THIS REPORT IS NOT A FINAL ORDER OF DISCIPLINE*

DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY
AD HOC HEARING COMMITTEE

In the Matter of:	:	
	:	
ROBERT M. SCHULMAN,	:	
	:	Board Docket No. 19-ND-008
Respondent.	:	Disciplinary Docket No. 2017-D108
	:	
A Suspended Member of the Bar of the District of Columbia Court of Appeals (Bar Registration No. 376111)	:	

REPORT AND RECOMMENDATION
APPROVING PETITION FOR NEGOTIATED DISCIPLINE

I. PROCEDURAL HISTORY

This matter came before the Ad Hoc Hearing Committee on February 19, 2020, for a limited hearing on a Petition for Negotiated Discipline (the "Petition"). The members of the Hearing Committee are Kathleen Wach, Tonya D. Love, and La Verne Fletcher. The Office of Disciplinary Counsel was represented by Deputy Disciplinary Counsel Julia L. Porter. Respondent, Robert M. Schulman, was represented by Christopher B. Mead.

The Hearing Committee has carefully considered the Petition signed by Disciplinary Counsel, Respondent, and Respondent's counsel, the supporting affidavit submitted by Respondent (the "Affidavit"), and the representations during the limited hearing made by Respondent, Respondent's counsel, and Disciplinary Counsel. The Hearing Committee has also considered Disciplinary Counsel's files and records which were reviewed *in camera*, as well as certain *ex parte*

* Consult the 'Disciplinary Decisions' tab on the Board on Professional Responsibility's website (www.dcattorneydiscipline.org) to view any subsequent decisions in this case.

communications with Disciplinary Counsel. For the reasons set forth below, we approve the Petition, find the negotiated discipline of a three-year suspension with a fitness requirement is justified, and recommend that it be imposed by the Court. For purposes of reinstatement, we recommend Respondent's suspension should run from June 28, 2018—the date Respondent filed his affidavit as required by D.C. Bar. R. XI, § 14(g).

II. FINDINGS PURSUANT TO D.C. BAR R. XI, § 12.1(c) AND BOARD RULE 17.5

The Hearing Committee, after full and careful consideration, finds that:

1. The Petition and Affidavit are full, complete, and in proper order.

2. Respondent is aware that there is currently pending against him an investigation based on his criminal conviction. Tr. 14[1]; Affidavit ¶ 2.

3. The investigation is based on Respondent's convictions for conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff. Petition at 1-2, 12.

4. Respondent has freely and voluntarily acknowledged that the material facts and misconduct reflected in the Petition are true. Tr. 14; Affidavit ¶ 4. Specifically, Respondent acknowledges that:

> (1) Schulman is subject to discipline because he is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on December 19, 1983, and assigned Bar number 376111.

[1] "Tr." refers to the transcript of the limited hearing held on February 19, 2020.

(2) In 2010, Schulman was a partner at Hunton & Williams where he worked as an intellectual property lawyer in the firm's Washington, D.C. office.

(3) In or around 2000, Schulman and his wife hired Tibor Klein as their financial adviser while Klein was working at a brokerage firm. Klein later founded his own firm, Klein Financial Services, a registered financial advisor based in Long Island, New York.

(4) The Schulmans gave Klein discretionary authority over their accounts, which meant he could make individual trades without first obtaining their permission. Klein received one percent of the Schulmans' portfolio as his fee.

(5) Klein became a personal friend of the Schulmans – he socialized with them and stayed at the Schulmans' house when they met to discuss the Schulmans' portfolio.

(6) In 2008, Alpharma, a pharmaceutical company, retained Hunton in connection with a dispute with Purdue, another pharmaceutical company. Schulman worked on the Alpharma matter with another Hunton partner, Tom Slater, together with David Kelly, a senior associate in the firm's Atlanta office.

(7) During Hunton's representation of Alpharma in the Purdue litigation, King Pharmaceuticals acquired Alpharma.

(8) In July 2010, Schulman and other Hunton lawyers were preparing for a summary judgment hearing in the Alpharma (now King) litigation later that month and a trial in August 2010.

(9) In or around July 2010, Chris Klein, in-house counsel at King, informed Slater that King and Purdue were in settlement discussions and that King was in merger discussions with Pfizer. King's settlement talks with Purdue and the Pfizer acquisition of King were taking place at the same time.

