In re Jessica Arong O'Brien
Respondent-Appellant

Commission No. 2018PR00111

Synopsis of Review Board Report and Recommendation
(June 2022)

The Administrator brought a one-count complaint against Respondent, charging her with misconduct arising out of her participation in a scheme to defraud various lenders by means of false representations, which resulted in Respondent's being convicted of mail fraud and bank fraud. The disciplinary complaint in this matter charged Respondent with committing criminal acts that reflect adversely on her honesty, trustworthiness, and fitness as an attorney, and with engaging in dishonesty, fraud, deceit, and misrepresentations, in violation of Rules 8.4(b) and 8.4(c) of the Illinois Rules of Professional Conduct.

The Hearing Board found that Respondent had committed the charged misconduct and recommended that Respondent be disbarred from the practice of law.

Respondent appealed, challenging the Hearing Board's recommendation of disbarment, and asking the Review Board to recommend a three-year suspension, retroactive to the date of her interim suspension in 2018. As part of her challenge to the sanction recommendation, Respondent also challenged two evidentiary rulings.

The Review Board affirmed the Hearing Board's findings and evidentiary rulings, and recommended that Respondent be disbarred.

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

In the Matter of:

JESSICA ARONG O'BRIEN,

Respondent-Appellant,

No. 625568.

Commission No. 2018PR00111

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a one-count complaint against Respondent, charging her with misconduct arising out of her participation in a scheme to defraud various lenders by means of false representations, which resulted in Respondent's being convicted of mail fraud and bank fraud. The disciplinary complaint in this matter charged Respondent with committing criminal acts that reflect adversely on her honesty, trustworthiness, and fitness as an attorney, and with engaging in dishonesty, fraud, deceit, and misrepresentations, in violation of Rules 8.4(b) and 8.4(c) of the Illinois Rules of Professional Conduct. The complaint was filed pursuant to Supreme Court Rule 761, which governs disciplinary hearings arising from an attorney's conviction.

Before the Hearing Board on March 3, 2021, fifteen exhibits were admitted into evidence by the Administrator and one by Respondent (R. 34);[1] Respondent, acting *pro se,* also called four character witnesses. On June 17, 2021, the Hearing Board issued its Report and Recommendation and found that Respondent had committed the misconduct with which she was charged and recommended that Respondent be disbarred from the practice of law. (C. 507-518.)

Respondent filed exceptions. On appeal, and at the March 11, 2022 Review Board oral argument, Respondent, again acting *pro se,* challenged the Hearing Board's recommendation of disbarment, and asked this Board to recommend a three-year suspension, retroactive to the date of her interim suspension in 2018. As part of her challenge to the sanction recommendation, she also challenged two evidentiary rulings.

For the reasons that follow, we affirm the Hearing Board's findings and evidentiary rulings and agree with its recommendation that Respondent be disbarred.

BACKGROUND

The facts are fully set out in the Hearing Board's report and are summarized only to the extent necessary here. The Hearing Board's report provides a detailed description of the federal case against Respondent, including the indictment, the conviction by a jury, opinions written by the federal judge, the sentencing, and the appellate history.

Respondent

Respondent was admitted to practice in Illinois in 1998, after graduating from law school and obtaining an LLM in taxation. She worked for a law firm for two years, and then joined the Illinois Department of Revenue, where she worked for twelve years practicing tax law. She also served as a member of the Hearing Board for the Illinois Attorney Registration and Disciplinary Commission ("ARDC"), and on the Illinois Supreme Court's Character and Fitness Committee for several years. She served as a judge for the Cook County Circuit Court from 2012 through 2018. She has no prior discipline.

Respondent's Misconduct

In 2017, a federal grand jury in Chicago, Illinois, returned an indictment charging Respondent with mail fraud and bank fraud. The indictment alleged that, between 2004 and 2007,

Respondent engaged in a scheme to defraud various lenders by means of materially false and fraudulent pretenses, representations, and promises, and by concealing material facts, thereby fraudulently causing lenders to issue loans totaling approximately $1.4 million. The indictment also alleged that, in order to obtain funds from lenders, Respondent made false representations to lenders concerning her income and liabilities; her employment; her company's annual revenue and profit; the sales price of her two investment properties; and the actual purchaser of the properties. The indictment also charged a co-defendant with mail fraud and bank fraud.

After a five-day trial, the jury convicted Respondent of having intentionally committed the criminal conduct charged in the indictment. Respondent's co-defendant pled guilty before Respondent's trial.

The federal judge who presided over the trial and heard the evidence, Judge Thomas M. Durkin, issued written opinions denying various motions filed by Respondent, including her motions for acquittal and a new trial, and rejected her argument that there was insufficient evidence to convict. Judge Durkin stated that the evidence showed Respondent had intentionally engaged in a scheme to defraud lenders by repeatedly making misrepresentations to the lenders in multiple loan documents in order to fraudulently obtain money, and that Respondent had personally profited from the fraud scheme by more than $200,000. Judge Durkin stated: "This was a crime. I heard the evidence …. I have no doubt that [the defendant was] guilty of these crimes …. and had I tried this as a bench trial, I would have found the defendant guilty just as the jury did." (Adm. Ex. 5 at 84, 86-87.)

