

In re Jessica Arong O'Brien
Attorney-Respondent

Commission No. 2018PR00111

Synopsis of Hearing Board Report and Recommendation
(June 2021)

The Administrator filed a one-count Complaint pursuant to Supreme Court Rule 761(d) setting forth Respondent's conviction for mail fraud and bank fraud. Respondent's conviction was based on her submission of false information to lenders between 2004 and 2006 to procure loans to purchase or refinance two properties and to obtain a line of credit. The false information included statements regarding her income and liabilities, her employment, and the revenue and profit of a realty company. Further, in 2007 Respondent engaged in a scheme to sell the two properties to a sham buyer she knew would be fraudulently qualified for mortgage loans; concealed the sham buyer's role from lenders; and made false statements to lenders regarding the sales price of the properties.

The Complaint charged Respondent with: a) committing criminal acts (mail fraud and bank fraud) that reflect adversely on her honesty, trustworthiness and fitness as a lawyer in violation of Rule 8.4(b); and b) engaging in dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c).

The Hearing Board found the charges of the Complaint were proved by clear and convincing evidence. After considering the misconduct, as well as the mitigating and aggravating factors, the Hearing Board recommended Respondent be disbarred.

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

In the Matter of:

JESSICA ARONG O'BRIEN,

Attorney-Respondent,

No. 6255568.

Commission No. 2018PR00111

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Administrator's Complaint alleged that Respondent, who was convicted of mail fraud and bank fraud, committed criminal acts that reflected adversely on her fitness as a lawyer and engaged in dishonest conduct. The Hearing Board found the charges were proved by clear and convincing evidence and recommended Respondent be disbarred.

INTRODUCTION

The hearing in this matter was held on March 3, 2021 by video conference before a panel consisting of Brigid A. Duffield, Gregory E. Rogus and Brian B. Duff. Scott Renfroe represented the Administrator of the Attorney Registration and Disciplinary Commission ("ARDC"). Respondent Jessica Arong O'Brien ("Respondent") appeared pro se.

PLEADINGS AND MISCONDUCT ALLEGED

On December 20, 2018 the Administrator filed a one-count Complaint against Respondent charging her with: 1) committing a criminal act that reflects adversely on her honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b) and 2) engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of Rule 8.4(c).

FILED

June 17, 2021

ARDC CLERK

On September 8, 2020, Respondent filed an answer in which she admitted to the procedural history regarding her indictment and conviction, but denied the substance of the allegations and denied the conclusions of misconduct.

EVIDENCE

Respondent testified on her own behalf and presented four witnesses. The Administrator's exhibits 1-15 and Respondent's group exhibit 1 were admitted into evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In attorney disciplinary proceedings the Administrator has the burden of proving the charges of misconduct by clear and convincing evidence. In re Winthrop, 219 Ill. 2d 526, 542, 848 N.E.2d 961 (2006). Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 577 N.E.2d 762 (1991).

Respondent, in connection with her procurement of mortgages and sale of properties, is charged with committing the criminal acts of mail fraud and bank fraud and engaging in dishonest conduct in violation of Rules 8.4(b) and 8.4(c).

A. Summary

The Hearing Board found Respondent violated Rules 8.4(b) and 8.4(c) as charged.

B. Evidence considered

Background. Respondent was born in the Philippines and relocated to the United States after high school. After graduating from law school, she pursued an LLM in taxation, worked for a law firm for two years, and then in 2000 took a position with the Illinois Department of Revenue. She continued with the Illinois Department of Revenue until 2012 when she was elected to serve as a judge of the Cook County Circuit Court. (Tr. 135, 183-89).

Indictment. On April 11, 2017, a federal grand jury in the Northern District of Illinois returned a two-count indictment against Respondent and her co-defendant Maria Bartko charging

them with committing mail fraud (Count I) and bank fraud (Count II) in violation of 18 U.S.C. sections 1341 and 1344. United States v. O'Brien and Bartko, 17 CR 239. Count I charged that between 2004 and 2007 Respondent and Bartko devised and participated in a scheme to defraud lenders by causing the lenders to issue and refinance loans totaling at least \$1,400,000. During that time Respondent was a licensed attorney, licensed loan originator, licensed real estate broker, owner of O'Brien Realty LLC, employed full-time by the Illinois Department of Revenue and employed part-time as a loan officer with a mortgage company. (Adm. Ex. 1).