(10) The Hunton firm opened a separate file related to the acquisition. Slater and Kelly did most of the work on the acquisition matter, which the firm regarded as highly sensitive and confidential. Schulman did not work on the acquisition matter but learned about it in early August 2010.

(11) On August 4, 2010, Slater and Kelly went to New York for a meeting with Chris Klein and Pfizer's lawyers in connection with the potential merger between King and Pfizer. Schulman did not attend the meeting. Shortly after the August 4, 2010 meeting, Kelly told Schulman about merger talks between King and Pfizer and told him to keep the information confidential. Schulman later told the SEC that he understood that the purpose of the meeting was for Pfizer's attorneys to conduct due diligence. Schulman further said that he did not know the timing or scope of the potential merger.

(12) On Friday, August 13, 2010, Schulman and his wife had dinner with Klein at the Schulmans' home in Virginia. Klein was visiting the Schulmans to discuss their portfolio and other financial matters.

(13) During their dinner at which they drank wine, Schulman improperly communicated to Klein that King might be acquired. In their discussion about King, Schulman told Klein it would be "nice to be King for a day," referring to King Pharmaceuticals. Schulman knew that Klein was aware that Schulman's firm represented King.

(14) Klein described the dinner conversation with Schulman in his plea allocution (which occurred after a jury found Schulman guilty of conspiracy to commit securities fraud and securities fraud [in a separate proceeding (*see* ¶ 33)). Klein said, while under oath, the following:

> On August 14, 2010 I visited the Schulmans at their home in McLean, Virginia. At the time of the visit I knew that Robert Schulman was an attorney at Hunton & Williams and he was rendering legal services to King Pharmaceuticals. Consequently, I knew that Mr. Schulman owed a duty of confidentiality to King. During the course of the dinner with Mr. and Mrs. Schulman, Mr. Schulman provided me with material nonpublic information regarding the fact that King was the subject of an acquisition by Pfizer, Inc. More specifically, Mr. Schulman told me that he thought he had inside information because he had to give his files to someone at Hunton & Williams for a meeting with Pfizer. Mr. Schulman then stated, "You know, it would be nice to be

> King for a day." After I did not respond to his comment, Mr. Schulman then leaned forward toward me and emphatically repeated the statement about being King for a day. These gestures were immediately followed by Mr. Schulman stating, you know I can't trade it. . . .
>
> When he told me about the material nonpublic information, I knew that Mr. Schulman was breaching his duty of confidence to King. During the rest of the evening and prior to my leaving to New York the next morning, Mr. Schulman never admonished me not to trade on the information that he told me during the dinner conversation. In fact, during the ensuing months, Mr. Schulman never told me not to trade on the information. I interpreted the full context of the conversation, and, in particular, the comment that you know I can't trade it to mean that Mr. Schulman could not directly trade the stock but that I could both for my benefit and his. As a result, I bought King for myself and for a number of my investment advisor clients, including Mr. Schulman, so that he too would benefit from the tip. I also passed the information to a broker who was a long-time friend of mine and eventually I shared in his trading profits. In 2011 I gave false information to the SEC during the course of my investigative testimony. . . .

(15) In response to the court's question about what exactly Schulman said to Klein during their dinner that "was material nonpublic information," Klein responded:

> He said that he believed that he had inside information because he had to give his files over to someone at his law firm at Hunton & Williams for a meeting with Pfizer. And then he continued to make that King-for-a-day statement which I didn't -- I didn't get it at first and kind of -- he said it again and kind of looked at me like come on. And, you know, I figured it out from there.
>
> . . .

> He didn't specifically say that it -- come out and say King was the subject of an acquisition. He specifically stated that he had to give his files over. He didn't say what files. He just said he had to give his files over to someone at Hunton & Williams for a meeting with Pfizer. And the reference to King came in that statement that it would be good to be King for a day.

(16) The government alleged, and a jury found, that Schulman shared the confidential or non-public information about King with Klein with the intent that Klein trade on the information and with the intent that Schulman would receive a benefit in return.

(17) On Sunday, August 15, 2010, after returning to New York, Klein made several calls to Michael Shechtman, his friend and a financial advisor at Ameriprise Financial. When he reached Shechtman on Monday, August 16, 2010, Klein told him he had inside information. Klein told Shechtman that the inside information he had was that Pfizer was acquiring King.

(18) Based on the information that Schulman had given Klein about King, which Klein shared with Shechtman, Klein and Shechtman traded in King stock and options for their own accounts.

