SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-246
District Docket No. XIV-2023-0438E

In the Matter of William E. Gericke
An Attorney at Law

Argued
January 18, 2024

Decided
May 2, 2024

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

Joshua J.T. Byrne 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 motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following the Supreme Court of Pennsylvania's issuance of a March 20, 2023 order suspending respondent for one year, on consent.

The OAE asserted that, in the Pennsylvania matter, respondent was determined to have violated the equivalents of New Jersey RPC 1.8(b) (engaging in a conflict of interest by using information relating to the representation of a client to the client's disadvantage without informed consent); RPC 4.1(a)(1) (knowingly making a false statement of material fact or law to a third person); 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 reciprocal discipline and conclude that a one-year suspension is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1994. During the relevant period, he maintained a practice of law in Bala Cynwyd, Pennsylvania. He has no prior discipline.

We now turn to the facts of this matter.

Facts

From May 1997 through August 2021, respondent worked for the Cozen O'Connor (Cozen) law firm.[1] In or around 2018, the managing partner at Cozen asked respondent and another attorney to form a conflicts department. Two years later, in 2020, the managing partner asked respondent and other attorneys in the firm to form a legal professional services group (LPSG). As conflicts counsel, respondent was required to identify possible conflicts of interest between Cozen's existing clients and potential clients.

Cozen maintained a list of restricted securities and a policy requiring that any firm attorney who wished to purchase securities to notify the firm's restricted securities committee (RSC) for the purposes of determining whether the transaction would be prohibited. LPT Property Trust (LPT) was one of Cozen's clients and, thus, was on the firm's list of restricted securities.

[1] The admitted facts underlying respondent's misconduct were derived from the Joint Petition in Support of Discipline on Consent, dated January 13, 2023, filed by respondent and the Pennsylvania Office of Disciplinary Counsel (the ODC).

Herman Fala, Esq., former co-chair of the firm's real estate department, left Cozen in 2014 to join LPT, as its Director. Respondent was aware of Fala's new position. In early September 2019, before Labor Day weekend, respondent heard a story on KYW radio about a new public offering of LPT stock and, on or about September 10, 2019, read an article in The Philadelphia Inquirer, titled "LPT Discounts New Shares."

On October 7, 2019, Thomas Gallagher, Esq., a partner in Cozen's tax department, asked respondent to conduct a "conflicts check" on a company named Prologis, Inc., but he asked if it "could be performed without listing Prologis on the daily conflicts report," which was issued daily to every attorney at Cozen. Respondent confirmed to Gallagher that he could run the conflicts check as a "research request," so that Prologis would not appear on the daily conflicts report. Gallagher told respondent that Fala was "requesting a tax opinion as part of due diligence . . . for a possible merger involving LPT." After this discussion, respondent sent the conflicts analyst coordinator an e-mail, requesting that they "run[] a research check on Prologis."

The next day, October 8, 2019, respondent sent the conflicts report to Gallagher and purchased 1,000 shares of LPT stock, at $51 a share. At the time respondent made that purchase, no public information had been released about the possible merger between LPT and Prologis. Further, respondent never

communicated with any LPT representative to obtain informed consent for his use of LPT's confidential information to purchase 1,000 shares of LPT stock.

On October 27, 2019, within three weeks of respondent's purchase of the stock, Prologis publicly announced its merger agreement with LPT. Shortly thereafter, on November 19, 2019, respondent sold his 1,000 shares of LPT stock at $61 per share, realizing a profit of $10,002.02.

That same month, LPT contacted Gallagher concerning an inquiry by the Financial Industry Regulatory Authority (FINRA) in connection with the LPT/Prologis merger. Accordingly, on November 21, 2019, Gallagher sent an e-mail to respondent, informing him that he was required to provide information to LPT "concerning who knew what and when" related to the merger and, to comply with that request, he needed respondent's middle name and home address. That same date, respondent replied and provided Gallagher with the requested information.