During the sentencing hearing, Respondent admitted that she was not innocent and that she had included fraudulent information in the loan applications. (*Id.* at 56, 70.) Respondent

was sentenced to one year and one day in prison, and ordered to pay $660,000 in restitution, jointly with her co-defendant, based on the actual loss to the victim lenders.

Respondent appealed her conviction to the Seventh Circuit Court of Appeals, which affirmed the conviction. Respondent then filed a Petition for Rehearing with the Seventh Circuit Court of Appeals, alleging egregious prosecutorial misconduct, which was summarily denied. Respondent also filed a Petition for a Writ of C*ertiorari* with the United States Supreme Court, and that petition was denied. *See United States v. O'Brien*, 953 F.3d 449 (7th Cir. 2020), *petition for rehearing denied*, 2020 U.S. App. Lexis 27906 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1128 (2021).

HEARING BOARD'S RULINGS, FINDINGS, AND RECOMMENDATION

Ruling on the Administrator's Motion to Preclude Evidence

In Respondent's answer to the complaint in this matter, she admitted that she had been convicted of mail fraud and bank fraud, but repeatedly asserted that her conviction had been "obtained through fraud on the court and egregious prosecutorial misconduct," which included suborning perjury, concealing evidence, and misrepresenting facts to the court. (Answer to the Complaint at 1-7.) Based on Respondent's answer to the complaint, the Administrator filed a motion requesting that Respondent be precluded from introducing evidence at the disciplinary hearing challenging and attacking her bank fraud and mail fraud convictions. The hearing panel chair granted the Administrator's motion and entered an order stating that Respondent would be "prohibited from attempting to introduce evidence that is contrary to the facts establishing her guilt in the underlying Federal criminal prosecution." (Order dated Oct. 14, 2020.)

Misconduct Findings

The Hearing Board found that the Administrator proved all of the charges by clear and convincing evidence, noting that 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(b) by engaging in a scheme to defraud, which involved moral turpitude, and that Respondent's criminal actions clearly reflected adversely on her honesty, trustworthiness, and fitness to practice law, (citing *In re Vavrik*, 117 Ill. 2d 408, 412-13, 512 N.E.2d 1226 (1987)) ("This court has consistently stated that conviction of a crime involving moral turpitude is conclusive evidence of an attorney's guilt and a ground for disbarment … and that moral turpitude is shown when, as here, the crime involves fraud or fraudulent conduct." (Citations omitted)). The Hearing Board also found that Respondent violated Rule 8.4(c) by engaging in dishonest conduct, in that Respondent intentionally and repeatedly made misrepresentations to lenders in order to obtain money, in a deliberate and planned scheme from which Respondent profited.

Mitigation and Aggravation Findings

In mitigation, the Hearing Board found that Respondent was active in her community; mentored young people and took on leadership roles; participated in bar associations and other organizations; wrote and lectured on various issues; did volunteer work in the community and for several churches and organizations; and advocated for inmates while she was incarcerated. The Hearing Board noted that Respondent received more than twenty awards or other types of recognition from various organizations for her accomplishments. The Hearing Board also noted that Respondent has been making small monthly payments towards restitution. Moreover,

four witnesses testified to Respondent's good character and public service, and Respondent has no prior discipline.

In aggravation, the Hearing Board found that Respondent had engaged in a pattern of misconduct over the course of several years for her own personal gain. Additionally, Respondent did not acknowledge that she intentionally engaged in any wrongdoing and did not express any credible remorse for her actions. Moreover, her conduct reflected badly on the legal profession, as well as the judiciary. Furthermore, Respondent failed to cooperate fully with the ARDC in connection with the disciplinary proceedings, in that she did not participate in two pre-hearing conferences, and she failed to disclose her potential witnesses on a timely basis.

Sanction Recommendation

The Hearing Board concluded that the seriousness of Respondent's misconduct and the aggravating factors warranted disbarment.

ANALYSIS

Respondent was convicted of mail fraud and bank fraud, as described in detail in the Hearing Board Report. Pursuant to Supreme Court Rule 761(f), criminal convictions constitute conclusive proof of the attorney's guilt of the crime of conviction, for purposes of a disciplinary proceeding. Therefore, the facts concerning Respondent's misconduct are not at issue on appeal. The only issue Respondent raised in her exceptions to the Hearing Board's report was that the sanction was unduly harsh. However, in connection with her sanction argument, she also challenges two evidentiary rulings concerning the exclusion and admission of evidence, which we address before turning to the sanction.

