facts were merely brought out at the trial. He was paying his payroll obligations late, needlessly incurring interest and penalties for years.
>
> There's an impaired judgment in this defendant that projects two different interpretations. One person could say it projects an arrogance and that is in general what the Government has interpreted this defendant's conduct as. But that doesn't seem to really fit this man who seems to have some deep seated mental condition that defies explanation.

[5] "Ex" refers to the exhibits appended to the parties' August 11, 2023 stipulation.

> I have just concluded the latter. I've decided that at his age and his family ties a term of extended incarceration of 27 months which would be the minimum for offense level 18 or 21 months at an offense level 16 would not be warranted. I have decided to vary from the guidelines to a sentence of a year and a day. That sentence, I have determined, is a severe punishment for this 70-year-old man, first offender, non-violent offender whose life other than his chaotic and misguided financial management of his money and his firm's money otherwise, that life has been positive.
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> [Ex8pp36-37.]

The Parties' Positions

Citing disciplinary precedent, discussed below, the OAE acknowledged the broad spectrum of discipline imposed on attorneys who fail to remit payroll taxes, ranging from a reprimand to disbarment, dependent upon the facts and circumstances. The OAE also referenced, as instructive, disciplinary precedent pertaining to attorneys who commit tax evasion and fail to pay or file personal income taxes. See, e.g., In re Halpern, 243 N.J. 552 (2020) (censure; the attorney was convicted of failing to pay substantial income taxes, contrary to 28 U.S.C. § 7203, for two years; in mitigation, the attorney reasonably believed her estranged husband would be paying her joint tax obligation); In re Vecchione, 159 N.J. 507 (1999) (six-month suspension; the attorney failed to file personal income tax returns for a twelve-month period, contrary to 28 U.S.C. § 7203; the

attorney also failed to pay combined personal income tax liability of $271,963); In re Cattani, 186 N.J. 268 (2006) (one-year suspension; the attorney failed to file, for eight years, federal and state income tax returns, and failed to pay $60,000 to $70,000 in income taxes, penalties, and interest, contrary to 26 U.S.C. § 7203; other misconduct included violations of RPC 1.8(a) (engaging in an improper business transaction with a client), RPC 1.15(a) (failing to safeguard funds), and RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6)); In re Rakov, 155 N.J. 593 (1998) (two-year suspension, retroactive to date of temporary suspension; attorney convicted of attempted income tax evasion, contrary to 26 U.S.C. § 7201, for five calendar years; the attorney failed to report interest paid to him on a personal loan).

Respondent, however, also made false statements in connection with his mortgage loan application, contrary to 18 U.S.C. § 1014. The OAE asserted that the discipline imposed upon attorneys convicted of crimes involving false statements in the procurement of loans have included varying terms of suspension to disbarment. See, e.g., In re White, 191 N.J. 553 (2007) (one-year suspension; the attorney, while a law school student, fraudulently obtained a student loan by submitting an application in the name of a friend; the attorney forged her friend's name and used her friend's credit to obtain a loan of more than $54,000); In re Capone, 147 N.J. 590 (1997) (two-year suspension,

retroactive to date of attorney's temporary suspension, for knowingly making false statements on a loan application to inflate the value of the property he was acquiring, in violation of 18 U.S.C. §§ 1014 and 2; attorney defaulted on the loan). Additional cases cited by the OAE are discussed below.

The OAE noted, in mitigation, that respondent had no serious prior discipline in his forty years at the bar. In aggravation, respondent failed to remediate his conduct, despite repeated opportunities to do so. Further, his conduct was for his own pecuniary gain.

The OAE concluded that, based upon the foregoing precedent, respondent's willful failure to pay over payroll taxes for two tax quarters, in violation of 26 U.S.C. § 7202, resulting in $267,144.62 in outstanding tax liability, $47,586.30 in interest, and $36,315.41 in penalties, required a one-year suspension from the practice of law. Further, based upon White and Capone, who received a one-year and two-year suspension, respectively, respondent's false statement on a mortgage loan application, also required a term of suspension.