The following acts were charged as part of the fraudulent scheme:

- In August 2004, Respondent caused loan documents to be submitted to a lender to finance her purchase of property at 625 46th Street knowing that the documents contained materially false information, including that her monthly income from the Illinois Department of Revenue was \$6,800, that she had disclosed all liabilities when in fact she had not disclosed a \$260,000 mortgage obligation, and that information in the submission was true and accurate;
- In September 2005, Respondent sought to refinance the mortgage on the 46th Street property as well as a mortgage on an investment property at 823 W. 54th Street. In the loan applications, she falsely stated her employment and her monthly income from O'Brien Realty, and falsely certified the information;
- In November 2006, Respondent caused materially false information to be submitted to a lender to obtain a commercial line of credit for her realty company, and then used the proceeds to pay expenses related to the aforementioned investment properties. In applying for the line of credit, Respondent falsely represented the realty company's annual profit to be \$150,000 and its revenue to be \$100,000;
- In March 2007, Respondent agreed to sell the aforementioned investment properties to Maria Bartko but because Bartko's credit would not permit her to make the purchases, they agreed Bartko would recruit "Buyer A" to purchase the properties, knowing false information would be submitted to lenders to obtain funds for the purchases. Respondent paid Bartko and Buyer A undisclosed amounts and concealed information about those payments from the lenders. Respondent and Buyer A submitted HUD-1 statements to lenders with inaccurate information about receipts and disbursements, which they certified to be true. Respondent knowingly concealed Bartko's role as true purchaser and submitted documents which inflated the sales price of the properties, falsely represented that the buyer would occupy the premises and overstated the buyer's income.

- On April 16, 2007, Respondent and Bartko, for the purpose of executing the scheme to defraud, knowingly caused an envelope containing a payoff check for \$297,208.96 to be sent and delivered by a commercial interstate carrier to Chase Home Finance in Columbus, Ohio for payment relating to the purchase of the 46th Street property.

(Adm. Ex. 1).

Count II of the indictment incorporated the acts set forth in Count I and charged that on or about April 16, 2007, Respondent executed the scheme to defraud by causing a financial institution to fund a mortgage loan in the amount of approximately \$73,000 for Buyer A's purchase of the 46th Street property. (Adm. Ex. 1).

Conviction and sentencing. Respondent pled not guilty to the charges in the indictment and the case proceeded to a jury trial before the Hon. Thomas M. Durkin. On February 15, 2018, the jury returned a verdict of guilty on both counts. On September 4, 2018, Judge Durkin issued a 45-page Memorandum Opinion and Order denying Respondent's motions for acquittal, directed verdict and new trial, and rejecting her arguments regarding insufficiency of the evidence, the applicable statute of limitations, vagueness of charges, improper jury instructions and improper admission of evidence. Judge Durkin cited to documentary evidence establishing Respondent's false statements regarding income and liabilities to obtain loans and a commercial line of credit, her purported sale of property to a straw buyer when she knew the identity of the true buyer, and her profit of over \$200,000 from the sale of the properties. (Ans. at par. 3, 4; Adm. Exs. 2, 3, 7, 8).

On December 20, 2018, Respondent was sentenced to prison for one year and one day, followed by a two-year period of probation and restitution of \$660,000 (jointly with her co-defendant), which was stayed until her release from prison. In imposing the sentence Judge Durkin considered Respondent's significant amount of public service, her self-made success, that her crimes occurred some years ago, and her lack of any prior criminal record. In aggravation he noted

that Respondent's crimes were ones of choice rather than need; she had a special responsibility as an attorney to follow the law; she knew the mortgage industry well; her actions took place over a period of years; she realized substantial financial gain; and she was the smartest and most educated person in the scheme. (Adm. Exs. 5, 6).

Respondent appealed her conviction on the basis of duplicity in the charges, insufficiency of evidence, the applicable statute of limitations, and errors in admitting evidence. On March 13, 2020, the Seventh Circuit Court of Appeals issued an opinion rejecting those arguments and affirming her convictions on both counts. Respondent's Petition for Rehearing and Petition for Writ of Certiorari were denied. (Tr. 225-26; Adm. Exs. 11-15).

B. Analysis and conclusions

1. Rule 8.4(b) - Committing criminal acts that reflect adversely on a lawyer's honesty, trustworthiness or fitness

Respondent was convicted by a jury of committing mail fraud and bank fraud. Her post-trial motions were denied by Judge Durkin after a thorough review of the evidence, and her conviction was upheld by the appellate court. In disciplinary proceedings, "proof of conviction is conclusive of the attorney's guilt of the crime." S. Ct. R. 761(f).