(19) Klein also purchased King stock for the accounts of 48 of his clients, including the Schulmans. Specifically, Klein purchased 3,000 shares of King stock for Schulman's IRA account, costing almost $27,000. The 3,000 shares Klein purchased in Schulman's account were the fourth largest purchase of King shares that Klein made in any single account.

(20) Altogether, Klein purchased more than 65,000 shares of King stock for his clients' accounts for approximately $585,000. With a few exceptions, the vast majority of those shares were purchased on August 16, 2010, the first trading day after Klein's meeting at the Schulmans' home.

(21) Klein's firm sent or caused to be sent to the Schulmans monthly statements for their accounts. The monthly statement for Schulman's IRA reflected that 3,000 shares of King stock were acquired for $26,899.20 on August 16, 2010. The monthly statement

included a one or two-page summary for the account. Schulman told the SEC that he did not read the monthly statements other than reviewing the summary on the first couple of pages, and did not know that Klein had purchased King stock for his IRA account until April 2011, after Hunton received a Financial Industry Regulatory Authority (FINRA) inquiry listing Klein.

(22) Pfizer's acquisition of King was announced on October 12, 2010. Within days of the announcement, Shechtman sold the King stock and options.

(23) Klein sold the shares of King stock he had purchased for himself on October 12, 2010, the same day the Pfizer-King merger was announced, for a profit of approximately $8,000.

(24) On that same day, Klein sold all of the King stock he had purchased for his family and clients, including the Schulmans, generating a profit of $328,038.

(25) As a result of the purchase and sale of King stocks for his IRA account, Schulman made a profit of more than $15,500, which represented more than a 50 percent profit in less than two months.

(26) In November 2010, a compliance officer with Ameriprise contacted Shechtman about his trading in King securities. Shechtman falsely told the investigators that he had been looking at King stock for a while. Shechtman later sent a follow up e-mail to the investigator and others disclosing that he had spoken with Klein about King because he was concerned that the investigators would learn about his numerous phone calls with Klein around the trading. Shechtman told Klein about the Ameriprise investigation about a week later.

(27) After discussions with Klein, Shechtman met with Ameriprise investigators and lied about his reason for trading in King stock. He later testified that he lied because he felt he had no choice and hoped the investigators would believe him and go away.

(28) The Securities and Exchange Commission opened an investigation and questioned Shechtman.

(29) On September 19, 2013, the SEC charged Shechtman and Klein with insider trading in violation of Rules 15(b) and 14(e) of the Securities Exchange Act. The SEC did not charge Schulman.

(30) Shechtman admitted liability and agreed to cooperate with the United States Attorney's Office. Shechtman resolved the charges with the SEC and pled guilty in the related criminal case to one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371.

(31) After the SEC filed charges against Klein, Schulman and his wife fired Klein as their investment advisor.

(32) On August 4, 2016, a grand jury in the Eastern District of New York returned an indictment against Schulman and Klein, charging them with conspiracy to commit securities fraud, in violation of 18 U.S.C. § 371, and securities fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff. The charges stemmed from the trading in King securities based on material, non-public information that Schulman obtained in connection with his and his firm's representation of King.

(33) On February 24, 2017, the district court granted Klein's motion to sever his trial from Schulman's. Klein later pled guilty to Count One of the indictment, charging conspiracy to commit securities fraud. Klein did not enter his guilty plea until July 25, 2017 – after the jury had found Schulman guilty of both counts in the indictment.

(34) Schulman's trial began on March 6, 2017. The government introduced the testimony of several witnesses, including Slater, Schulman's former partner at Hunton; Shechtman, who was a cooperating witness; and Richard Cinnamo, a Postal Inspector who described Schulman's sworn deposition testimony to the SEC on August 27, 2012, and statements in an interview with the USAO for the Eastern District of New York on May 19, 2015.

(35) Schulman did not testify at his criminal trial, but his wife, Ronnie, was one of the witnesses who testified for the defense.

(36) On March 15, 2017, the jury returned its verdict finding Schulman guilty of both felony counts – conspiracy to commit securities fraud and securities fraud.

(37) In April 2017, Schulman filed motions for acquittal and for a new trial. The government opposed the motions.

