SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-271
District Docket No. XIV-2023-0297E

In the Matter of Mendel Zilberberg
An Attorney at Law

Argued
March 20, 2025

Decided
May 12, 2025

Ryan J. Moriarty appeared on behalf of the
Office of Attorney Ethics.

Kim D. Ringler 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 final discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's convictions, in the United States District Court for the Southern District of New York (the SDNY), for bank fraud, in violation of 18 U.S.C. §§ 1344, 3293, and 2; conspiracy to commit bank fraud, in violation of 18 U.S.C. §§ 1349 and 3293; making a false statement to a bank, in violation of 18 U.S.C. §§ 1014, 3293, and 2; conspiracy to make a false statement to a bank, in violation of 18 U.S.C. §§ 371 and 3293; and embezzlement and misapplication of bank funds, in violation of 18 U.S.C. §§ 656, 3293, and 2. The OAE asserted that these offenses constitute violations 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.

Ethics History

Respondent earned admission to the New Jersey bar in 1994, to the New York bar in 1995, and to the Florida bar in 1997. He has no prior discipline in New Jersey. During the relevant timeframe, he maintained a practice of law in Syosset, New York.

On December 18, 2024, the Supreme Court of New York, Appellate Division, Second Judicial Department, disbarred respondent for his criminal conviction underlying this matter, retroactive to July 11, 2023. In re Zilberberg, 223 N.Y.S.3d 297 (N.Y. App. Div. 2024).

Facts

In addition to maintaining a practice of law in New York, respondent served on the Board of Directors of Park Avenue Bank (PAB), in Manhattan, New York. Further, beginning in 2008, respondent served on the compliance committee of PAB's Board, which was tasked with regulating PAB's compliance with Regulation O.[1] The Federal Deposit Insurance Corporation (the FDIC) regulated PAB's activities as a bank.

[1] 12 C.F.R.§ 215, also known as Regulation O, governs loans to executive officers, directors, and principal shareholders of banks. Its purpose is to prevent bank insiders from leveraging their positions to procure loans with more preferential terms than are available to other bank customers.

The Criminal Trial Before the SDNY

On November 8, 2019, a SDNY grand jury issued a six-count indictment, charging respondent and his co-conspirator, Aron Fried, with (1) conspiracy to commit bank fraud; (2) committing bank fraud; (3) conspiracy to make false statements to a bank; (4) making false statements to a bank (two counts); and (5) embezzlement and misappropriation of bank funds.

Respondent's criminal trial spanned from July 5 to July 11, 2023, during which the government presented the testimony of eight witnesses.

Herschel Sauber, an orthotist and owner of a company that manufactured artificial limbs and orthotic devices, was the first witness to testify. Sauber was friends with Abraham Kahan, who also was in the medical supply business. Sauber became a straw borrower who ultimately applied for a $1.4 million line of credit from PAB for the benefit of respondent, Kahan, and Fried.

Sauber testified that, at times, Kahan would discuss his finances with Sauber. Sauber was aware that Kahan's business had run into financial difficulties and, in fact, Kahan asked him for a short-term personal loan. Over the years, Sauber lent Kahan approximately $70,000 in interest-free loans.

Despite the personal loans that Sauber advanced to Kahan, Kahan later asked Sauber for his assistance with obtaining a loan through a bank. Kahan told

Sauber that, because of tax issues, he could not obtain a bank loan and, therefore, would need Sauber's help. Kahan also told Sauber that he could not obtain a loan from the bank because he was a convicted felon.[2]

Sauber testified that he initially was uncomfortable with Kahan's request and tried to "brush him aside," maintaining that he has a hard time declining requests for help. Eventually, however, Sauber felt bad for Kahan and agreed to help. Kahan had told Sauber he needed a $700,000 loan; however, he later increased the amount to $1.4 million. Sauber testified that the loan proceeds were never intended to go to him; rather, the money was always intended to go to Kahan for him to invest in a business and to pay for a wedding.

As collateral for the loan, Kahan agreed to put Sauber's name on the deed to his home; however, Sauber never considered Kahan's home his own and never planned to keep the house. Rather, the plan was for him to transfer the deed back to Kahan after the loan was repaid.

All of Sauber's contacts with PAB were through Kahan, and Sauber signed the loan documents without having read them. For example, Sauber did not prepare the statement of personal net worth that listed Kahan's home as

[2] Previously, in 2004, Kahan pleaded guilty to healthcare fraud for engaging in a kickback scheme. For those crimes, he was sentenced to five years of probation, ordered to pay $130,000 in restitution, and assessed a $50,000 fine.

Sauber's personal asset, even though he considered it mere collateral for the loan. The document also misspelled Sauber's name.

On August 31, 2009, the same date Sauber applied for the $1.4 million loan, respondent sent an e-mail to Moshe Rosenwasser, PAB's senior vice-president in charge of commercial lending to businesses, indicating that he soon would be sending documents related to the Sauber loan, and requesting that Rosenwasser process the loan as soon as possible. The document respondent sent was the false statement of personal worth listing Kahan's home as Sauber's asset. In his reply e-mail, Rosenwasser asked respondent what to list as the purpose of the loan, to which respondent replied "to be able to take advantage of business opportunities?" In another August 31, 2009 e-mail to Rosenwasser, respondent wrote:

> you will have the docs emailed within the next half hour from Stacey of my office. The only thing missing is the appraisal, which you will have tomorrow a.m. Please process ASAP, and remember the other matters we discussed Friday as well. I remember the story of Cinderella, who had until 12:00 to do what had to be done, and afterward the pumpkin thing.
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> [Ex.E,p412-413.][3]

[3] "Ex." refers to the exhibits appended to the OAE's brief in support of its motion for final discipline.
"Rb" refers to respondent's February 13, 2025 written submission to us.