Hearing Board decisions on evidentiary issues are reviewed for abuse of discretion. *In re Blank*, 145 Ill. 2d 534, 553-54, 585 N.E.2d 105 (1991). An abuse of discretion occurs where

no reasonable person would agree with the position adopted by the Hearing Board. *In re Chiang,* 07 CH 67 (Review Bd., Jan. 30, 2009), at 10, *petition for leave to file exceptions denied,* M.R. 23022 (May 18, 2009). Moreover, a hearing is not affected by an erroneous ruling unless there is a showing of prejudice. *See In re Damisch*, 38 Ill. 2d 195, 203-04, 230 N.E.2d 254 (1967) ("[I]n the absence of a showing that prejudice resulted from the rulings on evidentiary questions, such rulings will not affect the validity of a disciplinary hearing."). Applying this deferential standard of review, we find that the hearing panel chair did not abuse her discretion in making the contested evidentiary rulings.

I. The Hearing Panel Chair Did Not Abuse Her Discretion In Barring Respondent From Introducing Evidence Contrary To Facts Of The Conviction.

Before the disciplinary hearing, the hearing panel chair issued an order stating, "Respondent is prohibited from attempting to introduce evidence that is contrary to the facts establishing her guilt in the underlying Federal criminal prosecution." (Order dated Oct. 14, 2020.) On appeal, Respondent argues that the hearing panel chair abused her discretion in excluding that evidence, and that Respondent should have been allowed to present additional evidence at the disciplinary hearing concerning the facts and circumstances surrounding her conviction.

At the Review Board oral argument, Respondent admitted that she failed to make an offer of proof, either formal or informal, to the Hearing Board concerning the evidence that she wanted to offer. As a result, Respondent denied the Hearing Board the opportunity to rule specifically on the proposed evidence, point-by-point. Accordingly, Respondent has forfeited this issue on appeal. Nevertheless, as set forth below, the Review Board reviewed the merits of her argument.

Supreme Court Rule 761(f) states that proof of an attorney's conviction on a criminal charge "is conclusive of the attorney's guilt of the crime." Consequently, the disciplinary

system will not attempt to go behind the conviction or re-analyze the evidence presented in the criminal case, and a respondent cannot re-try the issue of guilt at a disciplinary hearing. *See In re Scott*, 98 Ill. 2d 9, 17, 455 N.E.2d 81(1983); *In re Gold,* 77 Ill. 2d 224, 226, 396 N.E.2d 25 (1979).

Respondent argued at the disciplinary hearing, and now argues on appeal, that she should have been permitted to offer evidence showing that her conviction was the result of prosecutorial misconduct, and that she is innocent of the criminal charges. In other words, she contends that she should have been allowed to relitigate the issue of guilt during the disciplinary hearing. Respondent, however, is wrong because an attorney may not relitigate the issue of guilt in a disciplinary hearing. *See In re Ciardelli*, 118 Ill. 2d 233, 239, 514 N.E.2d 1006 (1987) ("This court has held in many cases that the conviction of a crime involving moral turpitude is conclusive evidence of the respondent's guilt and that grounds for the imposition of discipline exist. These cases also hold that this court will not go behind the record of conviction." (citations omitted)); *In re Williams*, 111 Ill. 2d 105, 113, 488 N.E.2d 1017 (1986) ("For the purposes of disciplinary proceedings, his conviction [of an offense involving moral turpitude] is conclusive evidence of his guilt and grounds for the imposition of discipline.").

In her answer to the disciplinary complaint, Respondent claimed that her conviction resulted from fraud on the court and egregious prosecutorial misconduct, which included suborning perjury, concealing evidence, and making misrepresentations to the court. Based on those statements, the Administrator filed a motion to bar Respondent from offering evidence at the disciplinary hearing attacking the validity of her conviction.

The hearing panel chair properly granted the Administrator's motion to preclude such evidence because Respondent was attempting to collaterally attack her conviction, which is not permitted under Rule 761(f). The hearing panel chair's ruling is supported by the record and

consistent with relevant law, and therefore is not an abuse of discretion. *See In re Minneman*, 98 SH 38 (Review Bd., Nov. 29, 2000), at 6, *petition for leave to file exceptions denied,* M.R. 17352 (March 22, 2001) (ruling that it was not an abuse of discretion to bar evidence which would collaterally attack a conviction, given that Rule 761(f) prohibits an attorney from attempting to establish that he was wrongfully convicted*; see also Williams*, 111 Ill. 2d at 112-15 (evidence contradicting the conviction was inadmissible because it "was contrary to the factual findings which the jury had to necessarily make in the criminal trial to reach the verdict which it reached."); *In re Scott*, 98 Ill. 2d 9, 17-18, 455 N.E.2d 81 (1983) (the Court rejected Respondent's attempt to go behind the conviction, and refused to analyze the evidence in the criminal case).