In January 2020, LPT's outside counsel contacted Gallagher and informed him that FINRA was seeking additional information surrounding the October 27, 2019 public announcement of the merger and provided him with a list of individuals and entities it had identified. Respondent's name appeared on FINRA's list.

On February 10, 2020, Gallagher sent respondent that list, via e-mail, asking that he review it and, if respondent did not know any of the identified individuals or entities, to send Gallagher an e-mail to that effect. If, however, respondent knew any of the listed individuals or entities, Gallagher directed respondent to review the attached letter for the information FINRA had requested and, further, informed him that they "will have to disclose any relationships/contacts."

In reply to Gallagher's e-mail, respondent denied having "any past or present relationships with any of the individuals or entities on that list" and that "the extent of [his] knowledge of LPT's business activities" was limited to Gallagher's request that he "run a confidential conflict check on Prologis in early October 2019." Respondent also stated that he "[didn't] recall any issues coming up with the conflict check that concerned [him]." Respondent failed to disclose that (1) his name appeared on the list; (2) he purchased shares of LPT stock after he performed the confidential conflicts check related to the merger; (3) he sold his shares of LPT stock following the merger; and (4) he realized a profit of approximately $10,000.

On July 21, 2021, Sarah L. Allgeier, Esq., an attorney for the Securities Exchange Commission (the SEC), issued a subpoena to respondent. Shortly

thereafter, Cozen placed respondent on administrative leave and, on August 15, 2021, respondent resigned from the firm.

Proceedings Before the SEC

Respondent retained Richard A. Levan, Esq., to represent him in connection with the proceedings before the SEC and, at Levan's suggestion, respondent agreed to meet with the SEC. Thereafter, Allgeier contacted Levan because the SEC was willing to settle the case and, according to respondent, the following terms had been negotiated:

> The SEC agreed it would not file a complaint against [respondent] in the Eastern District of PA, which to [respondent's] understanding would be the SEC's typical procedure . . . .
>
> The SEC agreed to only file an Administrative Order instituting public cease-and-desist proceedings, making findings, and imposing remedial sanctions against [respondent] . . . .
>
> The SEC's monetary sanction in this matter was the amount of profit [respondent] made selling the LPT stock ($10,000.20), plus a multiplier of only 1 . . . for a total monetary sanction of $20,000.40.
>
> The SEC also agreed there would be no referral to the DOJ for a criminal investigation.
>
> [RB-ExB at 3.][2]

[2] "RB-ExB" refers to respondent's July 15, 2022 letter to the OAE, which included his response

(footnote cont'd on next page)

During his August 2021 interview with Allgeier and six other SEC representatives, respondent acknowledged that his purchase of the LPT stock in November 2019 had violated the Securities and Exchange Act and the SEC's Rules of Practice.

On or about October 28, 2021, respondent submitted an offer of settlement to the SEC and, on November 19, 2021, the SEC issued an administrative order announcing the settled charges against respondent for improperly trading on confidential information that he learned while employed as conflicts counsel at Cozen. Specifically, according to the SEC's order, respondent had purchased LPT stock after obtaining material, nonpublic information regarding its impending merger with another company. Respondent "either knew or was reckless in not knowing that he obtained this information in confidence and he was not permitted to trade on it."

Despite knowing that the information regarding the merger was confidential, the very next day, and prior to the public announcement of the merger, respondent purchased 1,000 shares of LPT stock via his personal brokerage account. After the merger agreement was publicly announced, LPT's stock price increased 13.7 percent. On November 19, 2019, having learned of

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to the SEC.
"Pet." refers to the Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d).

the announcement, respondent sold his entire position in LPT for a profit of $10,002.20.

The SEC's order charged respondent with having "willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder" and found that he "engaged in conduct within the meaning of Section 4C(a)(3) of the Exchange Act and Rule 102(e)(1)(iii) of the [SEC's] Rules of Practice." Further, respondent agreed to pay a $20,004 penalty and to accept a permanent bar on his privilege to appear or practice before the SEC as an attorney.

On December 3, 2021, respondent, through his counsel, satisfied his $20,004.04 civil penalty.

