SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-411
District Docket No. XIV-2010-0034E

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| IN THE MATTER OF | : |
| SCOTT P. SIGMAN | : |
| AN ATTORNEY AT LAW | : |

Decision

Argued: March 20, 2014

Decided: June 13, 2014

Jason D. Saunders appeared on behalf of the Office of Attorney Ethics.

Kenneth D. Aita appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following Pennsylvania's imposition of a thirty-month suspension on respondent. In a joint petition in support of discipline on consent, respondent admitted violating the following Pennsylvania RPCs: RPC 1.15(a) (failure to safeguard client funds that were required to be kept separate from the lawyer's own property); RPC

1.15(b) (failure to promptly notify a client or third person upon receiving property of the client or third person); RPC 1.15(d) (failure to promptly notify a client or third person of receipt of funds or property that are not fiduciary funds or property); RPC 1.15(e) (failure to promptly deliver funds or property to a client or third person or to promptly render a full accounting regarding the property); RPC 3.4(a) (unlawfully obstructing another party's access to evidence or unlawfully altering, destroying or concealing a document or other material having potential evidentiary value); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).[1]

The OAE recommended respondent's disbarment. For the reasons expressed below, we concur with the OAE's recommendation.

Respondent was admitted to the New Jersey and Pennsylvania bars in 2001. He has no history of discipline in either jurisdiction. At the relevant times, he was an associate at the law firm of Bochetto & Lentz, P.C., in Philadelphia, Pennsylvania.

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[1] Pennsylvania RPCs 1.15(a), 1.15(b), 3.4(a), 8.4(c), and 8.4(d) are equivalent to New Jersey RPCs 1.15(a), 1.15(b), 3.4(a), 8.4(c), and 8.4(d). Pennsylvania RPCs 1.15(d) and 1.15(e) have no New Jersey RPC counterparts.

According to the Pennsylvania joint petition, from July 5, 2005 through March 6, 2009, respondent was an associate at Bochetto & Lentz (B&L). While so employed, respondent knew that (1) he was prohibited from handling any client matters independently of his employment with B&L; (2) he was prohibited from handling any client matters that were not approved by George Bochetto; (3) he was prohibited from referring client matters or prospective client matters to another attorney or law firm, unless approved by Bochetto; (4) he was required to pay to B&L any referral fees that he received for any client or prospective client matters referred to other counsel; (5) he was prohibited from declining to accept a client matter that would be handled by B&L, without Bochetto's approval; (6) he was prohibited from charging a retainer or a fee to a client or prospective client, without Bochetto's approval; (7) for cases he originated, he was entitled to receive twenty percent of the fees received by B&L for criminal cases and hourly fee cases and thirty-three and a third percent of fees received by B&L for contingent cases; (8) he was to conduct himself with honesty and transparency and "to exhibit absolute loyalty to B&L;" and (9) he was required to record time spent on client files and non-client matters related to his employment at B&L.

1. **The Rachel Furman Matter**

In early 2007, Rachel Furman retained Daniel Cevallos, a former B&L attorney, to appeal her "license" suspension, for a fee of $1,250. Because Cevallos had a conflict in his schedule that prevented him from appearing at Furman's February 7, 2007 hearing, respondent agreed to attend it, at Cevallos' request. Respondent succeeded in obtaining a favorable result for Furman.

On respondent's B&L time log, he entered "1.4" for the time spent on the Furman case. He had neither obtained Bochetto's prior approval to represent Furman, nor informed him that he was doing so.

In a February 7, 2007 email to respondent, copied to Cevallos, Furman asked which attorney she should pay. Presumably, one of them instructed her to pay Cevallos. Cevallos then sent a $600 check to respondent's residence, for respondent's representation of Furman.

Respondent negotiated the check and used the funds for his own purposes. He did not inform Bochetto that he had represented Furman and did not turn over the funds to B&L. Pursuant to B&L's policy, respondent was entitled to twenty percent of the fee, or $120, while B&L should have received $480.