Respondent further argues that the order issued by the hearing panel chair prohibited Respondent from offering mitigating evidence, including evidence of her conduct after 2007. That argument misstates the substance of the order. The only evidence that was prohibited was evidence "contrary to the facts establishing her guilt." (Order dated Oct. 14, 2020.) That order did not prohibit mitigating evidence. In fact, Respondent offered mitigating evidence, including evidence of her conduct after 2007, by calling four character witnesses, as well as personally testifying about her activities and achievements, and offering exhibits relating to her community service and the awards she received.

In short, the hearing panel chair was well within her discretion to bar Respondent from presenting evidence that was contrary to the facts establishing her guilt, and we affirm her ruling.

II. The Hearing Panel Chair Did Not Abuse Her Discretion By Admitting Into Evidence Respondent's Email To The Illinois Supreme Court.

Respondent argues that the hearing panel chair abused her discretion by admitting an email written by Respondent to the Illinois Supreme Court in which Respondent stated that, if

her post-trial motions were denied, she would voluntarily ask that her name be removed from the rolls of Illinois attorneys. (*See* Adm. Ex. 4 at 1-2.) Respondent argues that she was unfairly prejudiced by the admission of that email. We conclude that the hearing panel chair did not abuse her discretion, and Respondent suffered no prejudice from the email's admission.

Respondent waived this argument by agreeing to the admission of the email. *See In re Cordova*, 96 CH 571 (Review Bd., Aug. 30, 1999) at 17-18, *motion to approve and confirm denied and sanction increased*, M.R. 16199 (Nov. 22, 1999) ("As to the financial records, we note that Respondent failed to object to their admission at hearing; therefore, he has waived any objection on review."); *In re Menegas*, 03 CH 106 (Review Bd., July 13, 2006) at 10, *petitions for leave to file exceptions allowed and attorney disbarred*, M.R. 21124 (Nov. 17, 2006) ("Respondent failed to object to any of the exhibits offered by the Administrator …; therefore, this issue should be deemed waived on review."). Specifically, Respondent stated that she had no objection to the admission of the Administrator's exhibits, including this email, after which the hearing panel chair admitted the Administrator's exhibits. (*See* R. 35.) Thus, the hearing panel chair did not abuse her discretion in admitting the email when Respondent explicitly told the hearing panel chair that she had no objection to its admission.

Even if Respondent had not waived this argument (which we find she did), Respondent suffered no prejudice from the admission of the email. Although the Hearing Board Report did not specifically address this issue, it is clear that the Hearing Board did not rely on the email. The Hearing Board Report does not mention the email, and the hearing panel chair repeatedly stated that she was giving no weight to the email. (*See* R. 40-44.)

Consequently, we find no error in the hearing panel chair's admission of the email. Furthermore, we state unequivocally that this Board, which makes its own sanction recommendation, is not relying on the email for any purpose.

SANCTION RECOMMENDATION

The Hearing Board recommended that Respondent be disbarred. Respondent argues that the Hearing Board erred in recommending disbarment, and requests that this Board recommend a three-year suspension, retroactive to the date of her interim suspension in 2018. The Administrator, in turn, argues that the Hearing Board's recommendation is appropriate based on the sanctions imposed in similar cases, and urges us to recommend disbarment.

We review the Hearing Board's sanction recommendations *de novo* and have done so in this matter. *See In re Storment*, 2018PR00032 (Review Bd., January 23, 2020) at 15, *petition for leave to file exceptions denied,* M.R. 30336 (May 18, 2020). In making our own 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 the attorney 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 "the need to impress upon others the significant repercussions of errors such as those committed by" Respondent. *In re Discipio*, 163 Ill. 2d 515, 528, 645 N.E.2d 906 (1994) (citing *In re Imming*, 131 Ill. 2d 239, 261, 545 N.E.2d 715 (1989)). Finally, we seek to recommend a sanction that is consistent with sanctions imposed in similar cases, *Timpone*, 157 Ill. 2d at 197, while also considering the unique

circumstances of each case. *In re Witt*, 145 Ill. 2d 380, 398, 583 N.E.2d 526 (1991). Based upon the nature and extent of Respondent's wrongdoing, as well as the substantial aggravating factors, we believe that disbarment is warranted.

Respondent's misconduct was extremely serious. From 2004 to 2007, Respondent intentionally engaged in criminal activity involving a pattern of dishonest and deceitful conduct, for personal gain, which resulted in Respondent's obtaining $1.4 million from victim lenders. As evidenced by her criminal conviction, Respondent participated in a scheme to intentionally defraud lenders by knowingly making false and fraudulent representations, which included Respondent's falsely overstating her income, understating her liabilities, and misrepresenting her employment, as well as providing other false and misleading information to lenders.

At the sentencing for Respondent's criminal conviction, Judge Durkin, who presided over the criminal case, emphasized that there was simply no excuse for Respondent's criminal conduct; her crime did not arise out of serious financial hardship since Respondent had a comfortable lifestyle with a good salary; the crime was not an impulsive act, as it involved repeated intentional acts over a period of time; and Respondent could have stopped committing fraud at any time, but she elected to continue the fraud for years. (Adm. Ex. 5 at 75-77.)