The Pennsylvania Disciplinary Proceedings

On January 12, 2023, in connection with the Pennsylvania disciplinary proceedings, respondent signed an affidavit "consenting to the recommendation of a one-year suspension from the practice of law in Pennsylvania." The next day, on January 13, 2023, respondent and the ODC filed a Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d), wherein respondent admitted that he:

a. Engaged in insider trading in violation of 15 U.S.C. § 78j and 17 C.F.R. §§ 240.10b-5 and 240.10b5-1;

b. Breached his fiduciary duty to LPT as a client of Cozen;

c. Used confidential information relating to Cozen's representation of LPT to the disadvantage of LPT and its shareholders without LPT's informed consent;

d. Knowingly made a false statement of material fact to a third person; and

e. engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

[Pet. ¶54.]

More specifically, respondent admitted that, as a founding member of Cozen's conflicts department and LPSG, he owed a fiduciary duty to clients to "exercise the highest degree of honesty and good faith in his dealings with firm clients, and in handling information related to firm clients." He conceded that he "knew or should have known" that Cozen had a policy requiring attorneys to coordinate with the RSC before purchasing securities, and that LPT was on Cozen's list of restricted securities. Respondent acknowledged that the information Gallagher had shared with him regarding a potential LPT/Prologis merger was "confidential" and "material, nonpublic information" and, further, that he "knew or was reckless in not knowing that he obtained information in confidence and was not permitted to trade on it."

Respondent admitted that his purchase was "based in part on confidential information" concerning client LPT that he received "as a result of his employment at Cozen and his role as conflicts counsel." Further, because

respondent was aware of the impending merger, and he made no attempt to seek informed consent from LPT to purchase their stock, he admittedly "misappropriated material, nonpublic information that he obtained in the course of his employment as an attorney and breached the trust and confidence" that he owed to Cozen and LPT. Additionally, in his February 10, 2020 e-mail to Gallagher, respondent "knowingly misrepresented the extent of [his] knowledge about the LPT/Prologis merger and LPT's business activities at the time [Gallagher] requested that [he] run a confidential conflicts check on Prologis in early October 2019," by failing to disclose that (1) his name appeared on FINRA's list of individuals and entities in connection with its inquiry regarding the LPT/Prologis matter; (2) he had purchased shares of LPT stock after performing the confidential conflicts check requested by Gallagher; (3) he sold his shares of LPT stock after the LPT/Prologis merger; and (4) he profited more than $10,000 by selling his shares of LPT stock.

Based on these facts, respondent admitted that he violated the following Pennsylvania Rules of Professional Conduct: Pa. RPC 1.4(a)(1); Pa. RPC 1.8(b); Pa. RPC 4.1(a), l fact or law to a third person; and Pa. RPC 8.4(c).

In recommending a one-year suspension from the practice of law, respondent and the ODC asserted that "[t]he level of appropriate discipline for an attorney who has settled with the SEC alleged securities fraud charges for

civil monetary penalties appear[ed] to be an issue of first impression in Pennsylvania." They analogized respondent's misconduct to two Pennsylvania attorneys who were criminally convicted, based on similar conduct, ODC v. Sudfeld, 2020 Pa. LEXIS 3453 (June 22, 2020), and ODC v. Obod, No. 37 DB 2001 (S. Ct. Order 01/31/2003).

Like the attorneys in Sudfeld and Obod, respondent "improperly used material, nonpublic information for personal stock trades to realize a profit," but respondent and the ODC agreed that "respondent's misconduct [was] distinguishable . . . in two important ways" because (1) "[r]espondent's misconduct did not result in a criminal convicted or related sentence," and (2) respondent "cooperated with and did not make false statements to the SEC."

In mitigation, respondent and the ODC submitted that respondent (1) cooperated with the SEC; (2) expressed remorse and acceptance of responsibility by admitting to the charged misconduct; (3) consented to a one-year suspension of his law license; and (4) had no prior discipline in his more than twenty-eight years of practice in Pennsylvania. The petition did not contemplate any aggravating factors. Accordingly, respondent and the ODC agreed that respondent's suspension was "necessary and appropriate to put Pennsylvania attorneys on notice that insider trading is fraudulent,

impermissible activity – regardless of whether the misconduct results in a criminal conviction or civil money penalty."

