

In re David William Belconis
Respondent-Appellee

Commission No. 2019PR00058

Synopsis of Review Board Report and Recommendation
(May 2023)

The Administrator brought a one-count complaint against Respondent, charging him with committing criminal acts that reflect adversely on his honesty, trustworthiness, and fitness as an attorney, and with engaging in dishonesty, fraud, deceit, and misrepresentations, in violation of Rules 8.4(a)(3) and 8.4(a)(4) of the 1990 Illinois Rules of Professional Conduct. The disciplinary complaint alleged Respondent engaged in the charged misconduct by participating in a scheme to defraud lenders, which resulted in Respondent's being convicted of mail fraud, wire fraud, and making false statements to financial institutions concerning real estate transactions.

The Hearing Board found that Respondent had committed the charged misconduct and recommended that Respondent be suspended for three years, retroactive to the date of his interim suspension in September 2019.

The Administrator appealed, challenging the Hearing Board's sanction recommendation and asking the Review Board to recommend a three-year suspension until further order of the Court, which would not be retroactive.

The Review Board agreed with the Hearing Board's recommendation that Respondent be suspended for three years, retroactive to the date of his interim suspension in September 2019.

**BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

DAVID WILLIAM BELCONIS,

Respondent-Appellee,

No. 6193077.

Commission No. 2019PR00058

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a one-count complaint against Respondent, charging him with misconduct arising from his participation in a scheme to defraud lenders that resulted in Respondent's being convicted of mail fraud, wire fraud, and making false statements to financial institutions concerning real estate transactions. The disciplinary complaint in this matter charged Respondent with committing criminal acts that reflect adversely on his honesty, trustworthiness, and fitness as an attorney, and with engaging in dishonesty, fraud, deceit, and misrepresentations, in violation of Rules 8.4(a)(3) and 8.4(a)(4) of the 1990 Illinois Rules of Professional Conduct.¹ The complaint was filed pursuant to Supreme Court Rule 761, which governs disciplinary hearings arising from an attorney's conviction.

Following a hearing at which Respondent was represented by counsel, the Hearing Board found that Respondent committed the charged misconduct and recommended that Respondent be suspended for three years, retroactive to the date of his interim suspension on September 17, 2019.

FILED

May 02, 2023

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The Administrator appealed, challenging the Hearing Board's recommendation, and asking this Board to recommend a three-year suspension until further order of the Court ("UFO"), which would not be retroactive. The only issue on appeal is the sanction.

For the reasons that follow, we agree with the Hearing Board's recommendation that Respondent be suspended for three years, retroactive to the date of his interim suspension on September 17, 2019.

BACKGROUND

The facts are fully set out in the Hearing Board's report. Because the only issue on appeal is the appropriate sanction, the facts are summarized only briefly here.

Respondent

Respondent was licensed to practice law in Illinois in 1986. He initially worked at a law firm doing real estate closings, and then became a partner at another law firm, where he also practiced real estate law. In 1993, Respondent opened his own law practice, as a sole practitioner, focusing on real estate law. He also owned a title insurance company. At the time of the disciplinary hearing in this matter, Respondent was 63 years old. In September 2019, Respondent was suspended on an interim basis following his conviction. Respondent has no prior discipline.

The Criminal Case

In 2015, a federal grand jury in Chicago returned an indictment alleging that Respondent participated in a scheme to defraud lenders in connection with a condominium development project, and charging him with mail fraud, wire fraud, and making false representations to lenders concerning real estate transactions. *See United States v. Belconis*, 15 CR 399. Five co-defendants were also charged in the indictment. Two of the defendants pled guilty and the other defendants were convicted at trial.

After a three-week trial involving Respondent and three co-defendants, the jury convicted Respondent of one count of mail fraud, one count of wire fraud, and three counts of making false statements to financial institutions concerning real estate transactions.

After the trial, Respondent filed motions asking for a judgment of acquittal or a new trial and challenging the sufficiency of the evidence. The federal judge, who presided over the trial, issued a written opinion denying Respondent's motions and rejecting his argument that there was insufficient evidence to convict. The Seventh Circuit Court of Appeals affirmed the conviction.

Respondent was sentenced to a two-year term of supervised release that included a six-month period of home confinement, following one day in prison that was considered served. He was also ordered to pay restitution to two lenders totaling \$190,485 and a \$10,000 fine.

At the disciplinary hearing in this matter, the documentary evidence concerning Respondent's criminal conviction was the following: the criminal indictment; the order by the trial judge denying Respondent's motions for acquittal or a new trial; the transcript of the sentencing in the criminal case; and the order by the Seventh Circuit Court of Appeals affirming Respondent's conviction. (See Adm. Exs. 1, 3; Resp. Exs. 1, 2.)