(38) In September 2017, the federal court denied Schulman's motions to acquit and for a new trial finding there was sufficient record evidence for a jury to find beyond a reasonable doubt all the elements of insider trading – *i.e.*, (1) that Schulman had a relationship of trust and confidence with the source from which he obtained the material non-public information that he disclosed; (2) that he violated that duty of trust and confidence by disclosing the information to Klein; (3) that he intended Klein to trade on the information and that Klein did, in fact, trade; and (4) that Schulman intended to receive a personal benefit in return for the disclosure.

(39) The federal court also found that there was sufficient record evidence for a jury to find beyond a reasonable doubt that Schulman was guilty of conspiracy to commit securities fraud – *i.e.*, (1) Schulman had an agreement with one or more person to commit an unlawful act; (2) Schulman knowingly and willfully joined and participated in the conspiracy; and (3) some member of the conspiracy knowingly committed at least one overt act in furtherance of the conspiracy.

(40) On October 5, 2017, the federal court sentenced Schulman to three years' probation to run concurrently on both counts, a $50,000 fine, forfeiture in the amount of $15,527, and 2,000 hours of community service.

(41) Schulman appealed his conviction.

(42) On January 10, 2019, the Second Circuit affirmed Schulman's conviction. The mandate on the appeal issued on February 1, 2019.

Petition at 2-12.

5. Respondent is agreeing to the disposition because Respondent believes that he cannot successfully defend against discipline based on the stipulated misconduct. Tr. 13; Affidavit ¶ 5.

6. Disciplinary Counsel has made no promises to Respondent other than what is contained in the Petition for Negotiated Discipline. Affidavit ¶ 7. Those promises and inducements are that Disciplinary Counsel has agreed not to pursue any additional charges in the underlying matter, to recommend a three-year suspension with fitness, and to not allege that Respondent committed a crime of moral turpitude. Petition at 13. Respondent confirmed during the limited hearing that there have been no other promises or inducements other than those set forth in the Petition. Tr. 22.

7. Respondent has conferred with his counsel. Tr. 8-9.

8. Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction set forth therein. Tr. 22-23; Affidavit ¶ 6.

9. Respondent is not being subjected to coercion or duress. *Id.*

10. Respondent is competent and was not under the influence of any substance or medication that would affect his ability to make informed decisions at the limited hearing. Tr. 9-10.

11. Respondent is fully aware of the implications of the disposition being entered into, including, but not limited to, the following:

a) he has the right to assistance of counsel if Respondent is unable to afford counsel;

b) he will waive his right to cross-examine adverse witnesses and to compel witnesses to appear on his behalf;

c) he will waive his right to have Disciplinary Counsel prove each and every charge by clear and convincing evidence;

d) he will waive his right to file exceptions to reports and recommendations filed with the Board and with the Court;

e) the negotiated disposition, if approved, may affect his present and future ability to practice law;

f) the negotiated disposition, if approved, may affect his bar memberships in other jurisdictions; and

g) any sworn statement by Respondent in his affidavit or any statements made by Respondent during this proceeding may be used to impeach his testimony if there is a subsequent hearing on the merits.

Tr. 34-36; Affidavit ¶¶ 1, 9-10, 12.

12. Respondent and Disciplinary Counsel have agreed that the sanction in this matter should be a three-year suspension with reinstatement conditioned on a showing of fitness to practice law. Petition at 13-14; Tr. 21-22.

a) Respondent further understands that, for purposes of reinstatement, his period of suspension began to run on June 28, 2018—the date Respondent filed his affidavit pursuant to D.C. Bar R. XI, § 14(g). Tr. 37.

b) Respondent understands that he will be required to prove his fitness to practice law in accord with D.C. Bar R. XI, § 16 and Board Rule 9 prior to being allowed to resume the practice of law. Tr. 37-39.

c) Respondent understands that the reinstatement process may delay Respondent's readmission to the Bar. Tr. 38-39.

13. In mitigation of sanction, the parties agree that (a) Respondent has no prior discipline; (b) Respondent has taken responsibility for his misconduct by accepting the sanction agreed to in this petition; and (c) Respondent has cooperated with Disciplinary Counsel. Petition at 16; Affidavit ¶ 16. Respondent's counsel made a further statement in mitigation of sanction during the limited hearing. Tr. 22-33.

III. DISCUSSION

The Hearing Committee shall approve an agreed negotiated discipline if it finds:

> a) that the attorney has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein;
>
> b) that the facts set forth in the Petition or as shown during the limited hearing support the attorney's admission of misconduct and the agreed upon sanction; and
>
> c) that the agreed sanction is justified.