Overall, the OAE asserted that an eighteen-month to two-year term of suspension, retroactive to May 15, 2019 (the effective date of his temporary suspension), was the proper quantum of discipline for the totality of respondent's misconduct. During oral argument before us, the OAE

acknowledged that respondent had been temporarily suspended for approximately twenty-two months and, in response to our questioning, agreed that if we were to impose discipline greater than twenty-two months, respondent would be required to serve a period of suspension representing the difference between twenty-months and the imposed term of suspension.

In his written submission to us and during oral argument, respondent, through his counsel, stated his agreement with the OAE's recommended quantum of discipline for his misconduct, including that any term of suspension be retroactive to his temporary suspension. During oral argument, respondent urged, however, that any term of suspension be no greater than the twenty-two months for which had been temporarily suspended. Further, respondent informed us that he has not practiced law following his reinstatement.

Analysis and Discipline

As a preliminary matter, and as the OAE observed, the January 26, 2021 executive grant of clemency does not bar or otherwise inhibit our jurisdiction to accept the parties' disciplinary stipulation and impose discipline. The Court, in its May 25, 2021 Order reinstating respondent to the practice of law, expressly stated that the reinstatement "has no effect on any potential disciplinary matter relating to the conduct underlying [respondent's] pardoned conviction," citing

In re Petition of Expungement of Criminal Record Belonging to T.O., 244 N.J. 514, 536 (2021) (noting that "a pardon removes the legal disabilities that stem from the fact of a conviction but does not erase what happened when an offense was committed or restore a person's good character."). See also In re Abrams, 689 A.2d 6, 7 (D.C. 1997) (a presidential pardon does not preclude the exercise of jurisdiction in the context of an attorney disciplinary proceeding).

Violations of the Rules of Professional Conduct

Moving to our review of the record, we determine that the facts set forth in the stipulation clearly and convincingly support the finding that respondent committed all the charges of unethical conduct.

Specifically, respondent admittedly failed to timely remit to the IRS, for two quarters during 2016, the federal payroll taxes on behalf of the Firms' employees, a well-settled violation of RPC 1.15(b). Those funds represented wages the Firm's employees had earned, which respondent, as managing partner of the Firm, had agreed to withhold and disburse to the entity entitled to receive them – the IRS. Further, respondent failed to remit the Firm's matching taxes to the IRS, despite repeated verbal and written warnings. Respondent's inaction violated RPC 1.15(b), which requires a lawyer, who receives funds in which a

third person has an interest (here, employees and the IRS), to promptly deliver the funds to that third person.

Next, respondent violated RPC 8.4(b), which prohibits a lawyer from committing "a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." It is well-settled that a violation of this Rule may be found even in the absence of a criminal conviction or guilty plea. See In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime); In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense).

Respondent's willful failure to collect, account for, and pay more than $267,144.62 in payroll taxes, for two quarters of 2016, constituted a federal crime, contrary to 26 U.S.C. § 7202 and 18 U.S.C. § 2. Indeed, a federal jury convicted him of this crime, notwithstanding his subsequent grant of an executive pardon. Respondent, thus, violated RPC 8.4(b). Respondent separately violated this Rule by admittedly making false statements on a mortgage loan application, contrary to 18 U.S.C. §§ 2 and 1014.

Moreover, respondent's criminal conduct in these respects violated RPC 8.4(c) (two instances), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

In sum, we find that respondent violated RPC 1.15(b); RPC 8.4(b) (two instances); and RPC 8.4(c) (two instances). Thus, the sole issue left for our determination is the quantum of discipline for respondent's misconduct.

Quantum of Discipline

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.