Respondent admitted that he violated RPC 1.15(a), RPC 1.15(b), and RPC 8.4(c).

2. **The Kris Wood Matter**

On September 17, 24, and 25, 2007, Kris Wood met with respondent about forming a company. Respondent referred Wood's case to Cevallos, without Bochetto's knowledge or consent.

By check dated October 3, 2007, Cevallos paid respondent a $1,500 referral fee for Wood's case. Respondent negotiated the check and used the proceeds for his own purposes. He did not notify Bochetto of his actions or turn over the check to B&L, which was entitled to $1,000 of the referral fee.

According to the joint petition, respondent violated RPC 1.15(a), RPC 1.15(b) and RPC 8.4(c).

3. **The Norcross Matter**

In November 2007, Howard Norcross retained respondent and B&L to represent his son, Carmen, in a criminal case in Philadelphia municipal court. Bochetto approved respondent's handling of the case. Norcross paid the firm a $2,500 flat fee for respondent's representation of Carmen at a preliminary hearing. Because respondent originated the case, he received $500 from B&L.

In May 2008, respondent told Norcross that B&L required an additional $10,000 to continue representing Carmen. On May 27, 2008, when Norcross gave respondent a $5,000 "bank check" issued

to B&L, respondent instructed him to obtain another "bank check," payable to respondent, which Norcross did.

A negotiated guilty plea resulted in Carmen's sentence of incarceration for six to twenty-three months and probation for four years.

In late March 2009, after respondent no longer worked for B&L, Norcross called Bochetto to request a refund of the $5,000. Because Bochetto knew nothing about the payment, Norcross explained the details surrounding his payment to respondent.

After confirming with the B&L bookkeeper that the firm had never received the $5,000 payment, Bochetto questioned respondent, who replied that Norcross "is crazy, he never paid $5,000." Respondent then directed Norcross not to contact B&L and represented to Norcross that he would refund his money.

After his conversation with respondent, Bochetto contacted Norcross, who reiterated the events surrounding the payment to respondent and respondent's directive that Norcross was not to contact B&L. Respondent eventually refunded $4,000 to Norcross, in two installments. After the refund, B&L was entitled to $800 and respondent to $200, representing twenty percent of the $1,000 fee.

4. **The Arkady Rayz Referral**

While employed at B&L, respondent knew that, with the client's approval, whenever an associate originated a case by way of referral from another attorney, the associate would receive eight percent of B&L's fee and the referring attorney would receive twenty percent of B&L's fee.

In an April 6, 2007 email, Arkady Rayz, Esq., informed respondent that he had referred Anthony Barg to him because a conflict precluded Rayz from handling Barg's matter. Respondent assured Rayz that, if Barg retained B&L, respondent would pay Rayz a referral fee. Although respondent obtained Bochetto's approval to represent Barg, he failed to disclose to Bochetto or to B&L's bookkeeper that Rayz had referred the case to him and that he had promised Rayz a referral fee.

In an April 9, 2007 email, respondent provided the bookkeeper with Barg's client information, designated himself as responsible for originating the file, and indicated that the firm had received a $5,000 retainer by credit card payment.

In an August 8, 2007 email, respondent asked the bookkeeper to open a new file for Barg (presumably, a second file), "to be titled 'Tony Barg – Partnership,'" and designated himself as the attorney who had originated the file. In a January 28, 2008 email, respondent instructed the bookkeeper to charge Barg's

credit card $3,893.16 and to mark the file paid in full. Respondent reminded the bookkeeper that he was to receive a twenty percent origination fee.

For B&L's representation Barg paid $32,409.67 in attorneys' fees and $1,987.47 in costs. Although respondent received $6,580.95 as origination compensation for the Barg matter, he should have received only $2,592.77, or eight percent of the attorneys' fees that Barg paid to B&L. Respondent converted the balance, $3,988.18, for his own use.

In addition, by failing to disclose to Bochetto and the bookkeeper that he had promised Rayz a referral fee, respondent deprived Rayz of $6,481.93, the amount he should have received for the referral.