We agree with the Hearing Board that this matter also presents significant aggravating factors. In particular, the Hearing Board found that Respondent's failure to admit her intentional wrongdoing or to demonstrate true remorse were aggravating factors. We agree. *See In re Lewis*, 138 Ill. 2d 310, 347-48, 562 N.E.2d 198 (1990) (finding the attorney's failure to recognize the wrongfulness of his conduct and his lack of credible remorse as aggravating). We believe that acceptance of responsibility is one of the first steps towards being able to practice law in an ethical manner in the future.

Similarly, we consider Respondent's false claims of innocence to be an aggravating factor. At the federal sentencing hearing, Respondent admitted that she was guilty and that she had made false representations, but at the disciplinary hearing Respondent changed her position and claimed that she was innocent. Thus, Respondent provided two contradictory statements concerning her criminal conduct (admitting her guilt at the sentencing and denying her guilt at the disciplinary hearing), which statements cannot be reconciled. Respondent was either making misrepresentations in federal court or at the disciplinary hearing. We believe that her assertions of innocence during the disciplinary proceedings were untrue, given that she admitted guilt in federal court; was convicted by a jury; and had her guilt reaffirmed by the federal judge in denying her post-trial motions.

We also consider it an aggravating factor that, on appeal, Respondent has made baseless attacks on the integrity of the Administrator and the Hearing Board. (Resp. Brief at 3, 4, 17, 24-26, 28, 35.) Respondent falsely accused the Administrator of engaging in unethical conduct, attempting to coerce Respondent, and attempting to exploit Respondent's *pro se* status. Respondent also wrongly claimed that the Hearing Board was not acting independently, accusing the Hearing Board of blindly accepting the Administrator's arguments and acquiescing to the Administrator's undue influence. Respondent's accusations are unfounded, and we reject them. Indeed, as an attorney, a former judge, and a former ARDC Hearing Board member, Respondent knows better than to make such unjustified, unsubstantiated, and untrue accusations; however, apparently, she has elected to attack others in the hopes of serving her own interests. This conduct suggests that Respondent may place her own interests ahead of her clients' best interests in the future.

Respondent also made scurrilous accusations against the federal prosecutor who handled the criminal case, alleging that the prosecutor unfairly and unethically obtained a conviction against her – and engaged in a fraud on the court – by suborning perjury, concealing evidence, and misrepresenting facts. (*See* Answer to the Complaint at 1-7.) The Seventh Circuit rejected Respondent's arguments concerning prosecutorial misconduct by summarily denying Respondent's rehearing petition, in which she set forth those same accusations against the federal prosecutor. (*See* Adm. Ex. 14.)

Respondent's groundless accusations against the Administrator, the Hearing Board, and the federal prosecutor show a profound lack of respect for the judicial system and the disciplinary process and have the potential to undermine public confidence in the legal system. Given Respondent's position as an attorney and a former judge, some members of the public may erroneously accept her baseless accusations as being true.

It is also an aggravating factor that during two years of the fraud scheme (2006-2007), Respondent was a member of the ARDC's Hearing Board, where she recommended sanctions for other attorneys who engaged in unethical conduct, while Respondent herself was engaging in unethical conduct. Such behavior is incomprehensible and shows Respondent's disregard for her own personal and professional integrity. It also suggests that the public may need to be protected from Respondent. *See In Re Hall*, 2009PR2003 (Review Bd., Jan. 4, 2012), at 21, *petition for leave to file exceptions allowed*, M.R. 25193 (May 22, 2012) (wherein the Review Board referenced the attorney's ARDC's Hearing Board status while engaging in misconduct, and commented that the "disconnect between his ARDC work and his own concurrent misdeeds, as well as his almost complete inability or unwillingness to accept responsibility for his actions or express credible remorse, suggests that the public may well need protection from Respondent.").

Moreover, committing fraud while serving on the ARDC Hearing Board may tarnish the legal profession's reputation, and undermine the public's confidence in the disciplinary process itself. *See Id.* at 22 (stating "[T]hat a Hearing Board member could engage in a pattern of serious misconduct…while serving on Panels must surely impact the public's confidence in the legal profession and also negatively impact the public's view of the legal disciplinary system."); s*ee also In re Bush*, 09 CH 113 (Hearing Bd. Report, Nov. 1, 2010) at 39 (stating that as an Assistant State's Attorney, "Respondent should have been particularly sensitive to the impropriety of his conduct,…and the potential for damage to the reputation of his public office."). We believe that disbarring Respondent will help to restore and preserve public confidence in the integrity of the legal profession and the disciplinary process.