Rosenwasser replied, assuring respondent not to worry because "Charlie says he will not stop lending." Charlie Antonucci was PAB's chief executive officer. With respect to respondent's reference to Cinderella's carriage turning into a pumpkin and Charlie's desire to keep lending, Rosenwasser testified that "there was a rumor at that time that the government would require Park Avenue Bank to stop lending entirely, and I presume that was [respondent's] concern, that if we would not be able to lend, then we couldn't get any loans done."

On September 8, 2009, respondent informed Rosenwasser, via e-mail, that he should prioritize Sauber's loan above other PAB customer loans because it was "the important one."

Two days later, on September 10, 2009, respondent sent Rosenwasser another e-mail inquiring about the Sauber loan and asking "[a]re we on track. When will this fund." On the same date, Rosenwasser notified respondent, via e-mail, that he needed additional information regarding Sauber's income. On September 11, 2009, respondent's assistant provided documents demonstrating additional income and informed Rosenwasser that respondent "sends the following documents and asks if you would return reply with a funding date please."

On September 14, 2009, a PAB employee sent respondent an e-mail

indicating that the loan was out of Rosenwasser's hands and that respondent "can get it moved along etc." The next day, PAB approved Sauber's application for a $1.4 million loan.

Sauber and Kahan both attended the closing for the loan. Although Sauber was not given any closing documents, a PAB employee brought a checkbook out to him. Sauber was instructed to sign two blank checks and was told someone else would "finish everything up."

On September 18, 2009, PAB deposited $1.4 million in Sauber's bank account. That same date, $466,000 was transferred to one of Fried's bank accounts. Later the same day, Fried transferred the $466,000 to one of respondent's attorney bank accounts. Beginning September 25, 2009, Fried and Kahan transferred approximately $875,000 from Sauber's account to various accounts they controlled. Then, from December 2 through December 8, 2009, Fried transferred another $445,000 to one of respondent's law firm accounts. Of the $445,000 Fried transferred, $405,000 was intended for his purchase of Emanual Health Care (Emanual). Respondent transferred the remaining $40,000 to the account of another business that he owned.

In October 2010, the Sauber loan fell into default, representing a

$1,066,853 loss for the FDIC and Valley National Bank.[4]

On an unknown date, Sauber received a call from the bank inquiring as to when he would make the next payment on the loan. In response, Kahan told Sauber he would take care of everything. To do so, Kahan told Sauber he was going to drive to upstate New York to meet with either his accountant or attorney, and he asked Sauber if he could sign the deed over for the home so he could repay the loan. Sauber believed what Kahan had told him and signed over the deed. Later, individuals from the bank appeared at Sauber's home asking about when he would repay the loan. Ultimately, Sauber entered into an agreement with the bank, dated October 5, 2011, stating that he would pay an $800,000 settlement amount. As of the date of his testimony, in July 2023, he had not paid the settlement amount and had a judgment entered against him as a result of the defaulted loan.

Todd Goldman, a bank examiner with the FDIC, also testified at the trial. He conducted his first examination of PAB in 2005. Goldman stated that, when he examines banks, he employs the FDIC's "CAMELS" analysis. He explained that the "C" refers to "capital," and, when examining a bank, he "assess[ed] the

[4] After PAB collapsed, in 2010, Valley National Bank acquired its deposit accounts. See https://www.fdic.gov/resources/resolutions/bank-failures/failed-bank-list/parkavenue-ny.html (last visited April 28, 2025).

adequacy of the bank's capital, which is really the amount of money they have, the amount of assets they have to protect themselves from losses." The "A" refers to "asset quality," which he explained is an assessment of "how good" the assets are. The "M" stands for management, which means "the quality of bank management. That's extremely important, because that dictates how the – really how the bank is going to do." "E" represents the bank's earnings and expenses, and the "L" refers to a bank's liquidity and whether it can meet its day-to-day obligations. Finally, "S" represents the bank's sensitivity to market risk and is "all the bank's assets and their liabilities, [because] they have some sort of rate of interest associated with them, and we look at how the banks manage these interest rates."

Goldman explained that the FDIC is statutorily required to perform a CAMELS analysis on a bank at least every eighteen months. The FDIC's examination is not designed to detect bank fraud; rather, its purpose is to assess the condition of the bank, as well as compliance with banking rules and regulations. The review entails the bank providing a sampling of its loans, which enables FDIC examiners to ascertain how the bank underwrites loans.

Upon completion of the examination, the FDIC examiner presents detailed findings to the bank's management. Following that presentation, the FDIC

examiner meets with the bank's board of directors and presents a "high level" review of its findings. Whereas the FDIC covers "everything" with the bank's management, it "cover[s] a subset of that with the board at those meetings."

Because bank board members have fiduciary duties to the bank, they must ensure that they "keep the interests of the bank above – above anything else," including "their personal or their professional interests." Thus, Goldman testified, it was imperative for bank board members to disclose loans so that the FDIC could review compliance with the laws that pertain to insider loans, which he described as loans to "executives, directors, and what we call related interests of directors, which might be a business that they might own." Indeed, "insider loans" are governed by Regulation O.

In its evaluations of banks, the FDIC uses a scale of one to five to rate the condition of a bank, with one being the strongest condition, and five being the weakest. Goldman testified that, when he first examined PAB in 2005, the FDIC rated the bank a three, which is less than satisfactory. When he examined PAB three years later, the bank's condition had deteriorated and, thus, he rated PAB a four, which is deficient. Goldman testified that PAB's asset quality was unsatisfactory and that it lacked sufficient capital and liquidity.