Respondent failed to promptly notify Rayz when Barg paid the attorneys' fees and failed to ensure that Rayz promptly received the portion of the referral fees to which he was entitled.

Respondent conceded that he violated RPC 1.15(a), RPC 1.15(b), and RPC 8.4(c).

**5. The Datz Referral**

While employed at B&L, respondent was aware that, in contingent fee cases that an associate originated and that were referred to another attorney or law firm, with Bochetto's

approval, the associate would be entitled to thirty-three percent of the referral fee received by B&L.

On June 26, 2007, respondent had a conference call with Jillene Pasternak and her daughter, Amy Hendry, about Pasternak's June 20, 2007 slip-and-fall accident. Respondent referred Pasternak to A. Harold Datz, Esq., without obtaining Bochetto's approval.

By email sent the following day, Datz told respondent that he had spoken to Pasternak, had taken the case, and would give respondent a referral fee, upon the successful conclusion of the case. In a June 28, 2007 email, respondent provided Datz with his home address and personal cell phone number.

In April 2009, Datz settled the Pasternak case for $216,000, for which he received a forty percent contingent fee of $86,400.

As of March 2009, respondent was no longer working for B&L. On April 10, 2009, he provided Datz with a tax identification number. By check dated April 30, 2009, Datz paid respondent a $28,800 referral fee, or one-third of Datz's fee in the Pasternak matter.

Respondent failed to inform Bochetto that he had received the Datz referral fee, generated from a case that he had referred to another attorney, while still employed at B&L. Respondent did not pay B&L $19,200, representing its portion of the referral

fee. Moreover, respondent did not hold that amount in a trust account for B&L's benefit. Respondent used all of the proceeds from the Datz referral fee for his own benefit, including the $19,200 that B&L was entitled to receive.

According to the joint petition, respondent violated RPC 1.15(b), RPC 1.15(d), RPC 1.15(e), and RPC 8.4(c).

**6. The James Boerner Matter**

On December 16, 2005, James Boerner retained B&L to represent him in connection with an arson investigation of his residence in Maple Shade, New Jersey, conducted by State Farm Fire & Casualty Company (State Farm) or "by any law enforcement authority." Bochetto approved respondent's representation of Boerner, to occur "prior to any criminal indictment in connection with a criminal investigation."

Boerner's residence had been destroyed by a fire, on October 5, 2005. Prior thereto, National City Mortgage Company (National City), which held a mortgage on the property, had instituted foreclosure proceedings. Richard Haber, Esq. and Leonard Zucker, Esq., represented National City.

Beginning in September 2005 (prior to the fire), Boerner had been in discussions with Herbert McCulloch and Hollis Hames (co-buyers) about the sale of the property. McCulloch was represented

by the firm of Prochniak, Weisberg, P.C., in connection with the purchase. Following Boerner's retention of B&L, respondent provided legal counsel and advice to him about the sale documents.

From January 3 to February 8, 2006, either Weisberg (one of the buyer's attorneys) or Haber (the lender's attorney) sent twenty-two emails to respondent, in an effort to delay the sheriff's sale of the property and to close the sale from Boerner to McCulloch and Hames. By email dated February 17, 2006, Prochniak, another one of the buyer's attorneys, sent purchase documents to respondent for his review. On that same day, respondent replied by email that the "docs are fine for [Boerner] to sign," the documents were executed, and the buyers paid National City the amount due on the mortgage. On February 17, 2006, Boerner, McCulloch and Hames executed an "Agreement for Purchase and Sale of Real Estate."

In a February 21, 2006 email to respondent, with the subject line reading "Boerner: Fire Ins.," Weisberg requested a copy of the homeowner's insurance policy and asked when Boerner's "examination under oath and trial would take place." In reply, respondent sent an email to Weisberg, with a copy to his paralegal, directing the paralegal to provide Weisberg with information on Boerner's homeowner's policy. Respondent also

informed Weisberg that no criminal case had been filed against Boerner.