D.C. Bar R. XI, § 12.1(c); Board Rule 17.5(a)(i)-(iii).

A. Respondent Has Knowingly and Voluntarily Acknowledged the Facts and Misconduct and Agreed to the Stipulated Sanction.

The Hearing Committee finds that Respondent has knowingly and voluntarily acknowledged the facts and misconduct reflected in the Petition and agreed to the sanction therein. Respondent, after being placed under oath, admitted the stipulated

facts and charges set forth in the Petition, and denied that he is under duress or has been coerced into agreeing to this disposition. *See* Paragraphs 8-9, *supra*. Respondent understands the implications and consequences of entering into this negotiated discipline. *See* Paragraph 11, *supra.*

Respondent has acknowledged that any and all promises that have been made to him by Disciplinary Counsel as part of this negotiated discipline are set forth in writing in the Petition and that there are no other promises or inducements that have been made to him. *See* Paragraph 6, *supra*.

B. The Stipulated Facts Support the Admissions of Misconduct and the Agreed-Upon Sanction.

The Hearing Committee has carefully reviewed the facts set forth in the Petition and established during the hearing, and we conclude that they support the admissions of misconduct and the agreed upon sanction. Moreover, Respondent is agreeing to this negotiated discipline because he believes that he could not successfully defend against the misconduct described in the Petition. *See* Paragraph 5, *supra*.

With regard to the second factor, the Petition states that Respondent committed a serious crime under D.C. Bar R. XI, § 10, and that he violated Rule 8.4(b) in that he committed crimes that reflect adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects. The stipulated facts support Respondent's admission that he violated Rule 8.4(b) in that the stipulated facts describe the sworn testimony, credited by the jury and serving as the basis for Respondent's convictions for securities fraud and conspiracy to commit securities

fraud, that Respondent implicitly directed his financial advisor to engage in trading on the basis of non-public information, in order to obtain a benefit. *See* Petition at 5-6, ¶¶ 13-15.

The Petition further states that Respondent violated Rule of Professional Conduct 1.6(a), in that he knowingly revealed a confidence or secret of a client and/or used a confidence or secret of a client for the advantage of himself or a third person. The evidence supports Respondent's admission that he violated Rule 1.6(a) in that the stipulated facts describe Respondent's behavior in sharing with his financial advisor nonpublic information obtained through his law firm's representation of a company entitled King Pharmaceuticals concerning the pending merger of that company with Pfizer, another pharmaceutical company. *See* Petition at 5-7, ¶¶ 13-16.

The Petition further states that Respondent violated Rule of Professional Conduct 8.4(c), in that he engaged in dishonesty, fraud, deceit, and/or misrepresentation. The stipulated facts support Respondent's admission that he violated Rule 8.4(c) in that he was convicted of securities fraud and conspiracy to commit securities fraud for engaging in fraud by implicitly directing his financial advisor to engage in trading on the basis of non-public information, in order to obtain a benefit. *See* Petition at 7, ¶ 16.

C. The Agreed-Upon Sanction Is Justified.

The third and most complicated factor the Hearing Committee must consider is whether the sanction agreed upon is justified. *See* D.C. Bar R. XI, § 12.1(c); Board

Rule 17.5(a)(iii); *In re Johnson*, 984 A.2d 176, 181 (D.C. 2009) (per curiam) (providing that a negotiated sanction may not be "unduly lenient"). Based on the record as a whole, including the stipulated circumstances in mitigation, the Hearing Committee Chair's *in camera* review of Disciplinary Counsel's investigative file and *ex parte* discussions with Disciplinary Counsel, and our review of relevant precedent, we conclude that the agreed-upon sanction is justified and not unduly lenient.

At an earlier stage of these proceedings, the Board on Professional Responsibility considered whether Respondent's convictions for securities fraud and conspiracy to commit securities fraud involve moral turpitude *per se*. *See In re Colson*, 412 A.2d 1160 (D.C. 1979) (en banc) (setting out the procedure by which criminal convictions are first evaluated to determine whether the elements of the crime, without more, constitute moral turpitude); *In re Allen*, 27 A.3d 1178, 1183 (D.C. 2011) ("We have drawn a distinction 'between offenses which manifestly involve moral turpitude by virtue of their underlying elements, and those which do not.'" (quoting *Colson*, 412 A.2d at 1164)). The Board determined that these convictions do not meet that standard because the crimes do not require proof of specific intent to defraud or dishonesty for personal gain, and the matter was referred to this Hearing Committee to determine (1) if Respondent's crimes involved moral turpitude on the facts, and (2) what final discipline is appropriate. *See* Order, *In re Schulman*, Board Docket No. 18-BD-006, at 6-7 (BPR May 4, 2018) (the "May 4, 2018 Board Order").