Respondent's Misconduct

Respondent's misconduct occurred during 2007 and 2008 in connection with a condominium project run by two of his co-defendants, Vincent Manglardi and Theodore Wojtas ("the developers"), who were in the process of converting 700 apartments into condominiums. They had obtained large loans for the project but were unable to sell condo units quickly enough to service the debt. The developers therefore devised the charged fraud scheme, in which condo buyers fraudulently obtained mortgages based on false information and used those mortgages to

purchase condos from the developers. The developers were the architects and the main beneficiaries of the fraud.

The developers falsely represented to potential buyers that there was a large investment fund that wanted to assemble interests in the condo units and would help the condo buyers by providing money for the down payments, paying the property costs, and later repurchasing the condos at a higher price. In order to obtain mortgages, the buyers had to pretend to buy a unit and falsely represent to lenders that they had made a substantial down payment, planned to live in the unit, and would pay the mortgage. The condo buyers paid the fraudulently obtained mortgage funds to the developers.

The developers' representations were false. The large investment fund did not exist. Instead, the developers provided the down payments, or refunded the buyers' down payments, and provided other financial benefits to buyers, using proceeds from mortgage loans that the buyers obtained. The loan applications submitted by the condo buyers included a variety of material misrepresentations and omissions, including the source of funds for the down payments. The closing documents did not disclose that the developers were paying the down payments, and included false statements concerning the source of funds for the down payments. When the condo buyers failed to repay the mortgages, the lenders suffered substantial losses because the mortgages were higher than the value of the condos, which constituted the collateral.

Respondent represented condo buyers at 94 closings. His title company also handled 19 additional closings, and most of those closings involved buyers who were closely affiliated with co-defendant Vince Manglardi (one of the developers), including Manglardi's wife, his daughter, his girlfriend's daughter, and an employee. Respondent was paid attorney's fees and title company fees, respectively, for those closings.

The jury found Respondent guilty of mail fraud and wire fraud (Counts 10 and 13). Count 1 of the indictment, which was incorporated into Counts 10 and 13, alleged that Respondent participated in a scheme to defraud lenders and colluded with others to misrepresent and conceal material facts from lenders in order to fraudulently induce the lenders to approve non-conforming loans to condo buyers, and that Respondent and his co-schemers caused lenders to unwittingly fund risky, speculative deals to unqualified buyers, supported by inadequate collateral, which resulted in substantial losses to the lenders. (Resp. Ex. 1 at 5-6, 22.)

Counts 10 and 13 alleged that, in furtherance of the scheme, Respondent caused false information to be submitted to lenders in connection with two closings – one for co-defendant Karin Ganser (Manglardi’s girlfriend, who helped market the condos and purchased 12 condos), and one for an individual named Tae Lee. The jury also found Respondent guilty of three counts of making false statements to lenders concerning the down payments by Ganser and Lee for those two closings.

At sentencing, the trial judge described Respondent’s conduct as follows:

[T]he trial evidence was sufficient to find beyond a reasonable doubt that Mr. Belconis knowingly participated in the scheme to defraud, and there was credible evidence, from my perspective, that he knew Mr. Manglardi was defrauding lenders and others, that the so-called Vince [Manglardi] deals were fraudulent, and that Mr. Belconis was aligned with Mr. Manglardi in a way that demonstrated jointly-conducted activity and for which Mr. Manglardi’s conduct, at least with respect to the transactions with the Gansers, the Manglardi family, and the Nielses, [which involved multiple closings,] were reasonably foreseeable to Mr. Belconis.

He was a trusted attorney for Mr. Manglardi. He was involved in transactions that were important to Mr. Manglardi personally and performed necessary and significant tasks in accomplishing the fraud.

(Resp. Ex. 2 at 7, 10.)

The Seventh Circuit affirmed Respondent's conviction and rejected his argument that there was insufficient evidence to convict.

HEARING BOARD'S FINDINGS AND RECOMMENDATION

Misconduct Findings

The Hearing Board found that the Administrator proved all of the charges by clear and convincing evidence based on proof concerning Respondent's conviction. The Hearing Board noted Rule 761 provides that in disciplinary proceedings proof of a conviction is conclusive evidence of the attorney's guilt of the charged crime. The Hearing Board found that Respondent violated Rule 8.4(a)(3) by engaging in a scheme to defraud lenders, and that Respondent's criminal actions clearly reflected adversely on his honesty, trustworthiness, and fitness to practice law.

The Hearing Board also found that Respondent violated Rule 8.4(a)(4), which prohibits attorneys from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. The Hearing Board found that proof of Respondent's federal crimes established that Respondent had engaged in dishonest conduct.