On March 27, 2006, respondent represented Boerner at the State Farm deposition relating to Boerner's fire insurance claim on the destroyed property. In reply to most of the questions, Boerner asserted his Fifth Amendment right against self-incrimination. Toward the end of the "examination," respondent informed State Farm's attorney that Boerner had agreed to forego any insurance claims against State Farm.

By letter dated March 31, 2006, State Farm informed Boerner and respondent that "no coverage existed for the fire that destroyed the property" because Boerner had failed to answer questions during the March 27, 2006 "examination."

On June 30, 2006, State Farm issued a $130,727.45 check payable to National City, with the notation "'loss date' of '10/05/2006'." Because McCulloch had paid the mortgage, National City endorsed the State Farm check and forwarded it to Boerner.

Respondent had six "conference calls" with Boerner about the State Farm check. Respondent knew that Boerner had received from National City the State Farm check representing its obligation to the mortgagee, when the collateral securing the obligation (the improvements to the property) was destroyed.

Respondent and Boerner arranged for the deposit of the State Farm check into B&L's escrow account, on August 11, 2006. By letter to Boerner, dated that same day, respondent confirmed that, as Boerner had requested, the $130,727.45 "mortgage proceeds" would be held by B&L in escrow, pending the outcome of the arson investigation, until Boerner requested their release.

In December 2006, pursuant to Boerner's request, the proceeds were distributed as follows: $30,000 to B&L as a fee for representing Boerner in a DUI case; $13,498.83 to satisfy Boerner's federal tax debt; another $30,000 to B&L for Boerner's representation in a second DUI case; and the remainder to Boerner. As a result of the fee payments to B&L, respondent received two payments of $6,000, because he had originated Boerner's additional criminal matters.

In a May 2, 2007 email, Weisberg told respondent that he had learned that respondent had received the fire insurance proceeds, had taken his fees, and had distributed the remainder to Boerner. Weisberg pointed out that the "Agreement" had made his client the beneficiary of "any insurance payout arising from the fire to the property" and suggested that respondent "retrieve the insurance proceeds from [Boerner] 'before this blows up.' "By letter dated

May 3, 2007, McCulloch's attorney, Alan Ettenson,[2] advised respondent that McCulloch, not Boerner, was entitled to the fire insurance proceeds and that, despite respondent's denials of involvement in the sale of the property, Ettenson had documents that established his participation.

Respondent reviewed Ettenson's letter with Bochetto. In a meeting with Bochetto and others, respondent claimed that he had not reviewed the "Agreement" and that he did not know whether Boerner was entitled to the proceeds from the State Farm check. Following that meeting and a conference call with Ettenson, respondent drafted a letter to Ettenson for Bochetto's signature, stating, among other things, that (1) respondent had not been aware of a dispute over the entitlement of the proceeds of the State Farm check, until he received Ettenson's letter; (2) after speaking with respondent, Bochetto learned that respondent had not reviewed the purchase agreement; and (3) respondent had advised Boerner only that the pending criminal investigation would not prevent Boerner from selling the property.

Bochetto was not aware that the letter contained misrepresentations, in that respondent had received and reviewed

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[2] McCulloch had retained Ettenson in connection with obtaining the insurance proceeds, as a result of the sale of the property.

the agreement and had some involvement in the sale of the property.

In April 2008, McCulloch filed a lawsuit against Weisberg and Prochniak, who, in turn, filed a third-party complaint against respondent, B&L, and Boerner. Among other things, the third-party complaint alleged that respondent and B&L knew, or should have known, that the proceeds from State Farm belonged to McCulloch, not Boerner.

On February 23, 2009, respondent prepared and signed an affidavit, under oath, stating that, as far as he knew, State Farm had declined to pay Boerner's fire insurance claim, based on Boerner's failure to cooperate and answer questions at a deposition, and that, on August 11, 2006, Boerner had given him a check from his mortgage company, to be held in escrow, so that Boerner would have adequate resources to pay his defense fees and the debt to the IRS.