Goldman testified that he met with PAB's Board on October 29, 2008 to

discuss the results of the examination. During the meeting, he advised PAB's Board that the FDIC had substantial concerns regarding PAB's ability to fund its daily operations. The FDIC conveyed its observation that the bank had deteriorated and that bank management, as well as PAB's Board, needed to improve its control over its risks, particularly with respect to asset quality.

Despite its 2008 meeting with PAB management and its Board, when Goldman conducted an evaluation less than one year later, the bank's condition had deteriorated even further, to "critically deficient." In fact, PAB's condition had deteriorated so much that, according to Goldman, if the bank did not act immediately, the FDIC expected it would cease operating as an institution. Thus, when Goldman presented his findings at PAB's December 16, 2009 Board of Directors meeting, the New York State Banking Department (NYSBD) also was present. Goldman testified that, occasionally, when a bank in New York has a state charter, the FDIC and NYSBD examined the banks together and produced a single report containing the findings.

Following its 2009 examination, the FDIC was extremely concerned that PAB's capital was dwindling, and Goldman explained the problem as "when [a bank] increase[s] and make[s] more loans, [it is] magnifying the problem because we know that the asset quality is bad, so they're making a number of

bad loans."

Goldman's last contact with PAB was in March 2010, when the NYSBD nullified its charter and the FDIC assisted with the "resolutions process," where the FDIC worked with PAB to maximize whatever it could from the failed bank.

Kahan also testified during the trial. Specifically, he testified that, due to his role in the Sauber bank fraud scheme, he was arrested in 2018, entered a guilty plea, and became a cooperating witness for the government. He faced up to 130 years in prison for his role in the bank fraud scheme. In exchange for his cooperation at respondent's trial, the government agreed to provide the sentencing judge with a "5K letter."[5]

Kahan explained that he knew Fried from prior business dealings and Fried reportedly wanted Kahan to find potential investors for Emanual. Therefore, Kahan brought his uncle to a meeting at respondent's law office as a potential investor. During the meeting, Fried told Kahan that he could help Kahan obtain a loan from PAB through respondent. Kahan suggested applying for the loan using Sauber, as a straw borrower, because Kahan's credit was poor, and respondent said that would be acceptable.

[5] The government may file a motion with the court stating that a defendant "has provided substantial assistance in the investigation or prosecution of another person who has committed an offense," which permits the sentencing court to depart from the guidelines after considering five criteria. See U.S. Sentencing Comm'n, Guidelines Manual, § 5K1.1 (2024).

Kahan explained that, as part of the bank fraud scheme, they agreed to use Sauber as a straw borrower to apply for a loan, the proceeds from which Kahan and Fried could use to purchase Emanual. The trio agreed that one-third of the loan proceeds would go to respondent, with the remaining two-thirds split between Kahan and Fried for their investment in Emanual. Prior to obtaining the loan, Kahan met with respondent, Fried, and another attorney to review his prior healthcare fraud conviction to ensure that, after investing in Emanual, he would be able to work for the company. Kahan testified that respondent advised him that his ownership interest in Emanual needed to be less than 10 percent so that it would not require approval by New York State.

Initially, Kahan was going to have Sauber apply for a $400,000 loan; however, the amount increased when Fried told him that respondent suggested adding Sauber's wife as a co-signer for the loan because PAB could then approve a $1.4 million loan. Kahan was told that a condition of the $1.4 million loan was that one-third would go to respondent, who needed the funds for a short-term investment in One World United, his nursing business. Kahan testified that Fried had told him that, once PAB approved the loan, he needed to ensure $466,000 went to respondent immediately; otherwise, the loan would be called off.

Kahan admitted that he had told Sauber what to inform the bank because "Fried told me that [respondent] told him that he's going to get a phone call from the bank to discuss the loan, and he should basically say that it's going to be a business investment loan" for himself, which Kahan knew was not true.

Additionally, Kahan explained that he had asked Sauber to sign the blank checks so that he was able to use the loan proceeds without asking Sauber for a signature each time he needed funds.

Kahan testified that, after the FDIC had opened its investigation into the propriety of Sauber's $1.4 million loan, he spoke with Fried about what he was going to say during his deposition. Kahan explained that he had planned to tell the FDIC that he gave the funds to respondent to pay bills, which he knew was untrue because he knew respondent had intended to use his portion of the proceeds for the benefit of One World United. Indeed, Kahan knew his testimony to the FDIC was untruthful because he, ultimately, omitted respondent's involvement in the loan. Kahan believed his false testimony would protect himself, and all other involved parties, from further investigation.

Mordechai Freund, who worked at respondent's law firm in 2009, also testified during the criminal trial. Freund testified that respondent delegated to him the task of attending the loan closing with Sauber.

On September 15, 2009, Freund sent an e-mail to Rosenwasser advising him that comments respondent had made on Sauber's loan documents were attached. Freund confirmed that the handwriting on the documents belonged to respondent.

Later, Freund sent an e-mail to respondent inquiring whether he had done a Heter Iska[6] with Fried, whether Fried had done a Heter Iska with Kahan, and whether Kahan had done a Heter Iska with Sauber. Respondent indicated that the Heter Iskas had not been completed, but that "Paul" could do them. The record before us does not disclose the identity of Paul. Nevertheless, Freund sent an e-mail to Paul asking him to prepare a Heter Iska indicating Sauber was the lender and Kahan was the borrower, and a second Heter Iska indicating Fried was the lender and One World United was the borrower. Freund clarified that the Heter Iskas were intended to permit Kahan to borrow funds from Sauber, for Fried to borrow funds from Kahan, and for respondent to borrow funds from Fried.

After the loan closing, Freund sent an e-mail to Kahan advising him that

[6] A Heter Iska is a "device developed in the 12th to 14th centuries to overcome the Biblical prohibition against charging interest by one Jew to another." See Leibovici v. Rawicki, 290 N.Y.S.2d 997 (Civil Ct, NY County 1968). See also Kirzner v. Plasticware, LLC, 47 Misc. 3d 1209 (2015) (noting that a Heter Iska is a document that complies with Hebraic law but does not create a partnership).