Mitigation and Aggravation Findings

The Hearing Board found that there was substantial mitigation, including that Respondent cooperated in the disciplinary proceedings; he had been steadily employed; he worked with several charities, including Lamb's Farm and Feed My Starving Children; and he has no prior discipline. The Hearing Board also found that he did not orchestrate the fraud scheme. The Hearing Board pointed out that according to the trial judge, Respondent did not reap unusual profits; his misconduct did not involve the same kind of moral failure as that of the project developers; and he has conducted himself responsibly since his indictment. Additionally, Respondent presented four witnesses, who testified concerning Respondent's honesty and integrity.

The Hearing Board also found it mitigating that Respondent made a series of payments towards his restitution obligation. The Hearing Board noted that after Respondent was placed on interim suspension, he declared bankruptcy, sold his home, and used the proceeds from that sale, totaling \$40,418, as payment towards his restitution. Additionally, Respondent paid \$400 a month towards his restitution, and had not missed any payments. At the time of the disciplinary proceeding, he had paid \$52,000 of the \$200,000 he owed for restitution and the fine. The Hearing Board concluded that in light of Respondent's commitment to paying restitution, the outstanding amount owed is not a sufficient reason to recommend a harsher sanction.

In terms of aggravation, the Hearing Board stated, "According to the conviction, his conduct resulted in actual financial losses to lenders and violated Respondent's duties of honesty and candor." (Hearing Bd. Report at 9.) The Hearing Board rejected the Administrator's argument that Respondent's testimony denying any misconduct was an aggravating factor.

Recommendation

The Hearing Board recommended that Respondent be suspended for three years, retroactive to his interim suspension on September 17, 2019.

SANCTION RECOMMENDATION

The only issue on appeal is the appropriate sanction for Respondent's misconduct. The Administrator argues that the sanction recommended by the Hearing Board is inadequate given the serious nature of Respondent's misconduct and asks this Board to recommend a three-year suspension until further order of the Court, which would not be retroactive.

Respondent argues that the Hearing Board's recommendation is appropriate and asks this Panel to make the same recommendation.

We review the Hearing Board's sanction recommendations *de novo*. See *In re Storment*, 2018PR00032 (Review Bd., Jan. 23, 2020) at 15, *petition for leave to file exceptions denied*, M.R. 030336 (June 8, 2020). In making our recommendation, we consider the nature of the proved misconduct, and any aggravating and mitigating circumstances shown by the evidence, *In re Gorecki*, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003), while keeping in mind that the purpose of discipline is not to punish but rather to protect the public, maintain the integrity of the legal profession, and protect the administration of justice from reproach. *In re Timpone*, 157 Ill. 2d 178, 197, 623 N.E.2d 300 (1993). We also consider the deterrent value of attorney discipline and whether the sanction will help preserve public confidence in the legal profession. *Gorecki*, 208 Ill. 2d at 361. We seek to recommend a sanction that is consistent with sanctions imposed in similar cases, *Timpone*, 157 Ill. 2d at 197, while considering the unique facts of each case. *In re Witt*, 145 Ill. 2d 380, 398, 583 N.E.2d 526 (1991). Although our review is *de novo*, the Hearing Board's findings regarding candor, intent, understanding of the misconduct, and other fact-finding judgments are ordinarily entitled to considerable weight because the Hearing Board is able to observe the witnesses' demeanor and judge their credibility. *In re Timpone*, 157 Ill. 2d at 196; *In re Martinez-Fraticelli*, 221 Ill. 2d 255, 280, 850 N.E.2d 155 (2006).

The Administrator argues that the Hearing Board failed to give sufficient weight to the serious nature of Respondent's misconduct. The Administrator also argues that a more serious sanction is warranted because Respondent failed to accept responsibility or express remorse.

Respondent, in turn, argues that the Hearing Board's recommendation is appropriate based on the extensive and compelling mitigation in this case.

We believe that a retroactive three-year suspension is an appropriate sanction in this case because it properly balances the serious nature of Respondent's misconduct with the

significant mitigating factors in this case, and it meets the goals of attorney discipline, as discussed below.

The Recommended Sanction Gives Appropriate Weight to Respondent's Misconduct

The Administrator argues that the severity of Respondent's misconduct warrants a three-year suspension until further order of the Court, which would not be retroactive, and that the Hearing Board failed to give sufficient weight to Respondent's misconduct. We disagree.

The Hearing Board found that Respondent's criminal conviction provided conclusive proof that he engaged in criminal acts that reflected adversely on his honesty, trustworthiness, and fitness as a lawyer and that his conviction also proved he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. (Hearing Bd. Report at 5-6.) The Hearing Board also found that "Respondent's conviction for his involvement in a fraudulent real estate scheme is undoubtedly serious. According to the conviction, his conduct resulted in actual financial losses to lenders and violated Respondent's duties of honesty and candor." (*Id.* at 9.) Thus, we believe that the Hearing Board recognized and properly weighed the serious nature of Respondent's misconduct.