On March 3, 2009, Ettenson and Weisberg's and Prochniak's attorney deposed respondent. During the deposition, respondent provided the attorneys with his false affidavit and falsely testified that (1) he had not reviewed the agreement, before the property had been sold; (2) he had not been involved in the sale of the property; (3) he had not kept time records for legal services rendered to Boerner; (4) he was unaware that State Farm

had issued a check; (5) he was unaware that State Farm had issued a check for the fire that had destroyed the property; (6) he did not know that Boerner had received a check from State Farm; (7) he had not questioned Boerner about the "mortgage company" check (which was actually the State Farm check); (8) he had not contacted State Farm about the check; (9) he did not know that Boerner had presented the State Farm check for deposit into the B&L escrow account; and (10) he had not taken a fee from the fire insurance proceeds.

Respondent's January and February 2006 time records for the Boerner matter reflected his review of, and reply to, emails from the buyers and their attorneys and telephone conversations with them and Boerner, as well as his review of the purchase agreement.

On May 7, 2009, respondent's counsel sent a letter to the attorneys involved in the deposition, asserting that respondent wanted to correct "certain mistakes" made during his deposition and requesting that respondent be re-deposed, specifically with regard to his time records, the nature of the $130,000 check, the nature of his representation of Boerner, and the fees paid to B&L.

According to the joint petition, the above conduct violated RPC 3.4(a), RPC 8.4(c), and RPC 8.4(d).[3]

**7. The Westlaw Account**

During respondent's employment, B&L provided him with the firm's Westlaw password, to be used exclusively in connection with B&L matters. Bochetto did not authorize respondent to disseminate the password to anyone who was not employed by B&L.

In a June 13, 2007 email, Tara D'Lutz, Esq., an acquaintance of respondent, informed him that the Lexis ID that he had previously given to her was "defunct." She asked him for another ID so that she could run "one background check" on an individual involved in one of her cases. Respondent's return email included B&L's Westlaw password. D'Lutz was not employed by B&L, but by a Virginia law firm. Respondent did not inform D'Lutz that the password was for the B&L Westlaw account. D'Lutz used the B&L Westlaw password in July and August 2007.

In August 2007, the B&L bookkeeper sent three emails to B&L employees, questioning the charges the firm had incurred for the Westlaw searches performed by D'Lutz. Respondent denied knowledge of any unauthorized Westlaw charges. After B&L paid Westlaw

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[3] The petition did not include a reference to the improper distribution of funds to which Boerner was not entitled.

$3,662.80 for D'Lutz's usage, it learned that respondent had given D'Lutz the B&L password. In November 2009, D'Lutz's law firm reimbursed B&L for the charges.

Respondent admitted that his conduct in this regard violated RPC 8.4(c).

The joint petition listed the following mitigating factors: respondent's admission of misconduct; his cooperation with the Pennsylvania Office of Disciplinary Counsel (ODC); his remorse for his misconduct; the lack of a disciplinary history in Pennsylvania; and his active involvement with the Philadelphia Bar Association, the Weed and Seed Program (aimed at eliminating drug-related crime and improving the social and economic conditions in the community), and other legal and non-legal organizations.

The joint petition also listed, as mitigation, respondent's lawsuit against B&L for referral fees owed to him from cases that had remained at B&L, after his employment had been terminated. B&L claimed, in turn, that it was entitled to a set-off against respondent's share of the fees because, among other things, he had converted client fees and referral fees that belonged to B&L. In the joint petition, respondent represented that he would notify B&L that it was entitled to $25,468.18 from respondent's share of referral fees that B&L held in an escrow account. This

sum was the amount that the ODC determined that respondent had converted from B&L, in the matters referenced in the joint petition.

The petition also referred to character letters from the former Philadelphia District Attorney, the dean of Temple Law School, six attorneys, a Philadelphia police captain, a police officer, and a friend.[4]

According to the joint petition, the ODC and respondent agreed that a thirty-month suspension was appropriate. The petition pointed out that respondent converted a "substantial amount of fees from his employer (over $25,000) and engaged in misconduct over a lengthy period of time (twenty-four months), but had no record of discipline and cooperated by admitting his misconduct.