On March 20, 2023, the Supreme Court of Pennsylvania suspended respondent, on consent, for one year.

On March 23, 2023, respondent notified the Court, but not the OAE, of his Pennsylvania discipline, as R. 1:20-14(a)(1) requires. The OAE confirmed that it had not received a copy of that letter until respondent's counsel attached it to his September 14, 2023 response to the instant motion. The OAE noted that "R. 1:20-14(a)(1) requires notification in writing to the Director," but left to our discretion of whether respondent's letter to the Court constituted compliance with the Rule.

The Parties' Positions Before the Board

The OAE asserted, in its written submission to us and during oral argument, that respondent's misconduct in Pennsylvania constituted violations of RPC 1.8(b); RPC 4.1(a)(1); RPC 8.4(b); and RPC 8.4(c). The OAE determined, however, that Pa. RPC 1.4(a)(1) did not have a New Jersey RPC equivalent.

Specifically, the OAE argued that respondent violated RPC 1.8(b) by using confidential information, gleaned via his capacity as conflicts counsel

regarding the LPT/Prologis merger, to purchase stock to the disadvantage of LPT, the client. Respondent violated RPC 4.4(a)(1) by making a false statement of material fact in his February 10, 2020 e-mail to Gallagher, in which he knowingly misrepresented the extent of his knowledge about the LPT/Prologis merger. Further, he omitted material information from Gallagher, including that his name appeared on the list; he had purchased shares of LPT stock; he sold the stock after the merger; and he had profited from the transaction.

The OAE asserted that respondent violated RPC 8.4(b) by engaging in criminal securities fraud, contrary to 15 U.S.C. § 78j(b); CFR §§ 240.10b-5 and 240.10b5-1; and 18 U.S.C. § 2B1.1. Specifically, citing United States v. McGee, 763 F.3d 304, 310-11 (3d Cir. 2014), the OAE asserted that the Supreme Court has recognized two theories of insider trader, namely "traditional" and "misappropriation," and alleged that respondent's misconduct fell within the "misappropriation" category. "Respondent was not a corporate insider trading on the trust and confidence of his shareholders, but instead was legal counsel, with the duties of trust and confidence attendant thereto, to the company whose stock he traded." The OAE asserted that respondent, by trading upon confidential, nonpublic information, used or employed a "manipulative or deceptive device" in the same or purchase of a security, contrary to 18 U.S.C. §

78j. By that same conduct, the OAE maintained respondent also violated RPC 8.4(c).

In recommending a one-year term of suspension, the OAE analogized respondent's misconduct, committed in his capacity as conflicts counsel, to the attorney in In re Van Siclen, 231 N.J. 6 (2017) who, as discussed below, received a two-year suspension (the same discipline New York imposed), based on his involvement in a "pump and dump" scheme, in violation of RPC 1.7(a) (engaging in a conflict of interest) and RPC 8.4(c). In the Matter of Todd Davis Van Siclen, DRB 16-274 (May 2, 2017) at 1-5. The OAE also relied upon two criminal matters, In re Woodward, 149 N.J. 562 (1997), and In re DeSantis, 171 N.J. 142 (2002), both of which are discussed in detail below.

In mitigation, the OAE noted respondent's cooperation with the SEC's investigation; his consent to discipline in Pennsylvania thereby conserving disciplinary resources; his expression of remorse; and his lack of prior discipline in his twenty-nine years at the New Jersey bar.

In aggravation, the OAE asserted that respondent's conduct was motivated by greed and venality.