Sauber needed to sign a drawdown request for $466,000, and to then transfer the funds to Fried's account.

Rosenwasser also testified at the trial. He explained how PAB determined whether to issue a loan to an applicant. For example, Rosenwasser would ask borrowers questions and obtain documents that he believed would demonstrate they had the financial capacity to repay the loan. Rosenwasser explained that he needed to know the name of the borrower because "if the person gives me documents which reflect A as a borrower and really it's B who's the borrower, then that confuses me." Rosenwasser clarified that applicants seeking personal loans were required to complete an application; however, applications were not required for commercial loans because "the parameters are so broad. It's not like a mortgage that we're all used to . . . You can evaluate them in so many different ways that it's just not possible to have an application."

After a PAB loan officer obtained all the required information, they would prepare a "loan presentation." If the loan amount was $1.5 million or greater, the loan officer provided the loan presentation to PAB's credit committee for approval. However, if the loan was $1.4 million or less, the presentation was provided to the bank officer, and not the PAB credit committee, for approval.

Rosenwasser testified that he frequently interacted with respondent

because their offices at PAB were near one another. Respondent often walked into Rosenwasser's office to refer loans to him. When respondent referred loans to him, Rosenwasser testified that he would "pay them more immediate attention than somebody else. They would go a little higher on the list, and it's just a question of how quickly I would attend to it or how quickly I assign or ask one of the members of my team to deal with it."

After Rosenwasser reviewed the loan, he noted that he had "reviewed [it] without recommendation," which, according to Rosenwasser, meant that "the loan is doable, but I'm not recommending [that PAB do] the loan because the debt service coverage ratio was acceptable but not more than that, and I wasn't comfortable recommending it. But that doesn't mean that I wouldn't do it." To that end, he outlined – in an e-mail to respondent – the problems with Sauber's income to debt ratio and explained that Sauber lacked sufficient cash flow. He also sent Freund an e-mail telling him to instruct respondent to make a "discreet phone call" to the PAB officer who needed to sign off on the loan; however, Rosenwasser testified that he used the wrong word, and did not mean to do it secretly. In fact, Rosenwasser testified that respondent routinely sent him information that he assumed was accurate, and relied upon it because it was "important, significant, [and] central" to his assessment of Sauber's loan

application.

Gilah Jacobwitz, who was Fried's business partner, also testified at the trial. During her testimony, Jacobwitz initially invoked her Fifth Amendment right against self-incrimination; however, she ultimately testified in exchange for the government's offer of immunity.

Jacobwitz testified that she was an administrator at Emanual and that Fried was "in charge." She explained that Emanual employed home health aides who provide assistance to people in their own homes. She and Fried purchased Emanual for $400,000. Before purchasing Emanual, Jacobwitz and Fried unsuccessfully attempted to obtain the needed funds from family members and, thereafter, looked for alternative funding sources because they lacked credit to obtain a loan. Jacobwitz testified that they were able to procure the funds needed through a loan that respondent, Fried, and Kahan had obtained from PAB. She was told the loan was for $1.4 million and would be split among respondent, Fried, and Kahan. It is unclear from the record whether Jacobwitz knew Sauber was the individual who obtained the loan from PAB.

Fried repaid his $400,000 share of the loan. However, Jacobwitz testified that Fried told her that respondent and Kahan had not repaid their portions of the loan and that he was upset about it.

Jacobwitz explained that, on Emanual's ownership documents, she was listed as the owner because Fried was subject to a non-compete agreement with a former employer. Jacobwitz testified that she knew Kahan had been in trouble for committing Medicaid fraud and, further, that she did not want him to be a partner in Emanual because she did not trust or like him.

In his e-mails to PAB, respondent referenced both the Sauber and the Moses Trebitsh loans. Although respondent was not criminally charged for his involvement with Trebitsh procuring a loan through PAB, Trebitsh testified at the trial. He testified that Fried is his son-in-law and that Trebitsh had applied for a loan from PAB to help Fried purchase a business. Trebitsh testified that he took out the loan because he wanted to help Fried open a business, and he gave him the loan proceeds even though "it was supposed to go to me." Trebitsh confirmed that he had met with respondent in his office and the loan "went through him."

Juliana Lister, a forensic accountant at the Federal Bureau of Investigations, also testified at the trial. She explained that, based on her analysis of bank records associated with the Sauber loan, she determined a portion of Sauber's funds arrived in respondent's One World United account shortly after the bank disbursed them to Sauber. Specifically, Lister testified

that, on December 8, 2009, $405,000 was transferred to respondent's New York Interest on Lawyer Account before being transferred to his One World United account.

Respondent invoked his Fifth Amendment right during his criminal trial, electing to not testify.

On July 11, 2023, the jury found respondent guilty on all counts of the indictment.

The Sentencing Hearing

On March 19, 2024, the Honorable George B. Daniels, U.S.D.J., sentenced respondent to a thirty-month term of incarceration[7] and ordered joint and several restitution in the amount of $1,066,853. During the sentencing hearing, Judge Daniels found that respondent had abused his position of trust as a PAB Board member for his own benefit. Further, Judge Daniels found that respondent did not employ any legal expertise to engage in the fraud, but, rather, he leveraged his status as a PAB Board member to effectuate the fraud.

Respondent, for his part, requested that he be sentenced to probation, asserting that incarceration would substantially impact his health. He explained

[7] The government had recommended a forty-eight-month term of incarceration.

that he suffered from a degenerative back issue and was required to keep Oxycodone on his person at all times to take, as needed, for the pain. He argued that the Federal Bureau of Prisons was not equipped to manage his health issues because he would not be permitted to maintain the Oxycodone on his person in prison. He also contended that he had two children with emotional issues who relied on him and, thus, incarceration negatively would impact his children.