In making our own recommendation, we have given careful consideration to the criminal conduct for which Respondent was convicted, as set forth in the indictment and found by the jury, and as described by the trial judge and the Seventh Circuit. We recognize that the jury convicted Respondent of knowingly participating in a scheme to defraud lenders and intentionally causing lenders to issue loans based on false representations, which loans were risky and under collateralized, and resulted in substantial losses to the lenders.

We also recognize that the trial judge denied Respondent's motion for acquittal, stating that there was sufficient evidence for the jury to convict and "to believe that Belconis

knowingly and intentionally set up a system of closings wherein Manglardi pushed through deals that Belconis knew were part of Manglardi's scheme." (Adm. Ex. 1 at 8.) At sentencing, the trial judge stated, "my own assessment of the evidence, as I said in the post-trial motions, is that the evidence was sufficient, and ... [Belconis was] appropriately found guilty. [Belconis] made a choice with eyes wide open to get into business with Mr. Manglardi, knowing that false statements were used to close those deals." (Resp. Ex. 2 at 38-39.) Moreover, the trial judge ordered Respondent to pay \$190,000 in restitution, based on the losses to two lenders that Respondent directly caused during the fraud scheme, as charged in Counts 10 and 13 of the indictment.

Finally, we recognize that the Seventh Circuit affirmed Respondent's conviction, stating that it agreed with the trial judge's analysis of the evidence. The Seventh Circuit concluded that "the evidence is sufficient to permit reasonable jurors to find that Belconis recognized the fraudulent nature of the transactions in which he participated." (Adm. Ex. 2 at 7.)

It is clear from Respondent's conviction, and the findings made by the trial judge and the Seventh Circuit, that Respondent's misconduct was very serious. In making our recommendation, we have given substantial weight to the serious nature of the misconduct.

The Recommended Sanction Appropriately Balances the Misconduct and the Mitigation

Although we recognize the serious nature of Respondent's misconduct, we are convinced that a retroactive three-year suspension is the appropriate sanction, given the mitigating evidence in this case. We believe that the recommended sanction properly balances the serious nature of the misconduct with the mitigating factors, which include the following:

- Respondent had a 30-year legal career, which included successfully practicing law for more than 20 years before he engaged in the misconduct in 2007 and 2008. Prior to that, he had never been disciplined.

- Respondent cooperated with the disciplinary proceedings.
- The Hearing Board concluded that Respondent does not pose a risk to the public or the legal profession. The trial judge also concluded that Respondent does not present a risk to the public, stating, “It seems very unlikely to me that [Belconis] will commit any more crimes in the future.” (Resp. Ex. 2 at 41.)

- After Respondent’s misconduct ended, he practiced law for ten years without any disciplinary problems, before being suspended on an interim basis following his conviction. During that ten-year period, Respondent demonstrated that he has the ability to practice law in a professional and ethical manner.

- In addressing Respondent at sentencing, the trial judge stated “[T]he heart of the conduct at issue here was over a decade ago [which] can mean that the person standing before me is not the same person who committed the crime And since the indictment, you have conducted yourself responsibly and appropriately, and that is a good sign.” (Resp. Ex. 2 at 40-41.)

- Respondent worked with various charities, including Lamb’s Farm, and Feed My Starving Children. Respondent was also active in professional organizations, which included serving on the Board of a community bank for five years and maintaining membership in the American Bar Association.

- During his interim suspension, Respondent sought and obtained employment, unrelated to the practice of law. He initially worked in a warehouse packaging orders and organizing inventory for an import/export company owned by a friend; he then took a job climbing roofs and assessing damages for insurance purposes; and finally, he worked for a chemical company, owned by a friend, handling orders and financial matters.

- Respondent testified that, if permitted to practice law, he plans to practice bankruptcy law in the future, which interests him because he went through bankruptcy and has an understanding of what clients would be facing. By practicing bankruptcy law, instead of real estate law, Respondent would remove himself from the environment that fostered his earlier misconduct.
- Respondent presented impressive testimony from four witnesses, who testified about their high regard for Respondent and his good character. The witnesses, who have known Respondent for many years, included two attorneys, his current employer, and a close friend of 30 years. They all testified that they believe Respondent is honest and ethical, and the attorneys testified that Respondent has an excellent reputation for honesty and integrity.

We give these mitigating factors substantial weight. Although the mitigation does not negate or excuse Respondent's misconduct, the mitigating evidence is a strong indicator that Respondent will not repeat his misconduct, harm his clients or the public, or engage in other misconduct in the future. Accordingly, we believe that the mitigation in this case outweighs the need to impose a more serious sanction.