The petition emphasized that respondent's misconduct was more egregious than that of other Pennsylvania attorneys guilty of similar misconduct because, in addition to converting B&L's fees, respondent offered false testimony during a deposition (although, two months later, he admitted making "certain mistakes," during the deposition); failed to disclose the referral of the Barg matter to B&L, thereby depriving attorney Rayz of several

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[4] Those character letters are attached to respondent's reply brief to the OAE's motion.

thousand dollars in referral fees; and provided the B&L Westlaw password to a non-B&L employee, who accrued almost $3,700 of unauthorized charges.

The OAE took the position that respondent's conduct, similar to that exhibited in In re Siegel, 133 N.J. 162 (1993), In re Denti, 204 N.J. 566 (2011), In re Dade, 134 N.J. 597 (1994), and In re Spina, 121 N.J. 378 (1990) (theft of employers' funds), requires his disbarment. The OAE pointed out that respondent engaged in a lengthy and premeditated fraud, motivated by self-interest. The OAE added that, in addition to taking funds that his employer was entitled to receive, respondent lied to his employer on numerous occasions to hide his unethical conduct, unlawfully obstructed another party's access to evidence, and testified falsely in his affidavit and at a deposition.

Respondent's counsel, in turn, argued that a reciprocal thirty-month suspension is the more appropriate sanction and that the cases cited by the OAE are distinguishable because the conduct in those cases was significantly more egregious, involving the theft of greater sums of money, the conviction of a crime (Spina and Dade), altering and forging documents (Spina and Denti), commingling employer and attorney funds (Spina), lying to the employer (Spina and Denti), and taking affirmative steps to deceive partners, such as submitting false billing hours for

legal work not performed (Denti) or falsifying disbursements and expenses to receive cash to which the attorney was not entitled (Siegel).

Counsel highlighted the mitigating factors that were noted in the joint petition, including respondent's outstanding achievements, extensive involvement in the community, and character letters.

Finally, counsel underscored that much of the conduct related to a business dispute between respondent and B&L as evidenced by his lawsuit against B&L for "very large referral fees owed to him for cases he originated" while employed there. According to counsel, the matter went to arbitration where Bochetto stipulated that he owed respondent $227,350. The arbitrator found that B&L was entitled to a setoff of $103,407.10 for funds respondent should have given B&L. B&L thus owed respondent $123,942.93.[5] The matter is currently pending before the Superior Court of Pennsylvania.

Following a review of the full record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-

[5] Of great significance is that, as part of the arbitration proceedings, respondent admitted that he violated his fiduciary duty under his employment relationship with B&L and that, as a consequence of such violation, he received certain fees to which he "admittedly was not entitled ($25,468.18)."

14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state. Therefore, we adopt the Pennsylvania findings and find respondent guilty of the rule violations that he admitted.

Specifically, respondent failed to promptly notify third persons upon receiving funds in which the third person has an interest (RPC 1.15(b)), failed to keep funds separately in which the lawyer and a third person claim an interest until there is an accounting and severance of their interests (RPC 1.15(c)), unlawfully obstructed another party's access to evidence (RPC 3.4(a)), and converted or knowingly misappropriated law firm funds (RPC 1.15(a) and RPC 8.4(c))[6], and engaged in conduct prejudicial to the administration of justice (RPC 8.4(d)).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

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[6] Pennsylvania disciplinary authorities use the terms "conversion" and "misappropriation" interchangeably. In re Anonymous, No. 109 D.B. 91 1993 Pa. Lexis 348 (D.B. 1993).

> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
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> (E) the unethical conduct established warrants substantially different discipline.