Additionally, during the sentencing hearing, respondent blamed Kahan and Fried, insisting that they had initiated the straw borrower scheme and used him to "shepherd the loan through." Respondent also asserted that Fried had been sentenced to only one year and one day in prison, despite being younger and not suffering from health issues, which he felt was unfair.

In his statement to the court, respondent referenced a letter he had written that set forth details of his life[8] and expressed that, in retrospect, he should have handled things differently.

In sentencing respondent to a thirty-month term of incarceration, Judge Daniels stated that he considered respondent's medical condition, as well as his family circumstances, but that he had "seen no genuine remorse or acceptance of responsibility . . . for the criminal conduct that [respondent] engaged in. He's

[8] The letter is not part of the record before us.

not acknowledged the corrupt nature of the scheme and his criminal conduct." He also found that respondent directly benefitted from $506,000 of Sauber's loan. Judge Daniels stated that it was:

> clear to [him] that not only based on his background but his training as a lawyer and his position as a director of this bank, that of all the people involved in this criminal conduct, this defendant knew better, and . . . the defendant has done absolutely nothing to indicate that he recognizes and demonstrates any, as I say, remorse or acknowledgement of his criminal conduct.
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> [Ex.H,p47.]

Respondent failed to report his criminal charges to the OAE, as R. 1:20-13(a)(1) requires. However, on July 25, 2023, he reported his criminal conviction to the OAE.

The Parties' Positions Before the Board

In support of its motion for final discipline, the OAE asserted that respondent's conviction for engaging in bank fraud, making false statements to a bank, and embezzling funds demonstrated a lack of moral integrity for which disbarment is required. The OAE relied on disciplinary precedent in which attorneys were disbarred or received lengthy suspensions for egregious fraud or

venal dishonesty, including making false statements in connection with the procurement of loans.

Furthermore, citing In re Goldberg, 142 N.J. 557, 567 (1995), the OAE emphasized that respondent completely abdicated "his duties as a director of [PAB] and his participation in a criminal conspiracy to fraudulently obtain a $1.4 million loan, from which respondent personally profited but also resulted in the bank's failure." The OAE asserted that respondent not only obtained a fraudulent loan but also made false statements to PAB to conceal both the true identity of the borrower and the purpose of the loan. Further, the OAE contended that respondent used a "series of money transfers, bank accounts, and businesses controlled by respondent and his [co-conspirator] Fried" to attempt to "conceal his money grab." During oral argument before us, the OAE emphasized that the Goldberg factors weighed strongly in favor of disbarment.

The OAE argued that, similar to the attorney in In re Klein, 231 N.J. 123 (2017), respondent used his position of trust to legitimize the fraud. The OAE asserted that respondent's lack of good character endangers the public, the public's confidence in the legal profession, and the integrity of the bar, thereby warranting his disbarment.

In mitigation, the OAE acknowledged respondent's unblemished

disciplinary history in three decades at the bar, as well as his medical issues. However, the OAE urged that the mitigating factors were insufficient to overcome respondent's self-serving criminal conduct. Further, the OAE disputed that the passage of time should serve as a mitigating factor, as respondent had maintained, because he should not benefit from the decade-long successful cover-up of his crime.

In aggravation, the OAE argued that respondent had abused his position as a member of PAB's Board of Directors to facilitate the fraud. See In re Asbell, 135 N.J. 446 (1994) (status as law enforcement officer can be considered an aggravating factor), and In re McLaughlin, 105 N.J. 457 (1987) (status as a judicial law clerk can be considered an aggravating factor). Furthermore, the OAE contended that respondent's conduct was "solely motivated by greed," and cited Judge Daniels' finding that respondent lacked sincere remorse for his crimes.

In his written submission to us, respondent, through counsel, argued that the "significant and numerous mitigating factors" weighed against his disbarment and instead, supported the imposition of a term of suspension, retroactive to November 8, 2019, when he voluntarily ceased the practice of law in New Jersey following his federal indictment. Respondent emphasized the

following mitigating factors:

> the passage of time since the misconduct; otherwise socially beneficial, charitable and productive conduct; cooperation with the [OAE] by self-reporting his convictions; the absence of any other misconduct before or since; the impact of disbarment on a lawyer of relatively advanced age; the reliance upon the testimony of an informant/cooperating witness, an adjudicated felon who admittedly lied to the federal authorities, and two additional witnesses who were given immunity and non-prosecution agreements, to establish the legal case against Mr. Zilberberg; the likelihood that no future misconduct will occur; the harsh punishment already meted out; his family's reliance upon him for emotional and other support; and his age and poor health.
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> [Rb,p2.]

Respondent contended that disciplinary precedent involving attorneys who have made false statements to federal agencies did not always result in disbarment. Specifically, he analogized his conduct to that of the attorney in In re Conroy, 260 N.J. 23 (2025), who received a three-year retroactive suspension for making false entries intended to deceive the FDIC.