In his December 7, 2023 written submission to the Board, respondent, through his counsel, stated that he did not oppose the motion or deny the factual bases for the discipline. Further, he agreed with the recommended quantum of

discipline. He disputed, however, the OAE's assertion that his misconduct violated RPC 8.4(b), arguing that there had been no criminal findings by a court or by the Pennsylvania disciplinary authorities. Indeed, respondent emphasized that the ODC had not charged respondent with a violation of Pa. RPC 8.4(b) and, thus, he made no such acknowledgment in the Joint Petition. Respondent maintained that he lacked the requisite criminal intent.

Respondent attached, as an exhibit to his brief, his July 15, 2022 letter to the OAE in which he maintained that he purchased LPT stock in response to news stories he heard on KYW Radio over Labor Day weekend, and an article he read in The Philadelphia Inquirer on September 10, 2019 which, according to respondent, provided "public information regarding the possibility that LPT stock was undervalued and that LPT had a potential buyer." Respondent maintained that the exchanges he had with Gallagher about the confidential conflicts check "served as a reminder to [respondent] to buy LPT stock," and he "did not consider the information from [] Gallagher might be considered 'insider' information."

Further, when respondent read an article stating that Prologis had "actually purchased LPT," he was "initially happy about the prospect of his share value increasing, but soon realized there was a potential that his purchase so soon after speaking with [] Gallagher could be problematic." Under these

circumstances, respondent argued he "did not evince the requisite intent for a criminal violation," thus, there was no violation of RPC 8.4(b).

Moreover, respondent, through his counsel, explained that "it was not his intention to do anything wrong or violate the Exchange Act or any of the SEC's rules," but he "recognized that the purchase had the appearance of impropriety," and, "if presented with the situation again, he certainly would understand the import of the information received from [] Gallagher about a possible merger and would never purchase stock with that understanding."

During oral argument, respondent stressed that reciprocal discipline should be "identical" between Pennsylvania and New Jersey and, because Pennsylvania authorities "found no reason to refer [this case] for criminal prosecution," a finding that he violated RPC 8.4(b), and the accompanying stigma, was not warranted. He conceded, however, that even if we determine to dismiss the RPC 8.4(b) charge, a one-year suspension remained the appropriate quantum of discipline.

As a final point, respondent requested that any term of discipline be made reciprocal to April 19, 2023, the effective date of his Pennsylvania suspension. He asserted that a retroactive suspension was warranted because he "voluntarily" had not practiced in any jurisdiction since his Pennsylvania suspension. He argued that his abstention from practice was akin to a suspension

and contended that, if he remained suspended in New Jersey when his suspension in Pennsylvania was complete, he would struggle to find employment at a law firm that practices in both states.

Last, he emphasized that he had substantially complied with the notice requirement by reporting his suspension to the Court, rather than the OAE, by letter dated March 23, 2023. During oral argument, respondent's counsel candidly stated that he accepted some responsibility for the mistake, having advised respondent notice to the Court was sufficient under Pennsylvania rules, and not specifically informing him that notice to the OAE was required.

Analysis and Discipline

Following our review of the record, we determine to grant the OAE's motion for reciprocal discipline and to recommend the imposition of discipline for most of the Rules of Professional Conduct charged by the OAE.

Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be

determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In Pennsylvania, the standard of proof in attorney disciplinary proceedings is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A.2d 216 (Pa. 1982) (quoting In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981) (citations omitted). Here, in his joint petition in support of discipline, respondent admitted the facts underlying his misconduct but claimed that his LPT stock purchase was based on information that was publicly available on local news outlets, as early as September 2019.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) The disciplinary or disability order of the foreign jurisdiction was not entered;

(B) The disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) The disciplinary or disability order of the foreign matter does not remand in full force and effect as the result of appellate proceedings;

(D) The procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) The unethical conduct established warrants substantially or different discipline.

In our view, none of the above subsections apply in this matter and, thus, respondent's misconduct warrants the imposition of identical discipline in New Jersey – a one-year suspension from the practice of law.