Respondent's Denial of Guilt Does Not Warrant a More Serious Sanction in This Case

The Administrator argues that Respondent failed to accept responsibility by testifying that he did not engage in any misconduct, which should result in a more serious sanction. For the reasons set forth below, we disagree that a more serious sanction is warranted here.

An attorney is not required to admit guilt in order to be allowed to practice law. *See In re Wigoda*, 77 Ill. 2d 154, 159-16, 395 N.E.2d 571 (1979) (“The continued assertion of innocence in the face of prior conviction does not, as might be argued, constitute conclusive proof of lack of the necessary moral character to merit reinstatement.”) Simple fairness and fundamental justice demand that the person who believes he is innocent though convicted should

not be required to confess guilt to a criminal act he honestly believes he did not commit.”) (*quoting In re Hiss*, 368 Mass. 447, 457-59, 333 N.E.2d 429 (1975)).

We believe that Respondent’s assertion of innocence in this case does not indicate that he lacks the necessary moral character to practice law. We find it particularly significant that Respondent practiced law for more than ten years without incident after the misconduct ended, thereby demonstrating his ability to fulfill his professional obligations and to act in accordance with ethical standards. Respondent had the unique opportunity to prove himself over a lengthy period of time, after his misconduct ended, and he did so successfully. We give that substantial weight.

Furthermore, Respondent maintained steady employment during his interim suspension, which included working for Gregg Mason, who has known Respondent for more than 20 years. Mason testified that Respondent worked hard; showed up on time; followed orders; and was totally trustworthy. Mason also testified that he was satisfied with Respondent’s work; he has complete faith in Respondent; he trusted Respondent to handle financial transactions; and he believes Respondent would be trustworthy if allowed to practice law again. Additionally, three other witnesses testified that Respondent was honest and ethical. The testimony of those witnesses also provides evidence that Respondent has the necessary moral character to practice law responsibly.

The Administrator argues that a more serious sanction is appropriate when an attorney’s failure to accept responsibility shows that the attorney does not grasp the nature and seriousness of the misconduct, and the attorney is likely to engage in similar misconduct in the future. *See In re Capozzoli*, 2000PR00037 (Review Bd., Aug. 9, 2002) at 11, *petitions for leave to file exceptions allowed*, M.R. 18371 (Jan. 2, 2003) (“An attorney's failure to recognize that he or

she engaged in misconduct, or to show remorse for the harm caused thereby, is aggravating, as it casts doubt on the attorney's understanding of his or her professional obligations and future ability to act in accordance with ethical standards.”). Although we agree with that legal premise, we believe it is inapplicable here.

In this case, Respondent certainly understands the ramifications and gravity of engaging in fraudulent conduct, and the need to comply with ethical standards and professional obligations. Given his experience in the criminal proceeding, together with this disciplinary proceeding, Respondent is well aware of the potential risks of engaging in misconduct in the future. Additionally, as discussed above, the mitigating evidence demonstrates that Respondent has the ability to act in accordance with ethical standards.

Accordingly, we find that Respondent's denial of guilt does not warrant a more severe sanction given the unique facts of this case. Respondent has demonstrated that he can be trusted to practice law ethically, and the mitigating evidence indicates that he is not likely to engage in misconduct in the future.

Respondent's Testimony Challenging His Guilt Does Not Constitute Mitigating Evidence Here

The Administrator argues that Respondent's testimony asserting his innocence and aimed at impeaching his conviction should not be considered as mitigation in determining the appropriate sanction. The Administrator asserts Respondent's testimony violates Rule 761, which provides that, in a disciplinary hearing, a criminal conviction is conclusive of the attorney's guilt of the crime for which he was convicted.

The Administrator's argument is reasonable, and we agree that evidence challenging the facts underlying Respondent's conviction should not be considered as mitigation here. *See In re Palivos*, 2005PR00109 (Hearing Bd., Jan. 31, 2006) at 13, *approved and confirmed*,

M.R. 26127 (Sept. 25, 2013) (“We recognize Respondent is permitted to testify and present other evidence regarding the overall circumstances of his conduct for the purpose of mitigation. However, he is not allowed to impeach or challenge the factual allegations of the charge for which he was convicted Accordingly, we did not consider in mitigation Respondent's denials of his conduct which served as the basis for his conviction.”).

In this instance, we have based our recommendation on the conduct for which Respondent was convicted, balanced with the mitigating factors, as described above. We have not considered as mitigation Respondent’s assertions of innocence or any testimony that challenged the factual allegations for which he was convicted. Respondent’s testimony concerning his innocence does not impact on our analysis or our recommendation.