Respondent also cited precedent involving attorneys who were not disbarred for crimes involving deception, improperly obtaining a benefit, and preparing false documentation. See e.g., In re Power, 114 N.J. 540 (1989) (three-year suspension for an attorney who pleaded guilty to disorderly persons

obstructing the administration of law; the attorney purposely advised a client not to disclose any information to law enforcement authorities concerning a stock fraud investigation, advocated for a cover-up, not for the client's protection, but because of his fear that he was also a target in the investigation; he aided his client in filing a false claim with an insurance company, despite harboring a reasonable suspicion that the claim was fraudulent, and forwarded false information to an insurance company regarding the inflated value of a dead racehorse, in spite of access to extrinsic evidence reflecting a substantially lesser value); In re Kushner, 101 N.J. 397 (1986) (three-year suspension, retroactive to the date of the attorney's temporary suspension for his guilty plea to false swearing, a fourth-degree crime; in connection with a civil action, the attorney made a false statement by denying that he personally had signed promissory notes totaling approximately $40,000 for a personal business venture); In re Labendz, 95 N.J. 273 (1984) (one-year suspension for an attorney who knowingly participated in an attempt to perpetrate a fraud by making misrepresentations on a mortgage application; mitigating factors included unblemished record, excellent reputation, lack of loss to any party, and the lack of substantial gain to the attorney).

Respondent emphasized his generosity throughout his life and his good

reputation. In support, he submitted fifty-five character letters that universally attested to his willingness to provide emotional and financial support to those in need. He also asserted, in mitigation, that his back issues and the pain he suffers while serving his prison sentence constitutes "substantial punishment."

Indeed, respondent submitted a November 1, 2023 letter from his treating physician, Stuart B. Kahn, MD, outlining his various health ailments. The letter also was submitted to Judge Daniels as a part of the sentencing hearing. Dr. Kahn indicated that respondent's back pain had been worsening for several years, despite pharmacological and physical therapy interventions. It affects his ability to get out of bed and walk. Dr. Kahn prescribed respondent muscle relaxers and opioids to address the pain and, as respondent's condition has worsened, Dr. Kahn has increased the dose of the medications accordingly. In addition to respondent's back pain, Dr. Kahn noted that respondent also had a "heart condition with a stent, he has prostate cancer, and has difficulty voiding."

Additionally, respondent maintained that, despite exercising his constitutional right to a trial on the charges against him, following the jury's verdict, he accepted responsibility for his actions. He highlighted that Kahan, Sauber, and Fried had "concocted a scheme" without respondent's involvement and that the funds he ultimately received were advance legal fees for work he

undertook for Fried. Nevertheless, respondent acknowledged that "the jury adopted the prosecution's position in returning its verdict notwithstanding the court's acknowledgement that Mr. Zilberberg did not originate the scheme or direct the other two and that his legal expertise was not required." As such, respondent argued that his "relatively circumscribed role weighs in favor of a less harsh sanction."

Finally, respondent asserted that, although the attorney disciplinary system lacks a statute of limitations, "and the OAE cannot be faulted for the passage of time between the conduct ending more than a decade ago and the conviction occurring in 2024," the public would not be served by disciplining him harshly. Indeed, respondent argued he "promptly reported his convictions" to the OAE, in July 2023. However, respondent claimed he was unaware he was required to report the 2019 charges against him because he "regrettably relied on his New York counsel and focused on the criminal case."

During oral argument before us, respondent, through counsel, urged that disciplinary precedent and the abundance of mitigating factors weighed in favor of a one-to-three-year retroactive suspension. Respondent emphasized that his misconduct involved only one improper loan transaction that occurred in 2009, and only came to light in 2018 when Kahan, who was facing an unrelated

interaction with law enforcement, pointed federal authorities to the Sauber loan transaction. Respondent lamented that he received thirty-months imprisonment for his role in the transaction, whereas the other co-conspirators received lesser sentences, and Sauber was not even charged.

Respondent asserted that the "sole" aggravating factor was his failure to report his criminal charges to the OAE but maintained that it was a mistake because he had relied on his New York counsel during a critical time for him due to his criminal matter. In mitigation, respondent emphasized that he and his family already had paid a tremendous cost due to his conviction, that aside from his conviction, he has an unblemished record, and the passage of time since engaging in the criminal conduct in 2009. He also contended his conduct was isolated.

In conclusion, respondent argued that, in the context of the totality of his life and against the backdrop of his otherwise good work, a sanction less than disbarment was appropriate. He asserted that the protection of the public and the integrity of the bar would not be compromised by a term of suspension. Further, he urged that the term of suspension be retroactive to 2019, when he voluntarily ceased practicing law, his sentencing date, or the date he reported his conviction to the OAE.

Analysis and Discipline

Violations of the Rules of Professional Conduct

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). See also In re Magid, 139 N.J. 449, 451 (1995); and In re Principato, 139 N.J. 456, 460 (1995).

Thus, respondent's convictions for bank fraud, in violation of 18 U.S.C. §§ 1344, 3293, and 2; conspiracy to commit bank fraud, in violation of 18 U.S.C. §§ 1349 and 3293; making a false statement to a bank, in violation of 18 U.S.C. §§ 1014, 3293, and 2; conspiracy to make a false statement to a bank, in violation of 18 U.S.C. §§ 371 and 3293; and embezzlement and misapplication of bank funds, in violation of 18 U.S.C. §§ 656, 3293, and 2, establish his violation of RPC 8.4(b). Pursuant to that Rule, 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." Moreover, respondent's criminal conduct, which constituted fraud, violated RPC 8.4(c). Hence, the sole issue left for our determination is the proper quantum of discipline for respondent's misconduct. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; and Principato, 139

N.J. at 460.

Quantum of Discipline

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. 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 . . . 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.

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse an ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 165, 173 (1997). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

The quantum of discipline for attorneys convicted of serious criminal offenses ranges from lengthy terms of suspension to disbarment. See In re Mueller, 218 N.J. 3 (2014) (three-year suspension for an attorney who pleaded guilty to conspiracy to commit wire fraud, in violation of 18 U.S.C. § 1349), and Goldberg, 142 N.J. 557 (disbarment for an attorney who pleaded guilty, in separate jurisdictions, to three counts of mail fraud, in violation of 18 U.S.C. §§ 1341 and 1343, and conspiracy to defraud the United States, in violation of 18 U.S.C. § 371).