Violations of the Rules of Professional Conduct

As a threshold issue, the Court has made clear that it will evaluate our decision to grant a motion for reciprocal discipline, under R. 1:20-16(c), to determine whether clear and convincing evidence supports each ethics violation upon which we recommend discipline. In re Barrett, 238 N.J. 517, 521-22 (2019). In so doing, the Court in Barrett characterized R. 1:20-14 reciprocal discipline as "the process by which New Jersey applies its ethics rules to an attorney admitted in New Jersey, following the imposition of discipline in an ethics proceeding conducted by a sister jurisdiction." Id. at 522 (quoting In re

Sigman, 220 N.J. 141, 153 (2014)). Our review, like that of the Court, therefore "involves 'a limited inquiry, substantially derived from and reliant on the foreign jurisdiction's disciplinary proceedings.'" Ibid.

Consistent with that body of law, we have, on occasion, declined to find particular RPCs charged by the OAE in motions for reciprocal discipline. See, e.g., In the Matter of Robert Captain Leite, DRB 22-164 (February 24, 2023) (granting the OAE's motion for reciprocal discipline but declining to find a violations of RPC 1.2(d), RPC 3.3(a)(1), RPC 8.4(a), RPC 8.4(b), RPC 8.4(d), where the underlying facts did not support the charges), so ordered, 254 N.J. 275 (2023); In the Matter of Richard C. Gordon, DRB 20-209 (April 1, 2021) at 19-20 (granting the OAE's motion for reciprocal discipline but declining to find a violation of RPC 8.4(d) where underlying facts did not support the charge), so ordered, 249 N.J. 15 (2021); In the Matter of Amanda J. Iannuzzelli, DRB 20-129 (April 1, 2021) at 27 (granting the OAE's motion for reciprocal discipline but declining to find violations of RPC 3.1 or RPC 1.16(a)(2) based upon insufficient evidence in the record), so ordered, 249 N.J. 12 (2021) (imposing a three-year suspension rather than disbarment).

Here, we determine that the record contains clear and convincing evidence that respondent violated RPC 1.8(b); RPC 4.1(a)(1); and RPC 8.4(c). We determine, however, that our "limited inquiry, substantially derived from and

reliant on" Pennsylvania's disciplinary proceedings, leaves us unable to conclude that respondent violated RPC 8.4(b), as the OAE alleged. We, therefore, decline to find that violation.

Respondent violated RPC 1.8(b), which prohibits an attorney from using information relating to the representation of a client to the disadvantage of that client unless, after full disclosure and consultation, the client gives informed consent. Respondent admittedly violated this Rule by using the confidential information he gained regarding the LPT/Prologis merger, in his capacity as conflicts counsel for his law firm, to purchase LPT stock at a discounted rate in advance of the merger. Respondent failed to coordinate with the RSC, as his firm required, prior to purchasing the stock and failed to obtain his client's informed consent after full disclosure and consultation. Respondent, thus, violated RPC 1.8(b).

Next, respondent violated RPC 4.1(a)(1) by making a false statement of material fact to Gallagher in his February 20, 2020 e-mail. Specifically, respondent knowingly misrepresented the extent of his knowledge about the LPT/Prologis merger and the extent of LPT's business activities at the time Gallagher requested that he run the confidential conflicts check on Prologis. Further, he failed to disclose to Gallagher, despite his specific request, that (1) his name was on the list of individuals from whom FINRA sought information;

(2) he purchased shares of LPT stock after learning about the potential merger; (3) he sold the LPT stock once the merger was publicly announced; and (4) he realized a profit of more than $10,000 from that sale. Respondent's misconduct in this respect was also violative of RPC 8.4(c), which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

We determine, however, to dismiss the charge that respondent violated RPC 8.4(b). That Rule prohibits an attorney from committing "a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer." Although a violation of this Rule may be found even in the absence of a criminal conviction, the evidence must nonetheless establish, clearly and convincingly, that respondent's misconduct constituted a criminal offense. 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) (the attorney was found to have violated RPC 8.4(b), for failing to file tax returns for seven years and pay nearly $70,000 in taxes, despite not having been charged or found guilty of a criminal offense).