A review of the record reveals that this matter falls within the ambit of subparagraph (E). Respondent received a thirty-month suspension in Pennsylvania for, among other serious ethics improprieties, knowingly misappropriating his law firm's funds. Disbarment is not invariably imposed in Pennsylvania for that offense. See, e.g., Office of Disciplinary Counsel v. Staropoli, 69 Pa. D. & C. 4th 116 (2004) (discussed below) (one-year suspension; disbarred in New Jersey) and Office of Disciplinary Counsel v. LeBon, 115 DB 2000, No. 718 (2002) (unreported, one-year suspension; disbarred in New Jersey; lawyer requested that a client issue the check to him rather than the firm, deposited almost $6,000 for legal fees and costs into his own account, and used the funds for personal purposes).

In New Jersey, however, disbarment is required for the knowing misappropriation of law firm funds. Admittedly, respondent knowingly misappropriated more than $25,000 of his employer's funds. He did so by directing clients to pay him directly (Furman and Norcross) and by keeping referral fees to which he knew he was not entitled (Wood and Pasternak). In the Norcross matter, when the client presented him with a bank check payable to the law firm, he instructed Norcross to obtain a second bank check issued to him personally. After Norcross called B&L to obtain a refund of the retainer, Bochetto contacted respondent, who lied to him about the fee. In an effort to conceal his deception, respondent directed Norcross to refrain from contacting B&L. Respondent eventually reimbursed the majority of the fee to Norcross.

Respondent was also dishonest about matters that were referred to him. By not informing B&L that Rayz had referred a matter to him (Barg), he cheated Rayz out of his referral fee and kept the full origination fee for the Barg matter, rather than only the portion to which he was entitled. In Wood and Pasternak, he kept the entire referral fee for himself. In Pasternak alone, the referral fee was $28,800, of which B&L was entitled to $19,200.

In In re Siegel, supra, 133 N.J. 162, the Court addressed, for the first time, the question of whether knowing misappropriation of law firm funds should result in disbarment. There, during a three-year period, the attorney converted more than $25,000 in law firm funds (the same amount stolen by respondent), by submitting false disbursement requests to the firm's bookkeeper. Although the disbursement requests listed ostensibly legitimate purposes for the funds to be disbursed, they represented actual expenses incurred by either Siegel personally or by others, such as a mortgage service fee for his mother-in-law. While the payees were not fictitious, the stated purposes of the expenses were not legitimate.

The Court concluded that knowing misappropriation from one's partners is just as wrong as knowing misappropriation from one's clients. The Court agreed with the dissenting public members of the Board, who "saw no ethical distinction between the prolonged, surreptitious misappropriation of firm funds and the misappropriation of client funds."

See also, In re Staropoli, 185 N.J. 401 (2005) (motion for reciprocal discipline; attorney who received a one-year suspension in Pennsylvania was disbarred for retaining a $3,000 legal fee, two-thirds of which belonged to his firm); In re Epstein, 181 N.J. 305 (2004) (attorney disbarred for knowingly

misappropriating funds from his law firm; in four cases, the attorney instructed clients to issue fee checks to him; he then cashed the checks and retained the funds); In re LeBon, 177 N.J. 515 (2003) (attorney disbarred for diverting $5,895.23 of law firm funds by instructing a client to make a check for fees payable to him; he had his secretary confirm the instructions); In re Greenberg, 155 N.J. 138 (1998) (attorney disbarred for misappropriating approximately $34,000 from his law firm; the insurance company issued two checks payable to the attorney and to his clients; he endorsed the checks, sent them to the clients, and instructed the clients to return checks payable to him); and In re Spina, 121 N.J. 378 (1990) (non-practicing attorney disbarred, while working for the International Law Institute (ILI) in several different capacities; he commingled his and the ILI's funds and used the ILI's funds for his own purposes; the attorney's personal use of the funds was flagrant and continued even after the ILI began an investigation; the attorney pleaded guilty to the misdemeanor of taking $15,000, "without right" and, during his plea, admitted taking or converting an additional $32,000 for his own purposes).