In his appellate brief, Respondent summarized his position, stating he “maintain[s] his innocence of conduct for which he has been convicted,” and “he did not have knowledge of the fraud.” (Resp. Brief at 15, 17.) That defense was presented at the disciplinary through portions of Respondent’s testimony and goes directly to the issue of guilt. Respondent’s defense was rejected by the trial judge and the Seventh Circuit, and the disciplinary hearing is not the place to re-litigate the issue of guilt.

Respondent’s testimony, however, was not limited solely to the issue of guilt. Respondent also provided testimony concerning a variety of other matters, including his background, his family, his employment after his interim suspension, his charitable work, his bankruptcy, and his restitution payments. Although we did not consider Respondent’s assertions of innocence, we did consider his testimony concerning matters unrelated to the issue of guilt.

Imposing a Suspension Until Further Order of the Court Would Serve No Useful Purpose

The Administrator argues that Respondent should be suspended for three years until further order of the Court. We reject that argument and adopt the Hearing Board's reasoning concerning the imposition of a UFO sanction. The Hearing Board stated:

[T]he Administrator asserts that Respondent should be suspended until further order of the Court. We disagree. 'In cases in which disbarment is not warranted, a fixed term of suspension should be imposed, unless there are specific, articulable reasons for imposing an indeterminate term, or UFO.' *In re Baril*, 00 SH 14, M.R. 18162 (Sept. 19, 2002) (Review Bd. at 10). Such reasons include failing to participate in the disciplinary proceedings, the presence of mental health or substance abuse issues that require ongoing treatment in order for a lawyer to be fit to practice, multiple prior disciplinary actions, the need to make restitution, or, on rare occasion, when disbarment is warranted but significant mitigating factors are present. *Baril*, 00 SH 14, Review Bd. at 11-12.

The Administrator has not pointed to, and we do not find, an articulable factor that would support a UFO recommendation in this case.

Further, we do not consider the severity of the misconduct, by itself, to be a sufficient basis for a UFO recommendation.

It is unclear to us what purpose a suspension UFO would serve in this case Consequently, we view a UFO provision as punitive and unnecessary and decline to recommend it.

(Hearing Bd. Report at 10-11.) We agree. We do not see any useful purpose that would be served by imposing a UFO sanction.

The Administrator has not argued that disbarment is warranted, and a UFO is a drastic sanction, second only to disbarment. We also note that a UFO sanction would require a reinstatement proceeding to determine Respondent's fitness to practice. In our view, however, Respondent has already established that he is fit to practice law.

Imposing a Retroactive Suspension Satisfies the Goals of Attorney Discipline

We believe that imposing a retroactive suspension in this case satisfies the purposes of the disciplinary process, without requiring a longer suspension. In *In re Scott*, the Illinois Supreme Court explained the reasoning for imposing a retroactive suspension in that case as follows:

The purpose of disciplinary proceedings is to safeguard the public and maintain the integrity of the legal profession The mitigating evidence clearly demonstrates that the purpose of the disciplinary process in this case is fulfilled without a suspension longer than that already served. At the present time the respondent has been suspended from practice because of this conviction for nearly two years. This period of suspension falls within the range of the sanctions usually imposed for similar offenses.

98 Ill. 2d 9, 18-19, 455 N.E.2d 81 (1983) (the Court imposed a retroactive two-year suspension after the attorney was convicted of filing a false tax return). *See also In re Palivos*, 2005PR00109 (Hearing Bd., April 29, 2013) at 14, *approved and confirmed*, M.R. 26127 (Sept. 25, 2013) (“Where attorneys have been suspended on an interim basis due to a criminal conviction, it is not uncommon for the Court to specify that the final order of discipline be given retroactive effect to the date of the interim suspension.”).

Although the facts of the *Scott* case are not the same as the facts in this case, the Court’s reasoning applies here. Respondent has already been suspended for more than three years, and a longer suspension is not necessary to satisfy the disciplinary goals of protecting the public and maintaining the integrity of the legal profession. The mitigating evidence here indicates Respondent does not present a risk to the public, and we believe that Respondent’s having served a three-year (interim) suspension is sufficient to help deter other attorneys, preserve public confidence, and uphold the integrity of the bar.

The Recommended Sanction Falls Within the Range of Sanctions Imposed in Similar Cases

We believe that a retroactive three-year suspension is consistent with sanctions imposed in comparable cases.