Moral turpitude is described as "[a]n act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty . . . ." *Colson*, 412 A.2d at 1168 (quoting 2 Bouvier's Law Dictionary 2247 (Rawle's Third revision)). Disbarment is the required sanction when moral turpitude is found. D.C. Code § 11-2503(a).

Following the Board's decision that Respondent's convictions did not constitute moral turpitude *per se*, Disciplinary Counsel conducted an investigation into the underlying facts of Respondent's criminal conduct. In the course of the investigation, Disciplinary Counsel reviewed the transcript from Respondent's trial and the court records for Tibor Klein and Michael Shechtman, the two other people charged with securities fraud in the underlying matter. She also conferred with the two Assistant U.S. Attorneys who prosecuted Respondent in the Eastern District of New York, and reviewed Respondent's sworn statement to the SEC and the notes of his interview with the U.S. Attorney's Office. *See* Petition at 13 n.1. At the conclusion of her investigation, Disciplinary Counsel determined that her office would not be able to prove moral turpitude on the facts of Respondent's convictions. Subsequently, Disciplinary Counsel and Respondent mutually agreed to a disposition of the charges and submitted a Petition for Negotiated Discipline. *See In re Rigas*, 9 A.3d 494 (D.C. 2010) (setting out the procedure by which, following a determination by the Board of Professional Responsibility that a criminal conviction does not constitute moral turpitude *per se*, Disciplinary Counsel can then

reach a conclusion that the crime does not constitute moral turpitude on the specific facts of the case, and enter into a negotiated discipline agreement with Respondent).

Notwithstanding Disciplinary Counsel's representation, pursuant to the Board's May 4, 2018 Order, the Hearing Committee must independently determine whether the stipulations would support a finding of moral turpitude on the facts. *See Rigas*, 9 A.3d at 498 (agreeing that a negotiated discipline hearing committee should '"evaluate independently [Disciplinary] Counsel's decision that a particular criminal conviction does not involve moral turpitude on the facts or that the proof is insufficient"' (quoting Board Report)). If Respondent committed a crime of moral turpitude, his disbarment would be required by D.C. Code § 11-2503(a), and any lesser sanction would be unduly lenient. *See id.*

The Hearing Committee has considered the entire record herein and agrees that Disciplinary Counsel has "exhausted all reasonable means of inquiry" and would not be able to prove that Respondent committed a crime of moral turpitude. *See id.* at 497. The actions underlying Respondent's convictions, while "legally and ethically blameworthy, . . . cannot be described as either depraved or deceitful" and do not constitute moral turpitude. *See In re Shorter*, 570 A.2d 760, 767 (D.C. 1990) (per curiam).

Respondent's actions fell short of moral turpitude despite the element of intent inherent in the crime of securities fraud. As the Board recognized in its May 2018 order finding no moral turpitude *per se*, the statutes at issue here, 15 U.S.C. §§ 78j(b) and 78ff do not require proof of specific intent to defraud and do not necessarily

involve dishonesty for personal gain. May 4, 2018 Board Order, at 6 (citing *In re Wittenberg*, Bar Docket No. 061-02, at 10-14 (BPR Mar. 22, 2004)).[2] Even when a conviction does not include an element of intent to defraud, moral turpitude can be present when the facts and circumstances underlying the crime so indicate. *In re Mason*, 736 A.2d 1019 (D.C. 1999); *see also In re Untalan*, 619 A.2d 978, 979 (D.C. 1993) (per curiam) (Despite the respondent's misdemeanor conviction, which is incapable of supporting a *per se* finding of moral turpitude, moral turpitude is nonetheless found on the facts of his offense which "contained the elements of a classic scam and was effected for respondent's personal gain.").