We look no further than Respondent's conviction to determine that she engaged in criminal acts. Given the nature of her crimes, which involved moral turpitude (In re Vavrik, 117 Ill. 2d 408, 507 N.E2d. 1226, 1228 (1987)), we find that her acts clearly reflect on her honesty, trustworthiness and fitness as a lawyer. Accordingly, we find that Respondent violated Rule 8.4(b).

2. Rule 8.4(c) – Dishonesty, fraud, deceit or misrepresentation

As stated above, Respondent was convicted of engaging in fraud based on her false statements to lenders. Her acts were not inadvertent, nor did they result from inexperience. At the

time of her offenses she was employed as a tax attorney, held licenses as a loan originator and real estate broker, and owned a realty company. Further, the repetitive nature of the misstatements and the fact she profited from them is evidence that her scheme was deliberate and planned. We find, based on the evidence and Respondent's convictions, that she violated Rule 8.4(c).

EVIDENCE IN MITIGATION AND AGGRAVATION

Respondent testified she places great importance on mentoring young people, taking on leadership roles, promoting diversity, advocating for women, and being active in her community. Prior to her conviction and imprisonment, she served as president of the Asian-American Bar Association and the Women's Bar Association, where she formed a Leadership Institute; set up the Diversity Scholarship Foundation through her involvement with the Filipino-American Bar Association; wrote a column for a Chicago legal publication focusing on successful women and their career paths; spoke against drug use at high schools and grade schools; mentored many young attorneys; worked with the Boy Scouts of America to broaden their programming to include minorities; and contributed her time to several churches. She also served on the Hearing Board of the ARDC and on the Character and Fitness Committee of the Illinois Supreme Court. Respondent presented twenty-one photos of awards or other types of recognition she received from 2001 to 2016 for her leadership, service and accomplishments to bar associations and other organizations. (Tr. 190-205; Resp. Group Ex. 1).

Respondent testified while she was in prison, she helped other inmates, many of whom were minorities, by advocating for them and mentoring them. Since being released, she has continued her volunteer work with churches and has applied for hundreds of jobs, with no success. She expressed a passion for reforming the criminal justice system and finding solutions for persons with criminal backgrounds who are seeking employment. With respect to her court-ordered

restitution of \$660,000, she has been making monthly payments but because she is unemployed, the repayment has not been significant. (Tr. 181, 203-208, 217).

Respondent testified that her conviction, and the surrounding publicity it created, is an embarrassment. When asked what impact the publicity had on public confidence in the judiciary, she noted her conviction was for conduct that had nothing to do with her service as a judge or her practice of law, nor were any clients involved. (Tr. 213).

Four witnesses testified to Respondent's character and public service. Joshua Yousefi, an attorney, interned with Respondent in 2015 when she was serving as a judge. Yousefi remembered Respondent as hard-working, patient, thorough, and one who encouraged professionalism in the courtroom. He was impressed with Respondent's willingness to contribute to the community without expecting anything in return, and knows of nothing, including Respondent's conviction for fraud, that would cause him to question her honesty and integrity. (Tr. 57-65, 74).

Ronald Forman, an attorney, worked with Respondent at the Illinois Department of Revenue for twelve years and served as treasurer for her judicial campaign. Forman recalled that as an attorney, Respondent was intelligent, prosecuted cases honestly and fairly, and strived for just results. He also attested to her many contributions to society. Forman considers Respondent to be completely trustworthy, and he could think of no incident that caused him to question her integrity or ability to tell the truth. (Tr. 131-54).

Tina Echols first met Respondent in 2010, and then became manager of her judicial campaign. Echols described Respondent's efforts in meeting with and speaking to minority students in the Englewood area about the legal profession, drug avoidance, and social justice, and testified Respondent is greatly respected by that community. She views Respondent as a woman of great integrity and has not seen anything that casts doubt on her assessment. (Tr. 157-68).

Brendan O'Brien, a Cook County Circuit Court judge and Respondent's husband, described Respondent as having the highest character. He has witnessed first-hand the tremendous amount of time she has devoted to the legal profession, community causes, churches and schools. She was also on the Board of Trustees at John Marshall Law School. O'Brien has heard nothing but positive comments about Respondent's character and work at the Department of Revenue and as a judge. (Tr. 87-88, 95-100, 108-19).

Prior Discipline

Respondent has not been previously disciplined.

RECOMMENDATION

In determining the appropriate discipline, we are mindful that the purpose of these proceedings is not to punish, but to safeguard the public, maintain the integrity of the profession and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. While we strive for consistency and predictability, we recognize that each case is unique and must be decided on its own facts. In re Mulroe, 2011 IL 111378, ¶ 25.