In Goldberg, the Court made clear that certain criminal convictions will,

almost invariably, lead to disbarment. Specifically, the Court explained:

> Criminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to theft by deception and fraud, ordinarily result in disbarment. We have emphasized that when a criminal conspiracy evidences "continuing and prolonged rather than episodic, involvement in crime," is "motivated by personal greed," and involved the use of the lawyer's skills "to assist in the engineering of the criminal scheme," the offense merits disbarment. (citations omitted).
>
> [Goldberg, 142 N.J. at 567 (citations omitted) (emphasis added).]

However, also applying the Goldberg factors, terms of suspension have been imposed on attorneys who have committed less egregious crimes. Other important considerations include the amount of loss, if any, to the victims; the actions taken by the attorney to perpetuate the fraud; whether the attorney took responsibility for the crime; the attorney's cooperation with and assistance to the government's investigation and prosecution; and, where relevant and applicable, the sentence imposed.

For example, in another matter similar to the instant matter, yet featuring several distinguishing factors, an attorney helped his long-time friend obtain a loan from a bank that the friend had founded and for which the friend served as chairman of its board of directors. In re Demetrakis, 250 N.J. 514 (2022).

Demetrakis pleaded guilty to conspiring to make false entries to deceive the FDIC. In the Matter of James D. Demetrakis, DRB 20-316 (August 6, 2021) at 1, 3. As the founder of the bank, and member of its board of directors, Demetrakis' friend could not receive a loan from the bank. Id. at 4. To circumvent this prohibition, the co-conspirator recruited Demetrakis and Demetrakis' children to act as nominee borrowers to secure two loans. Id. at 4-5.

For the first loan, Demetrakis himself acted as a putative borrower, with the loan proceeds going to his friend. Ibid. For the second loan, procured less than a year later, Demetrakis had reached his lending limit at the bank, so he recruited two of his children to act as nominees; however, the proceeds went to Demetrakis and his friend for real estate development. Id. at 5. The loans were repaid in full, and the bank suffered no financial loss. Id. at 8. The Court imposed a one-year suspension.

In Conroy, 260 N.J. 23, the Court imposed a three-year term of suspension retroactive to her temporary suspension, following her guilty plea and convictions for making false entries to deceive the FDIC, and related charges. In the matter, the attorney served as outside counsel to a bank, and, in that role, she and several co-conspirators engaged in a complex scheme to deceive the

bank and government regulators regarding the bank's financial condition. Initially, Conroy was unaware of the co-conspirators' scheme; however, after she learned of the scheme, she did not alert government regulators. In the Matter of Donna Marie Conroy, DRB 24-124 (November 12, 2024) at 7. Conroy ultimately pleaded guilty to her criminal charges; cooperated with the government; and did not financially benefit from the scheme. Id. at 21. To the contrary, the scheme was intended to improve the bank's financial condition. Id. at 18-19.

The Court, however, has not hesitated to disbar attorneys who run afoul of the Goldberg factors. For example, in In re Klein, 231 N.J. 123 (2017), the attorney was disbarred for knowingly and intentionally participating in an "advanced fee scheme" that lasted approximately eight years and defrauded twenty-one victims of more than $819,000. He and his co-conspirator, a previously convicted felon, used bogus companies to dupe clients into paying thousands of dollars in "advanced fees" in exchange for a promise of collateral that could be used to borrow much larger sums of money from well-known financial institutions. In the Matter of Eric Alan Klein, DRB 17-039 (July 21, 2017) at 3-6. Instead of collateral, however, the clients received worthless documents called "Notices of Availability," which were not legitimate financial

instruments and were never accepted by banks as collateral for financing. Id. at 4. Klein and his co-conspirator accepted the advanced fees despite knowing that they would never provide the service promised to the clients. Ibid.

Klein continued the scheme, undeterred, even after federal law enforcement authorities arrested his co-conspirator. Id. at 11. His participation was motivated by personal greed. As he conceded during his federal criminal trial, he had twice filed for bankruptcy before meeting his co-conspirator, who then lined his pockets with approximately $2 million over eight years, representing roughly half of his law firm's revenue during the period of their joint criminal enterprise. Id. at 26.

Finally, Klein actively and knowingly engineered the fraud, leveraging his status as an attorney to provide "a veneer of respectability and legality" to the criminal scheme; drafting specious legal opinions that were included in false marketing materials; meeting with clients and identifying himself as a "legal advisor" and "escrow agent" to the bogus companies; and providing false assurances to clients that their advances fees would remain, inviolate, in his escrow account until their financing transactions closed. Id. at 26-27. For his crimes, Klein was sentenced to a fifty-one-month term of imprisonment, followed by three years of supervised release, and ordered to pay $819,779 in

restitution. Id. at 18.

In In re Marino, 217 N.J. 351 (2014), the attorney was disbarred for participating in a fraud scheme that resulted in a loss of over $309 million to 228 investors. He affirmatively assisted his brother and another co-conspirator in the fraud, which involved, among other things, the creation of a false financial history for a failing hedge fund to induce contributions from potential investors. In the Matter of Matthew A. Marino, DRB 13-135 (December 10, 2013) at 3-8. Marino's participation in the fraud included assisting in the concealment of the fraud perpetrated on investors by creating a fraudulent accounting firm that hid the fund's significant losses, obscuring the fund's true financial information, and drafting versions of a phony purchase and sale agreement of the non-existent accounting firm. Ibid.