The OAE asserted that respondent committed criminal securities fraud, in violation of 15 U.S.C. § 78j(b) and SEC Rule 10b-5, CFR 240.10b-5-1, by purchasing LPT stock after learning of its impending merger with another

company. Thus, according to the OAE, respondent "traded on insider information gained during the course of his representation of LPT, and not disclosed to LPT or Prologis or shareholders."

Pursuant to 15 U.S.C. § 78ff, a criminal conviction for insider trading requires that the defendant acted "willfully," or that he committed a "knowingly wrongful act." United States v. Cassese, 428 F.3d 92, 98 (2d Cir. 2005) (defining willfulness as "a realization on the defendant's part that he was doing a wrongful act under the securities laws in a situation where the knowingly wrongful act involved a significant risk of effecting the violation that has occurred").

In our view, respondent's qualified admissions – that he "knew or should have known" that Cozen had a policy requiring him to coordinate with the RSC before purchasing LPT stock and, further, that he "knew or was reckless in not knowing that he obtained information in confidence and was not permitted to trade on it" – demonstrate that, although he realized in hindsight that he should not have purchased LPT stock when he did, he did not have the requisite intent for us to conclude that he committed a crime. Thus, in the absence of clear and convincing evidence of respondent's willful intent to commit criminal securities fraud, we determine to dismiss the RPC 8.4(b) charge.

In sum, we find that respondent violated RPC 1.8(b); RPC 4.1(a)(1); and RPC 8.4(c). We determine to dismiss, for lack of clear and convincing evidence,

the RPC 8.4(b) charge. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

As previously stated, Pennsylvania imposed a one-year suspension for respondent's misconduct. We find no reason, in law or fact, to deviate from that determination.

The OAE correctly analogized respondent's misconduct to that of the attorney in Van Siclen, who received a two-year suspension, on a motion for reciprocal discipline from Pennsylvania, for his violations of RPC 1.7(a)(2) and RPC 8.4(c), based on his participation in a federal securities fraud scheme. In the Matter of Todd Davis Van Siclen, DRB 16-274 at 8.

In that matter, Van Siclen was an associate employed by the Otto Law Group PLLC (Otto Law). Otto Law had recommended that its client, HerbalPharm, Inc., undergo a "reverse merger" to "bypass the ordinary disclosure and registration requirements of going public." Van Siclen was tasked with locating a public shell company and, thus, he coordinated a deal with a former client, Beverly Kammerling whereby the firm would reduce her outstanding legal bill by $50,000 if she allowed HerbalPharm to pay $275,000 for her controlling interest in Eurosoft Corporation. Instead of purchasing that

interest directly, however, Otto Venture Purchasers (OVP) purchased the Eurosoft stock for $225,000 and resold it to HerbalPharm for $275,000, without disclosing Otto Law's involvement to its client, Pak Peter Cheung, HerbalPharm's CEO.

After changing HerbalPharm's name to MitoPharm, Inc., David M. Otto (the principal member of Otto Law) and Van Siclen drafted letters containing false statements so that individuals and entities owned and controlled by Otto would purchase that stock, which gave Otto "complete, undisclosed control" of MitoPharm's freely tradeable shares of stock. Then, at Van Siclen's recommendation, Cheung hired a stock promoter, who launched a public relations campaign to promote MitoPharm's stock, which then rose more than 400 percent. As a result, Otto and the stock promoter sold their shares, thereby profiting $1 million and $300,000 respectively. Van Siclen consented to a judgment in a SEC civil action and a two-year suspension in New York.

In determining that a two-year suspension was the appropriate quantum of reciprocal discipline, we considered Van Sinclen's lack of prior discipline and his lack of personal gain. In aggravation, however, we emphasized that he was the principal actor in the deceit underlying the reverse merger, a consideration that far outweighed the limited mitigation.

Notably, like respondent, Van Sinclen was not criminally charged with having violated criminal securities laws; nor did the Pennsylvania disciplinary authorities charge him with the New Jersey equivalent of RPC 8.4(b). Indeed, we expressly stated that the Rule applied exclusively to criminal acts and, here, recognized that "the SEC matter was a civil action." Id. at 8 n.8.