Generally, the discipline imposed for an attorney's failure to remit payroll taxes on behalf of an employee ranges from a reprimand or censure. See, e.g., In re Carlin, 244 N.J. 512 (2021) (reprimand; the attorney admittedly failed, for nearly two years, to withhold and remit his secretary's social security taxes to the IRS, in violation of RPC 1.15(b); to conceal his misconduct, he directly issued net paychecks to her which did not reflect her gross pay or payroll

deductions; we weighed this act of dishonesty in aggravation); In re Pemberton, 181 N.J. 551 (2004) (reprimand; the attorney had, for an eight-year period, failed to pay quarterly federal withholding taxes on behalf of his employees, yet issued false W-2 forms reflecting the payment of those taxes; violations of RPC 1.15(b) and RPC 8.4(c)); In re Frohling, 153 N.J. 27 (1998) (reprimand; the attorney did not pay all or part of federal withholding taxes for five years and state unemployment compensation taxes for two years, yet issued W-2 forms reflecting that certain sums had been deducted from his employees' gross salaries and either had been or would be paid to the government; violations of RPC 1.15(b) and RPC 8.4(c)); In re Bhalla, 233 N.J. 464 (2018) (censure; the attorney failed to remit an employee's social security withholding payments, a violation of RPC 1.15(b); he also negligently misappropriated and failed to remit the employee's contributions to his retirement account, a violation of RPC 1.15(a) and (b); further, the attorney violated RPC 8.4(c), by misrepresenting payment of the unpaid taxes on the employee's W-2 form and by making multiple misrepresentations to the employee regarding the status of the unremitted retirement contributions). But see In re Gold, 149 N.J. 23 (1997) (six-month suspension; the attorney failed to pay his secretary's social security and federal and state income taxes for two calendar years; the attorney also entered into business transactions with a client without the required disclosures

(RPC 1.8); we found no clear and convincing evidence that the attorney's failure to pay the taxes had been intentional; no prior discipline).

Cases involving an attorney's criminal conviction for failing to account for and pay over to the IRS all payroll taxes have resulted in discipline ranging from a term of suspension to disbarment, the length of which depends upon the presence of other criminal offenses or aggravating factors, the tax loss to the government, and the duration of the misconduct. See, e.g., In re Esposito, 96 N.J. 122 (1984) (six-month suspension; the attorney pleaded guilty to one count of failing to pay his employees' social security and income taxes for one calendar quarter, in violation of 26 U.S.C. § 7203; in mitigation, we found that the attorney's conduct "was not marked by any attempt at personal gain;" the funds due to the IRS were untouched and available in the attorney's business account; in mitigation, the attorney suffered severe emotional distress caused by mother's illness and death; no prior discipline); In re Gottesman, 222 N.J. 28 (2015) (three-year retroactive suspension; the attorney 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 conduct resulted in tax loss to the IRS of between $80,000 and $200,000; 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 Buonopane, 201 N.J. 408 (2007) (disbarment; the attorney failed to pay over taxes withheld from his employees, coupled with tax evasion, amounting to the misapplication of $2.7 million in entrusted funds over a five-year period; in aggravation, the attorney's employees were denied benefits due to his failure to pay over withholdings to the taxing authorities).

Respondent's failure to remit the Firm's employees' payroll taxes is most analogous to Esposito, who received a six-month suspension. Unlike Esposito, however, who had failed to remit taxes for one calendar quarter, respondent failed to pay over taxes to the IRS for two quarters in 2016, despite repeated warnings by the IRS. Further, unlike Esposito, respondent committed additional criminal conduct by making a false statement in his mortgage refinance

application. In these respects, respondent's misconduct is more egregious than that of Esposito and, thus, warrants a term of suspension greater than six months.