Respondent argues that the charged misconduct took place many years ago, and therefore, the public does not need to be protected, given the passage of time. We reject that argument in large part because of Respondent's recent conduct. Specifically, Respondent has attempted to minimize her conduct, rationalize her wrongdoing, and portray herself as a victim. As discussed above, Respondent continues to deny that she engaged in any wrongdoing and she still refuses to accept responsibility; Respondent admitted her guilt during her federal sentencing hearing, but now asserts that she is innocent; and Respondent continues to make baseless claims that she is the victim of prosecutorial misconduct, and unfounded accusations of wrongdoing by the Administrator and the Hearing Board. Moreover, Respondent has not repaid the $660,000 loss that she caused; and though she has had limited income since her sentencing, she has failed to take appropriate steps voluntarily to repay the victim lenders during the ten years before her sentencing. Additionally, Respondent has failed to cooperate fully during the disciplinary proceeding by failing to appear for two pre-hearing conferences and by filing her witness list seven months late.

We believe that Respondent's recent conduct weighs heavily in favor of disbarment and that disbarment is needed in order to protect the public. Respondent's recent actions show that she may be unwilling or unable to conform her conduct to the required ethical standards, and that she may fail to meet her ethical obligations in the future. *See In re Mason*, 122 Ill. 2d 163, 173-74, 522 N.E.2d 1233 (1988) ("An attorney's failure to recognize the wrongfulness of his conduct often necessitates a greater degree of discipline than is otherwise necessary, in order that the attorney will come to appreciate the wrongfulness of his conduct and not again victimize members of the public with such misconduct."); *In re Samuels*, 126 Ill. 2d 509, 531 (1989) (stating the attorney's refusal to acknowledge any wrongdoing "does not inspire confidence that respondent is ready to recognize his duty as an attorney and to conform his conduct to that required by the profession.").

We also consider the deterrent value of the sanction and whether the sanction will help preserve public confidence in the legal profession**.** *Gorecki,* 208 Ill. 2d at 360-61. The record shows that Respondent's criminal case received extensive publicity and was, literally, front page news. At sentencing in the criminal case, Judge Durkin pointed out that Respondent is a prominent individual, well-known in the community, and one who has received press and television coverage about her wrongdoing. Disbarring Respondent for her egregious misconduct is likely to have a deterrent effect on other attorneys who are aware of this case and reassure the public that such criminal conduct by an attorney will result in a severe sanction.

Respondent argues that the Hearing Board ignored the mitigating factors in this case and erred by finding that those factors did not overcome the charged conduct. That argument misses the mark. The Hearing Board did not ignore the mitigating factors; rather, it found that the mitigating factors in this case "do not excuse or cancel out her bad acts." (Hearing Bd. Report at 10.)

In making our own recommendation, we have given careful consideration to the mitigating factors in this matter, including Respondent's community service and activities; her many successful accomplishments; her service as a judge; her mentoring activities; the testimony of her character witnesses; the lack of prior discipline; and the fact that the crime took place years ago and was unrelated to any client or judicial matter. We agree with the Hearing Board, however, that the mitigating factors here are insufficient to avoid disbarment, given the serious nature of Respondent's misconduct and the multiple aggravating factors, which demonstrate Respondent's unfitness to practice law.

Respondent argues that suspension, rather than disbarment, is the appropriate sanction, citing *In re Palivos*, 2005PR00109 (Hearing Bd., April 29, 2013), *approved and confirmed*, M.R. 26127 (Sept. 30, 2013), and *In re Scott*, 98 Ill. 2d 9, 455 N.E.2d 81 (1983). The Hearing Board concluded, and we agree, that those cases are inapposite because Respondent's conduct in the instant matter was substantially more egregious than the attorneys' conduct in those two cases. In *Palivos*, the attorney advised others to provide false information in response to a federal subpoena, but he did not engage in an extensive scheme to defraud that resulted in financial harm; and in *Scott*, the attorney was convicted of filing one false income tax return.

Respondent also cites *In re Cetwinski*, 143 Ill. 2d 532, 574 N.E.2d 645 (1991), and *In re Scudder*, 2018PR00029 (Feb. 4, 2019), M.R. 29739 (March 19, 2019), in support of her argument that suspension is the appropriate sanction. The Hearing Board concluded, and we agree, that those cases are distinguishable because the attorneys in those cases, unlike Respondent, acknowledged their wrongdoing and expressed credible remorse.