The Administrator asserts that a harsher sanction is warranted based on two cases in which the attorneys were disbarred for engaging in fraud schemes. We believe, however, that this case is distinguishable from those cases. *See In re Porter*, 2016PR00130 (Hearing Bd., Jan. 18, 2019) at 28, (Review Bd., Dec. 31, 2019), *petition for leave to file exceptions allowed and disbarment imposed*, M.R. 30289 (Sept. 21, 2020) (the attorney and his co-schemers attempted to defraud investors as part of a fraudulent \$37 million investment scheme; they lied to investors and secretly intended to keep \$4 million of the investors' funds and 50% of the investment property; Porter stood to personally derive very large financial gains from the fraud scheme; the *Porter* Hearing Board stated, "the public needs to be protected from an attorney who preys on unsuspecting and trusting investors and is willing to misrepresent any fact to enrich himself"); *In re Helton*, 2012PR00010, *disbarment on consent allowed*, M.R. 26884 (Sept. 12, 2014) (the attorney was convicted of wire fraud for engaging in a scheme to defraud lenders, which included obtaining loans by submitting false information to lenders, lying to clients so that they would (unknowingly) participate in the fraud, and making down payments on behalf of purchasers without disclosing that information to the lenders; Helton was also convicted of bankruptcy fraud for filing bankruptcy petitions containing false information; Helton was sentenced to 180 months' imprisonment and was ordered to pay restitution of \$3.2 million based on the loss he caused).

In *Porter* and *Helton*, disbarment was imposed in order to protect the public and prevent the attorneys from engaging in future misconduct. In this case, however, as discussed above, the mitigating evidence indicates that Respondent does not present a danger to the public

and is not likely to engage in misconduct in the future. Therefore, those cases are distinguishable and do not support a sanction that is more severe than the recommended sanction.

The Administrator also cites three cases in support of the argument that a harsher sanction is warranted, in which the attorneys were suspended for several years for participating in fraud schemes. We believe that those cases actually provide support for the sanction recommended here. *See In re Sherre*, 68 Ill. 2d 56, 368 N.E.2d 912 (1977); *In re Nowak*, 62 Ill. 2d 279, 342 N.E.2d 25 (1976); *In re Khan*, 2012PR00131, *discipline on consent allowed*, M.R. 25990 (June 12, 2013). *See also In re Grossgold*, 58 Ill. 2d 9, 317 N.E.2d 45 (1974).

In *Sherre*, the attorney was suspended for three years, following his interim suspension of 17 months. Sherre and three co-defendants were convicted of mail fraud. They had prepared false financial documents overstating the assets of their insurance company and had provided those documents to regulatory agencies and insurance brokers in order to obtain business. The victims who relied on the false information could have suffered substantial losses. The Court rejected Sherre's claims that he had simply handled the legal work and he was unaware of any misrepresentations. Sherre was given a six-month suspended sentence and three years' probation in the criminal case. There was substantial mitigation, including that Sherre had practiced law for 40 years without discipline; he had served in the armed forces; he was not the principal wrongdoer in the scheme; and Sherre's sole benefit from the project was compensation for his legal services.

In *Nowak*, the attorney was suspended for three years, with one year being retroactive to the end of his parole. Nowak represented a savings and loan association that financed a real estate development. Nowak prepared financial documents for the association to file with regulators, which documents contained false information relating to the financing of the real estate development. Nowak also caused an appraiser to prepare an inflated appraisal, and a mortgage

broker gave Nowak \$72,000 in connection with the real estate development. Nowak was convicted of fraud and was sentenced to three years imprisonment. He spent one year in jail and two years on parole. He had voluntarily abstained from practicing law for several years before that.

In *Khan*, the attorney was suspended for three years. Khan pled guilty to wire fraud based on her participation in a mortgage fraud scheme, and she was sentenced to two years supervised release in the criminal case. Khan coached a client to backdate a power of attorney and to lie to the lender about property improvements, and she took steps to conceal the fraudulent nature of the transaction. A lender issued a loan of \$148,000 as a result of the fraud. In mitigation, Khan accepted responsibility and expressed remorse; she represented indigent clients; she volunteered in the community and worked with a local food program to help feed needy refugees; she conducted numerous free educational seminars for immigrants; she provided extensive *pro bono* legal services; she was raising her five young children; she cooperated and had no prior discipline; and she received only \$4,750 from the scheme.

In *Grossgold*, the attorney was convicted of mail fraud and was suspended for three years. Grossgold devised and carried out a fraudulent insurance scheme with his brother-in-law, in which they created and submitted false and inflated bills to insurance companies. Grossgold actively recruited others to participate in the fraud scheme. The only mitigating evidence presented was Grossgold's 30-year career without discipline.

We agree with the Administrator that *Sherre*, *Nowak*, and *Khan*, are similar to this case, although they are not identical. We believe that *Grossgold* is also similar. The misconduct in those cases, as here, involved schemes to defraud lenders and others through the submission of false information. Respondent has already been suspended for more than three years, which is

consistent with the sanctions imposed in those cases. We believe that being unable to practice law for three years properly holds Respondent accountable for his misconduct.