The sentencing judge found that Marino was aware of the fraud as it was being perpetrated on the investors, that he helped conceal it rather than report it to the authorities, and that the losses could have been either avoided or significantly limited if he had reported the fraudulent activity to law enforcement. Id. at 12-13. The judge pointed out that Marino's actions "left individuals, some 'in the twilight of their life, suddenly destitute.'" Id. at 13. Marino was sentenced to a twenty-one-month term of imprisonment, followed

by one year of supervised release, and ordered to make restitution in the amount of $60 million, jointly and severally with the other defendants involved in the fraud. Id. at 13-14. That amount was the sum that investors had been induced to contribute to the failing hedge fund during the period that Marino admitted knowing about and concealing the fraud. Ibid.

In our view, respondent's misconduct is akin to that of the attorneys who were disbarred for their fraudulent conduct. Specifically, respondent, as a member of PAB's Board of Directors, lied to PAB about the borrower; lied about the loan's purpose; lied about Sauber's finances and assets; and intentionally omitted from PAB that he was personally benefitting from Sauber's loan. In fact, respondent sent numerous e-mails to PAB employees to try to quickly advance Sauber's loan. It is no wonder that respondent wanted to advance the loan quickly; by virtue of his position on PAB's Board of Directors, he was privy to information from the FDIC and the NYSBD that PAB was on the brink of collapse. Instead of acting as PAB's fiduciary, he acted in a manner that compromised the continued operation of the bank.

Respondent's e-mails referred to the loan as Sauber's loan, even though he demanded to receive one-third of the loan for his participation in the scheme and, thus, knew Sauber was not receiving any money from the loan, despite

Sauber's purported role as borrower. Therefore, respondent's argument that he did not initiate the scheme rings hollow. Once he learned of the scheme, he seized upon the opportunity to exploit his position for his own personal gain, to the detriment of PAB and Sauber, thus, distinguishing his conduct from other attorneys, including in Conroy, who received terms of suspension.

Further, respondent sent e-mails trying to shepherd the loan through the process quickly knowing, due to the information he was privy to by virtue of his role on PAB's Board of Directors, that PAB's financial condition continued to deteriorate and was near collapse. He urged Rosenwasser to move the loan forward expeditiously because respondent remembered Cinderella and her carriage turning into a pumpkin when the clock struck midnight. Then, once Sauber finally received the funds, he ensured the money was funneled through multiple accounts in an attempt to legitimize the transfers.

The Heter Iskas respondent insisted on executing before the money changed hands demonstrate that he always intended for himself to be the recipient of the loan from PAB, in contravention of Regulation O. This conduct is particularly reprehensible because not only was he a member of PAB's Board of Directors, but he also served on its compliance committee, and thus, was acutely aware of his obligation to report the loan to avoid the appearance of

insider loans. Motivated by greed, respondent placed his own financial interests above the bank. Worse still, after scheming with Fried and Kahan to fraudulently obtain the loan for his own business purposes, respondent failed to repay the loan, resulting in Sauber, thirteen years later, continuing to address the fallout of the defaulted loan. Thus, respondent's victims – PAB and Sauber – suffered serious financial harm as a result of his selfish criminal conduct. In this respect, respondent's conduct is clearly distinguishable from that of the suspended attorney in Demetrakis.

Indeed, in his submission to us, respondent continued to deflect any responsibility for his actions, instead attempting to blame Sauber and his co-conspirators for participating in concocting the illegal scheme. He also chastises both Sauber and Kahan for cooperating with the government and testifying against him at his criminal trial.

Notably, too, in determining the appropriate quantum of discipline, we may consider the totality of respondent's admitted criminal conduct. See In re Gallo, 178 N.J. 115, 119-20 (2003) (in motions for final discipline, the Court "cannot ignore relevant information that places an attorney's conduct in its true light;" moreover, "[a]s there are no restrictions on the scope of disciplinary review in a case of an attorney who was not charged with a crime or who was

acquitted of a crime, there is no commonsense or policy justification for imposing such restrictions when an attorney has pled guilty to a crime;" the Court emphasized that its "disciplinary oversight responsibility cannot be curtailed by artificial impediments to the ascertainment of truth"). Respondent was convicted of bank fraud, false statements, and embezzlement in connection with Sauber's loan from PAB. However, he also played a role in Trebitsh obtaining a fraudulent loan from PAB for Fried's benefit, an important aggravating factor for our consideration.

Thus, in our view, when weighing respondent's criminal conduct against the Goldberg factors, disbarment is the only appropriate outcome. Undoubtedly, respondent participated in the straw borrower scheme for his own greedy purposes, and exploited his role on PAB's Board to ensure Sauber obtained the loan, but not the proceeds. Rather, respondent orchestrated a series of money transfers in short succession, using three separate Heter Iskas to legitimize the transfers, to ensure he received more than $500,000 for his participation in the scheme. At no time did respondent, despite his role on the PAB's compliance committee, disclose that he was receiving one-third of Sauber's loan to use for his own business purposes. Additionally, respondent's criminal conduct had serious implications for Sauber, who did not even benefit from the loan he took

out – indeed, respondent's failure to repay the loan jeopardized Sauber's finances and his own home.

Conclusion

Although respondent's dozens of character letters establish the various ways he has been an asset to his community, they are insufficient to overcome his egregious criminal conduct. His criminal conviction is based on his exploitation of a financial institution in distress. His scheme to embezzle funds from PAB, instead of acting as PAB's fiduciary, and his use of his attorney bank accounts to effectuate the embezzlement, in conjunction with his inability to accept remorse for his actions, demonstrate 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.

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. Mary Catherine Cuff, P.J.A.D. (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 Mendel Zilberberg
Docket No. DRB 24-271

Argued: March 20, 2025

Decided: May 12, 2025

Disposition: Disbar

Members	Disbar
Cuff	X
Boyer	X
Campelo	X
Hoberman	X
Menaker	X
Modu	X
Petrou	X
Rodriguez	X
Spencer	X
Total:	9

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