Other cases cited by Respondent on appeal are also distinguishable from the instant matter based on various factors, including one or more of the following: unlike Respondent, the

attorneys acknowledged their wrongdoing and accepted responsibility; the attorneys' misconduct was not as egregious as Respondent's conduct in the instant case; the attorneys caused smaller losses and/or received less personal financial benefit than Respondent; the attorneys engaged in misconduct for a shorter period of time than Respondent; unlike Respondent, the attorneys did not attempt to shift the blame to others by making baseless attacks on the prosecutor, Administrator, and Hearing Board; and, unlike Respondent, none of those attorneys were members of the ARDC Hearing Board while they were committing criminal conduct. *See, e.g., In re Glennon*, 2009PR00137 (Review Bd., June 21, 2013), *petition for leave to file exceptions denied,* M.R. 26211 (Sept. 25, 2013) (attorney participated in a fraud scheme, but he had limited knowledge of the extent of the fraud, acknowledged his wrongdoing, expressed credible remorse, and he cooperated in the criminal investigation); *In re Goulding*, 91 CH 208 (Review Bd., Oct. 29, 1996), *petitions for leave to file exceptions denied,* M.R. 13055 (March 21, 1997) (attorney engaged in a fraud scheme to hide a client's illegal income to avoid taxes not resulting in any loss, and he did not receive financial benefit except payment for his legal services); *In re Schmieder*, 92 SH 323 (Review Bd., Sept. 6, 1995), *petition for leave to file exceptions allowed,* M.R. 11772 (Jan. 23, 1996) (attorney participated in an insurance fraud, but received no financial benefit and acknowledged his wrongdoing and expressed credible remorse); *In re Sherre,* 68 Ill. 2d 56, 368 N.E.2d 912 (1977) (attorney participated in a fraud scheme not causing financial harm, and he did not receive any financial benefit except payment for his legal services).

In reaching its recommendation, the Hearing Board properly relied on existing caselaw, citing three cases, which are similar to the instant case, in which the attorneys were disbarred on consent after being convicted of criminal conduct. We agree with the Hearing Board that those three cases offer guidance in determining the appropriate sanction. *See In re Dixon-*

Roper, 2015PR00061, M.R. 27561 (Sept. 21, 2015) (attorney pled guilty to committing mail fraud; she submitted loan applications that contained false information in order to obtain money in connection with the purchase and refinancing of several properties, and she received payments from co-schemers for her role in the scheme); *In re Dailey*, 98 DC 1008, M.R. 15096 (Sep. 28, 1998) (attorney engaged in a scheme to defraud a bank of $1.2 million, and pled guilty to committing bank fraud and money laundering; he used $300,000 of those funds for his own purposes); *In re Scharf*, 97 DC 1007, M.R. 13820 (Sept. 24, 1997) (the attorney, who was a director of a bank, was charged with misapplying bank funds, making false statements to the FDIC, and engaging in bank fraud; he pled guilty to two counts of criminal activity, and admitted to fraudulently causing the bank to loan $470,000 to two companies, without disclosing that he had an interest in those companies). The circumstances of those three cases are similar to the circumstances in the instant matter, except that, the attorneys in those foregoing cases (unlike Respondent in this case) acknowledged their wrongdoing and accepted responsibility for it.

Respondent also argues that those three cases have no precedential value because they involved disbarment on consent. The Illinois Supreme Court, however, has clearly signaled that discipline on consent has precedential value. *See In re Adams*, 05 CH 30 (Review Bd., Dec. 5, 2007), *petition for leave to file exceptions denied*, M.R. 22150 (March 20, 2008) ("By concurring with the Review Board's recommendation for discipline, the Court is not adopting the reasoning of the Review Board including its statement on the 'limited precedential value' of consent dispositions."). The Supreme Court disbars attorneys because the serious nature of their misconduct warrants disbarment, not merely because the attorneys have agreed to disbarment. In short, cases involving disbarment on consent have precedential value.

In addition to the cases considered by the Hearing Board, we find that this matter is most similar to the following cases, in which the attorneys were disbarred for serious misconduct that resulted in criminal convictions.

In *In re Hook*, 98 CH 50 (Review Bd., May 16, 2006), *petition for leave to file exceptions denied,* M.R. 21025 (Sept. 25, 2006), the attorney was disbarred after being convicted of wire fraud, theft, and money laundering, based on his misappropriation of $989,000 from a pension fund. The attorney in that case, as in the instant case, denied all allegations of misconduct, and argued that the conviction was unjust and improper. The *Hook* Review Board ruled that the attorney could not relitigate his conviction as part of the disciplinary hearing. In that case, as in this one, the attorney was convicted of crimes involving a series of deceitful acts over a period of time, which resulted in substantial financial harm. The *Hook* Review Board concluded that this type of misconduct warranted disbarment, given the intentional and egregious nature of the crime, even though the attorney in that case (unlike Respondent in the instant case) did not personally benefit from the misappropriation of funds.

In *In re Peters*, 2011PR00064 (Hearing Bd., Aug. 10, 2015), *affirmed and approved*, M.R. 27617 (Nov. 17, 2015), the attorney was disbarred after being convicted of a scheme to defraud a bank by undervaluing collateral and making other misrepresentations to obtain money from the bank, purportedly for his company, but which he used for his own personal purposes. In that case, as in this one, the attorney failed to acknowledge that he had engaged in any misconduct and claimed that he was innocent. The Hearing Board in *Peters* concluded that his failure to acknowledge any wrongdoing, in the face of his conviction and the underlying facts, was an aggravating factor and warranted disbarment.