The OAE also cited two criminal matters that were before us on motions for final discipline, In re Woodward, 149 N.J. 562 (1997), and In re DeSantis, 171 N.J. 142 (2002), to support imposition of a suspension. The attorney in Woodward had access to confidential, material, and non-public information on trading and stocks as a member of his law firm's corporate finance department. In the Matter of Richard W. Woodward, DRB 96-314 (March 25, 1997). Despite his law firm's policy prohibiting employees from "revealing 'inside' information to anyone else except on a strict 'need to know basis,'" the attorney shared inside information with his brother and his best friend. Although he did not realize any financial gain from his misconduct, his brother and best friend profited by more than $305,000. The attorney pleaded guilty to conspiracy to commit securities fraud, and we suspended him for three years.

In DeSantis, the attorney received a one-year retroactive suspension following his criminal conviction to obstruction of justice, contrary to 18 U.S.C. § 1505. DeSantis was caught up in insider trading involving the acquisition of

Lotus by International Business Machines Corporation (IBM). Specifically, the attorney purchased shares in Lotus, based on a tip from a friend, and he profited more than $16,000. In the Matter of Carmine DeSantis, DRB 01-027 (August 6, 2001). His acquaintances, who relied on specific information that IBM would soon acquire Lotus, realized profits of almost $200,000. When the SEC first investigated the Lotus sale, the attorney denied knowing his acquaintances or having any inside information. Later, however, he recanted that testimony, cooperated with the federal criminal investigation, and "provided the Government with evidence concerning [his acquaintances'] participation in insider trading and efforts to obstruct the SEC's investigation," which alleviated the need for trials.

Subsequently, the attorney in DeSantis pleaded guilty to obstruction of justice. He was placed on probation for one year, ordered to pay a $5,000 fine, and disbarred in New York. In determining that a one-year suspension was the appropriate quantum of discipline we considered, in mitigation, that, at the time of his initial acts of misconduct, he was unaware that he was relying on insider information. Rather, his misconduct occurred when he chose to protect a friend by lying to the SEC. Although recognizing the severity of the misconduct, we concluded that the attorney in DeSantis had "used poor judgment" and

determined that a one-year suspension was the appropriate quantum of discipline.

Based on the foregoing disciplinary precedent, and DeSantis in particular, we conclude that a one-year suspension is the baseline quantum of discipline for respondent's misconduct. In crafting the appropriate discipline, however, we also consider mitigating and aggravating factors.

In mitigation, respondent has no prior discipline in his nearly thirty-years at the bar.

In aggravation, respondent was motivated by pecuniary gain.

Conclusion

On balance, we determine that a one-year suspension remains the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Although respondent requested that we impose a retroactive term of suspension, because he was not temporarily suspended in connection with his misconduct underlying this matter, a retroactive suspension is inappropriate. See In re McWhirk, 250 N.J. 176 (2022) (the attorney's four-year term of suspension in connection with a motion for reciprocal discipline was imposed retroactive to his April 2016 temporary suspension for the same misconduct underlying the

motion). Further, we consistently have found, and the Court has agreed, that a "voluntary withdrawal" from the practice of law provides no "basis to impose [a] suspension retroactively, and to do so would amount to no meaningful sanction." In the Matter of Brian J. Smith, DRB 20-318 (July 28, 2021) at 22-23, so ordered, 250 N.J. 44 (2022).

Member Petrou disagrees with the majority's determination to dismiss the RPC 8.4(b) charge. In his view, the evidence clearly and convincingly establishes respondent's willful intent to commit criminal securities fraud. Member Petrou, however, joins in the majority's conclusion with respect to the quantum of discipline.

Member Rivera 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: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of William E. Gericke
Docket No. DRB 23-246

Argued: January 18, 2024

Decided: May 2, 2024

Disposition: One-year suspension

Members	One-year suspension	Absent
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera		X
Rodriguez	X	
Total:	8	1

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