The stipulated facts do not demonstrate "a protracted series of activities and transactions" or a number of "pervasive fraudulent endeavors." *See Mason*, 736 A.2d at 1026, 1027; *see also, e.g.*, *In re Hallmark*, 998 A.2d 284, 285 (D.C. 2010) (per curiam) (finding moral turpitude on the facts where the respondent "repeatedly defrauded others for personal gain"). On the contrary, Respondent's conviction was based on a single event: he made statements to his broker on August 13, 2010, containing material non-public information which he had obtained through his position as an attorney representing King Pharmaceuticals, and upon which he intended his broker to trade. *See* Petition at 5-7, ¶¶ 13-16. No other actions by Respondent, in furthering the unlawful trading scheme or trying to conceal it, were alleged. *See* Tr. 26-27. Respondent's broker shared the material non-public

[2] The same characterization applies to Respondent's conviction for conspiracy to commit securities fraud under 18 U.S.C. § 371.

information with Michael Shechtman, another broker, who also traded on the information. Petition at 7, ¶¶ 17-18. While the two brokers engaged in extensive follow-up communications about the investments, Tr. 25-26, Respondent did nothing more. We thus find no moral turpitude based on these facts.

Similarly, although Respondent intended to receive a "benefit" in return for his actions, *see* Petition at 7, ¶ 16, Respondent's actions do not indicate that he was more specifically seeking a "substantial financial benefit." *Mason*, 736 A.2d at 1028. While Respondent's broker did invest on the information for Respondent's benefit, and Respondent admits that he intended for him to do so, the return was a relatively small amount, approximately $15,500, and the investments were made in the context of Respondent's retirement account rather than in a manner calculated to bring him immediate benefit. Petition at 8; Tr. 31-32. Apart from the bare fact that his retirement account was enriched, the record does not contain any specific evidence to support a finding that Respondent was motivated by a desire for substantial personal financial gain. *See Allen*, 27 A.3d at 1186-88 (finding that theft did not rise to moral turpitude due to the lack of clear and convincing evidence that the respondent was motivated by a desire for personal gain as opposed to "extreme stress" arising from an unspecified psychological condition).

These circumstances take this case out of the norm of schemes to defraud and may be considered exceptional. *See In re McBride*, 602 A.2d 626, 635 (D.C. 1992) (en banc) (providing that felonies requiring proof of intent to defraud are crimes of moral turpitude *per se*, and "the circumstances surrounding the commission of any

crime involving an intent to defraud would have to be exceptional to warrant the conclusion that moral turpitude was not involved"); *see, e.g.*, *In re Brown*, Bar Docket No. 88-97, at 14-15, 17-18 (BPR Dec. 10, 2003) (finding no moral turpitude on the facts where the respondent was convicted of felony securities fraud under New Jersey law, where Disciplinary Counsel did not present evidence to support a finding of fraudulent intent or intentional dishonesty for personal gain), *recommendation adopted where no exceptions filed*, 851 A.2d 1278, 1279-80 (D.C. 2004) (per curiam). The current proceedings mark the only known allegations of misconduct in Respondent's over 30-year membership in the Bar and did not occur in the context of a pattern of misconduct.

Important to our consideration is the fact that the discipline agreed to by the parties, a three-year suspension from practice with readmission conditioned on a fitness requirement, is the most stringent discipline that could be imposed, short of disbarment. *See* D.C. Bar R. XI, § 3(a). This factor, viewed in light of the circumstances described above, supports our conclusion that the agreed-upon sanction is not unduly lenient. *See, e.g.*, *Allen*, 27 A.3d at 1186, 1189 (one-year suspension with restitution for misdemeanor theft and fraud not motivated by personal gain); *Brown*, 851 A.2d at 1280 (one-year suspension, with fitness, for felony securities fraud, where a three-year suspension would have been appropriate but for the delay and lengthy interim suspension in the case).

IV. CONCLUSION AND RECOMMENDATION

It is the conclusion of the Hearing Committee that the discipline negotiated in this matter is appropriate.

For the reasons stated above, it is the recommendation of this Hearing Committee that the negotiated discipline be approved and that the Court suspend Respondent for three years with reinstatement conditioned on a showing of fitness to practice law. For purposes of reinstatement, we recommend Respondent's suspension should run from June 28, 2018—the date Respondent filed his affidavit as required by DC Bar. R. XI, § 14(g).

AD HOC HEARING COMMITTEE

Kathleen Wach
Chair

La Verne Fletcher
Public Member

Tonya D. Love
Tonya Love
Attorney Member