Attorneys who have made false statements in connection with the procurement of loans have received discipline ranging from lengthy terms of suspension to disbarment, depending on the seriousness of the offense. See, e.g., In re Brandon-Perez, 149 N.J. 25 (1997) (six-month suspension; the attorney obtained a loan under false pretenses; in refinancing her own mortgage, the attorney misrepresented to the lender that she would use the mortgage loan to satisfy four outstanding mortgages; she failed to disclose that, rather than pay off one of the mortgages, she planned to substitute collateral; she then failed to satisfy one of the mortgages for several years and ultimately defaulted on the loan; in aggravation, we considered the prolonged nature of the misconduct, spanning several years, and the harm to the lender who was never made whole); In re White, 191 N.J. 553 (one-year suspension; the attorney, while a law school student, fraudulently obtained a student loan by submitting an application in the name of a friend; the attorney forged her friend's name and used her friend's credit to obtain a loan of more than $54,000); In re Serrano, 193 N.J. 24 (2007) (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 Panepinto, 157 N.J. 458 (1999) (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 (1997) (two-year suspension for attorney who made 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, contrary to 18 U.S.C. §§ 1014 and 2, 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 greed); In re Noce, 179 N.J. 531 (2004) (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 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; in mitigation, we considered 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; real estate attorney knowingly and intentionally 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 is most similar to that of the attorneys in White and Capone, who received one-year and two-year terms of suspension, respectively, for making a false statement in connection with the procurement of a single loan. Unlike White, whose false statement enabled her to obtain a $54,000 loan, and Capone, whose false statement enabled him to obtain a $480,000 mortgage, respondent's false statement was intended to induce the bank to refinance his $1.5 million mortgage. Like both White and Capone, respondent's conduct was motivated by his own pecuniary gain.

Based upon the above precedent, and Esposito, White, and Capone in particular, the totality of respondent's misconduct should be met with a lengthy term of suspension. In crafting the appropriate discipline, we also considered the presence of any mitigating and aggravating factors.

In mitigation, respondent has a nearly unblemished record in almost fifty years at the bar, a factor we accord considerable weight. In re Convery, 166 N.J. 298, 308 (2001). Moreover, respondent readily admitted his fault by entering into this disciplinary stipulation, thereby conserving disciplinary resources.

In aggravation, respondent repeatedly was warned by the IRS that his failure to timely remit the payroll taxes would result in a criminal prosecution; yet he failed to remediate his conduct. In re Silber, 100 N.J. 517 (1985). Further, his conduct was for his own pecuniary gain. In re Yacavino, 100 N.J. 50, 54 (1985); In re Esposito, 96 N.J. at 132.

Conclusion

On balance, finding the aggravating and mitigating factors in equipoise, we determine that a two-year suspension is the appropriate quantum of discipline to protect the public and to promote confidence in the bar.

On May 15, 2019, respondent was temporarily suspended in connection with his criminal conduct underlying this matter. In re Gilmore, 238 N.J. 28. We recognize that retroactive terms of suspension are appropriate when the attorney has been temporarily suspended, by Order of the Court, in connection with their underlying criminal conduct. See In re Dutt, 250 N.J. 181 (2022), and In re Walker, 234 N.J. 164 (2018) (the attorneys' respective terms of suspension were imposed retroactive to the effective dates of their temporary suspensions in connection with their criminal conduct). Here, however, respondent was reinstated by the Court on March 25, 2021, after a period of suspension of approximately twenty-two months. Thus, under these unique circumstances, we

determine that respondent's two-year suspension shall run prospectively, upon Order of the Court, but with credit for the entirety of his temporary suspension.

Further, we recommend, as a condition to his discipline, that respondent be required to provide to the OAE proof of his fitness to practice law, as attested to by a mental health professional approved by the OAE.

Vice Chair Boyer and Member Campelo voted to impose an eighteen-month suspension, retroactive to the date of respondent's temporary suspension, with the same condition.

Chair Gallipoli and Members Hoberman and Rodriguez were 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of George R. Gilmore
Docket No. DRB 23-193

Decided: February 14, 2024

Disposition: Two-year suspension

Members	Two-year suspension	Eighteen-month suspension	Absent
Gallipoli			X
Boyer		X	
Campelo		X	
Hoberman			X
Joseph	X		
Menaker	X		
Petrou	X		
Rivera	X		
Rodriguez			X
Total:	4	2	3

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