In arriving at our recommendation, we consider those circumstances which may mitigate and/or aggravate the misconduct. In re Gorecki, 208 Ill. 2d 350, 802 N.E.2d 1194 (2003). In mitigation, Respondent's contributions to the legal profession and her community are commendable, as recognized by numerous organizations as well as the judge who sentenced her. Her appearances at schools, mentoring of young attorneys, and commitment to diversity are laudable. We also recognize Respondent's lack of prior discipline and her character witnesses, who confirmed her work ethic and dedication to helping others.

We consider a variety of factors that aggravate Respondent's misconduct. Respondent was experienced in the areas of law, real estate and lending and therefore should have been well aware

of her obligations in those areas; she engaged in fraudulent acts for her own personal gain; she did not exhibit any credible remorse for her conduct; she did not acknowledge any intentional wrongdoing; and she engaged in a pattern of behavior that lasted several years. Additionally, Respondent's acts reflected poorly on the legal profession and judiciary and resulted in the expenditure of judicial time and resources to conduct a trial. Finally, Respondent's cooperation in these proceedings was insufficient, as she failed to participate in two pre-hearing conferences and did not disclose her potential witnesses in a timely manner.

The Administrator argued that Respondent should be disbarred. Respondent asked us to consider a suspension, and urged that discipline be applied retroactively to the date of her interim suspension. Both parties cited cases involving attorneys who were convicted of crimes.

We believe the following cases cited by the Administrator, in which attorneys were disbarred on consent after being convicted of crimes involving bank loans, offer the best guidance for our determination of discipline. In In re Dailey, 98 DC 1008, M.R. 15096 (Sep. 28, 1998) the attorney, in his role as an officer of a bank, caused the bank to issue a loan participation of \$1,250,000 without having the loan reflected in the bank's records, and then used \$301,950 of the proceeds for a company he owned with other bank officials. The attorney pled guilty to one count of bank fraud and one count of money laundering. In In re Scharf, 97 DC 1007, M.R. 13820 (Sept. 24, 1997) the attorney, as director of a bank, participated in decisions to loan \$470,000 to two companies in which he had an interest, without disclosing his interests. He pled guilty to 2 counts of criminal activity. In In re Dixon-Roper, 2015PR00061, M.R. 27561 (Sept. 21, 2015) the attorney purchased property as a nominee buyer for other defendants, submitted false information to lenders, received payments from other defendants for her involvement in the fraudulent

transactions, and concealed payments to herself and others. The attorney pled guilty to one count of mail fraud.

We have also considered Respondent's citation to In re Palivos, 05 CH 109, M.R. 26127 (Sept. 25, 2013) in which a three-year suspension, applied retroactively, was imposed on an attorney who was convicted of conspiracy to obstruct justice for urging others to provide false documents in response to a federal subpoena. The attorney presented a number of character witnesses and had an impressive record of community, pro bono and charitable work. While Palivos presents some similarities to the present situation, the misconduct was far more restricted in time and scope, as it involved the attorney's advice to provide false information in response to a single request. In contrast, Respondent engaged in a lengthy pattern of providing false information to various entities in a number of transactions, and thus we find her conduct to be considerably more egregious.

We hold the same opinion regarding Respondent's citation to In re Scott, 98 Ill. 2d 9, 455 N.E.2d 81 (1983), where the attorney received a two-year suspension after being convicted for filing one false income tax return. Respondent cited to additional cases where suspensions were imposed, but in those cases the attorneys acknowledged their guilt and expressed remorse. See In re Cetwinski, 143 Ill. 2d 532, 574 N.E.2d 645 (1991); In re Scudder, 2018PR00029, M.R. 29739 (March 19, 2019).

Respondent engaged in repeated and calculated fraudulent acts for personal gain. Those acts were serious in nature, an abuse of trust, and an indication of her core mindset to break the law. While Respondent's community and professional contributions are compelling and not to be undervalued, they do not excuse or cancel out her bad acts. Consistent with the cited case law, we

conclude that disbarment is appropriate in this case and necessary to protect the public and to uphold the integrity of the profession.

Accordingly, we recommend that Respondent Jessica Arong O'Brien be disbarred.

Respectfully submitted,

Brigid A. Duffield
Gregory E. Rogus
Brian B. Duff

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 Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on June 17, 2021.

/s/ Michelle M. Thome

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

MAINLIB_#1392805_v1