In *In re Minneman*, 98 SH 38 (Review Bd., Nov. 29, 2000), *petition for leave to file exceptions denied,* M.R. 17352 (March 22, 2001), the attorney was disbarred after being convicted of conspiracy to commit tax fraud. The attorney concealed a large portion of a client's income to help the client evade paying income taxes and he did so over a lengthy period of time. In addition, the attorney lacked credible remorse and failed to demonstrate an understanding of his ethical obligations and the seriousness of his misconduct. Similar to the attorneys in *Peters*, *Hook*, and *Minneman*, Respondent engaged in serious criminal conduct involving intentional deceitful acts over an extended period of time, resulting in financial harm to victims, and she has failed to acknowledge any wrongdoing or express credible remorse.

In *In re Porter*, 2016PR00130 (Review Bd., Dec. 31, 2019), *petition for leave to file exceptions allowed and sanction increased*, M.R. 30289 (Sept. 21, 2020), the attorney was disbarred based on his involvement in a fraud scheme, even though he was not the architect of the scheme, the scheme failed, no victims were actually harmed, the attorney did not profit from the scheme, and the criminal case resulted in a deferred prosecution agreement, rather than a conviction. Respondent's conduct here was more egregious than the attorney's conduct in *Porter* because Respondent devised the fraud scheme; successfully carried it out; personally profited from the scheme in the amount of $220,000; was convicted by a jury; and was sentenced by a federal judge to a term of imprisonment.

In *In re Murphy*, 2012PR00073, M.R. 25458 (Sept. 17, 2012), the attorney was disbarred on consent, after his federal conviction for mail fraud and wire fraud. He fraudulently obtained mortgage loans by providing false information to lenders and falsely inflating the value of several residential properties; he arranged sham real estate transactions; and he provided false information to purchasers. Similarly, Respondent was federally convicted of committing mail

fraud and bank fraud, and she fraudulently obtained loans by providing false information to lenders, falsely inflating the value of two residential properties, and arranging two sham real estate deals.

In *In re Fumo*, 52 Ill. 2d 307, 288 N.E.2d 9 (1972), the attorney was disbarred after being convicted of mail fraud for defrauding insurance companies and clients. Despite favorable character evidence, the attorney was disbarred because, like Respondent, he intentionally engaged in a series of deceitful acts over a period of time.

Furthermore, the recommended sanction of disbarment is supported by other cases in which attorneys were disbarred following their convictions for fraud or similar crimes of dishonesty. *See, e.g., In re Hutul*, 54 Ill. 2d 209, 296 N.E.2d 332 (1973) (the attorney was convicted of mail fraud and conspiracy); *In re Pappas.* 92 Ill. 2d 243, 442 N.E.2d 142 (1982) (the attorney was convicted of mail fraud and causing an individual to travel in interstate commerce with the intent to commit bribery); *In re Vavrik,* 117 Ill. 2d 408, 512 N.E.2d 1226 (1987) (the attorney was convicted of grand theft).

Although no two cases are identical, disbarment is consistent with the sanctions imposed in cases where attorneys have engaged in serious criminal conduct, similar to Respondent's conduct. Moreover, after considering legal precedent, we find that Respondent's extensive fraud scheme, which lasted for years and caused a large financial loss, together with Respondent's unwillingness to recognize the wrongfulness of her actions and her attitude towards the justice system and the disciplinary process, support our determination that disbarment is appropriate.

In sum, we recommend that Respondent be disbarred. We believe that her disbarment is necessary to protect the public, maintain the integrity of the legal profession, and

protect the administration of justice from reproach. *Timpone*, 157 Ill. 2d at 197. We find that this sanction is commensurate with Respondent's misconduct and consistent with discipline that has been imposed for comparable misconduct. Additionally, this sanction serves the goals of attorney discipline, acts as a deterrent to other future attorney misconduct, and preserves the public's trust in the legal profession.

CONCLUSION

For the foregoing reasons, we affirm the Hearing Board's findings and evidentiary rulings and agree with its recommendation that Respondent be disbarred from the practice of law.

Respectfully submitted,

R. Michael Henderson
Leslie D. Davis
Scott J. Szala

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 June 7, 2022.

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

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[1] "R. #" refers to the Report of Proceedings; "C. #" refers to the Common Law Record; and Exhibits are cited as "Adm. Ex. #" or "Resp. Ex. #."

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

In the Matter of: **JESSICA ARONG O'BRIEN,** Respondent-Appellant, No. 6255568.	Commission No. 2018PR00111

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 Respondent-Appellant listed at the address shown below by e-mail service on June 7, 2022, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

Jessica Arong O'Brien
Respondent-Appellant
17cr239obrien@gmail.com

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

MAINLIB_#1509051_v1

FILED

June 07, 2022

ARDC CLERK