There are also other similar cases that we believe support a retroactive three-year suspension. *See In re Cetwinski*, 143 Ill. 2d 396, 574 N.E.2d 645 (1991); *In re Tucker*, 1997PR00119 (Review Bd., Feb. 24, 2000), *approved and confirmed*, M.R. 16747 (June 30, 2000); *In re Vercillo*, 1993PR00461 (Hearing Bd., June 3, 1994), (Review Bd., Dec. 30, 1994), *petition for leave to file exceptions allowed, and Hearing Board recommendation approved and confirmed*, M.R. 11014 (May 26, 1995).

In *Cetwinski*, the attorney was suspended for three years, with two years being retroactive to the date of his interim suspension. Cetwinski was convicted of conspiring to pay a kickback to a public official, and falsely claiming the unlawful payment as a business deduction on his income tax return. Cetwinski was sentenced to five years' probation in the criminal case, which was subsequently reduced to seven months' probation. Cetwinski's misconduct included paying kickbacks to two public officials; lying to federal investigators on two occasions; fraudulently submitting inflated billing statements to a client; and issuing a false press release denying any wrongdoing. Cetwinski provided substantial mitigating evidence, which included accepting responsibility and expressing remorse; cooperating with federal authorities and testifying at the trial of a public official; providing *pro bono* services to senior citizens; conducting seminars for senior groups; and having a reputation for honesty and integrity. As here, the trial judge concluded that Cetwinski was unlikely to engage in additional criminal conduct in the future.

In *Tucker*, the attorney was suspended for two years, with the two years being retroactive to the date of his interim suspension. Tucker was convicted in state and federal court for two separate crimes. In state court, Tucker was convicted of obstruction of justice for creating

a written statement by a defendant, which he knew was false, and subsequently falsely representing to a judge that the defendant's statement did not exist. In federal court, Tucker was convicted of failing to file tax returns for ten calendar years, which resulted in a tax loss of at least \$225,000. At the time of the disciplinary hearing, Tucker still owed approximately \$300,000 in back taxes, interest, and penalties, which he had not yet paid. Tucker offered substantial mitigating evidence, including *pro bono* work, community service, coaching children's sports, and positive character evidence from ten individuals, including attorneys and judges. The Review Board in *Tucker* concluded that a two-year suspension was appropriate and that the suspension should be retroactive to the date of his interim suspension since he had already been suspended for more than two years.

In *Vercillo*, the attorney was suspended for two years, with 1½ years being retroactive to the date of his interim suspension. Vercillo was the president of Cosmopolitan bank, and he was convicted for causing a false entry in a bank report. He was sentenced in the criminal case to three years' probation. Vercillo signed a \$1.9 million Standby-Letter-of-Guarantee on behalf of the bank's holding company, without having authority to do so, thereby creating a substantial liability for the bank. He failed to disclose the Guarantee in a financial report filed with the Federal Reserve System. In mitigation, Vercillo had a 30-year career without discipline, he provided *pro bono* services, he presented character witnesses, and he did not receive any financial benefit.

In *Cetwinski*, *Tucker*, and *Vercillo*, as here, the attorneys were convicted for engaging in fraudulent schemes that constituted serious misconduct and, as here, they each presented substantial mitigating evidence. Those cases resulted in retroactive suspensions, in full or in part, dating back to their interim suspensions.

Having considered the cases discussed above, as well as other cases cited by the parties and the Hearing Board, we believe that a retroactive three-year suspension falls within the range of sanctions imposed in similar cases.

CONCLUSION

Accordingly, we recommend that Respondent be suspended for three years, retroactive to the date of his interim suspension on September 17, 2019. We believe that the recommended sanction serves the goals of attorney discipline by acting as a deterrent to other attorneys and helping to preserve public confidence in the legal profession. See *Gorecki*, 208 Ill. 2d at 360-61. We find that the recommended sanction is commensurate with Respondent's misconduct and consistent with discipline that has been imposed for comparable misconduct, without being so harsh that it constitutes punishment. For the foregoing reasons, we agree with the Hearing Board's recommendation that Respondent be retroactively suspended for three years.

Respectfully submitted,

R. Michael Henderson
Bradley N. Pollock
Esther J. Seitz

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on May 2, 2023.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

¹ The conduct that was the subject of the indictment occurred during 2007 and 2008. Therefore, the 1990 Rules of Professional Conduct apply.

**BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

DAVID WILLIAM BELCONIS,

Respondent-Appellee,

No. 6193077.

Commission No. 2019PR00058

**PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD**

I, Andrea L. Watson, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by email and regular mail, by depositing it with proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601 on May 2, 2023, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellant by e-mail service.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Andrea L. Watson

By: Andrea L. Watson
Senior Deputy Clerk

FILED

May 02, 2023