In Staropoli, although the attorney's conduct was much less egregious than respondent's, the attorney was not spared from disbarment. The attorney, an associate in a Pennsylvania law

firm, was aware that contingent fee cases were to be divided in certain percentages between the firm and its associates, if the associates originated the cases. In May 2000, the attorney settled a personal injury case. The insurance company issued a check to the attorney and the client. The attorney did not tell the firm of his receipt of the check and deposited it into his personal bank account, rather than the firm's account. He distributed $6,000 to the client and kept $3,000 for himself.

In August 2000, the attorney left the firm without telling anyone about the personal injury case. The firm learned of it only when the insurer called the firm seeking the client's release. When the firm confronted the attorney, he alternately misrepresented that he had not charged the client a fee because she was a friend; that he charged her less than a one-third fee; and that he charged her only $1,500. In May 2001, the attorney made restitution to the firm for its portion of the fee.

At the Pennsylvania disciplinary hearing, the attorney expressed his remorse and embarrassment. In addition, two lawyers, from the very firm from which he misappropriated the funds, appeared to testify as to his good character.

We were divided in our decision. Four members found that the attorney's single aberrational act should not require "the death penalty on [the attorney's] New Jersey law career." Those members

were convinced that his character was not permanently flawed or unsalvageable.

The four members who voted for disbarment found that the attorney did not have a reasonable belief of entitlement to the funds that he withheld from the firm and that he advanced no other valid reason for his misappropriation of law firm funds. The Court agreed and disbarred the attorney.

Over the years, a line of cases has evolved where attorneys, who held a reasonable belief to entitlement of the funds they took, were saved from disbarment. See, e.g., In re Bromberg, 152 N.J. 382 (1998) (reprimand for attorney who reasonably believed that he was a partner in the firm by virtue of an agreement he had entered; because he had not been paid any salary during one month and his partner had unilaterally breached their letter-agreement, he believed he was advancing to himself funds to which he was entitled, when he intercepted two checks from a client, payable to the firm); In re Glick, 172 N.J. 319 (2002) (reprimand for an attorney who, from the inception of his association with the firm, disagreed with his share of the firm's profits; over a three-year period, he deposited checks payable to him, for his services as an arbitrator, into his personal account; he retained his fees as a form of self-help as compensation for what he perceived was the firm's failure to properly calculate his profit

share); In re Spector, 178 N.J. 261 (2004) (reprimand for attorney who remained at a firm while in the process of forming his own firm; he was under the impression that the prior firm had failed to comply with its employment agreement and that it intended to cheat him; he, therefore, retained fees that he had earned while still at the prior firm, intending to hold them in escrow but, through a miscommunication with his new partner, some of the fees were deposited in the business account and were spent); and In re Nelson, 182 N.J. 323 (2004) (reprimand for attorney who took funds from his law firm while in the midst of a partnership dispute; the attorney had learned that legal malpractice suits had been filed against the firm and had been concealed from him, that the firm had made improper payments of referral fees to other attorneys, that one of the partners had been trying to "steal" his clients to receive credit for generating the legal fees paid by the clients, and the law firm had failed to address the issue of the use of law firm funds for the payment of certain questionable expenditures).

Here, the joint petition did not set forth that respondent had a reasonable belief of entitlement to the fees that he improperly took for himself. In fact, the petition recited that respondent was well aware of the amounts to which he was entitled for originating a case, for referring a case, or for accepting a

case that had been referred to him or the firm; that he knew that Bochetto's approval was required for all such activities; that he received from B&L the fees to which he was entitled for originating matters while employed there; and that his duplicitous actions were the product of his dissatisfaction with the terms relating to his responsibilities to B&L and his share of origination or referral fees.

Respondent's counsel's argument that respondent's conduct related to a business dispute is meritless. According to the Arbitration Order attached to respondent's brief, the business dispute with B&L arose "on or around September 12, 2011, [when] the arbitration clause was invoked," following the entry of a termination agreement, on March 4, 2009, between respondent and Bochetto. Respondent improperly took B&L funds well before that time. It cannot be found, thus, that respondent reasonably believed that he was entitled to the fees that he took for himself. That he may have a valid claim to some referral fees that B&L continues to hold in its escrow account does not absolve him from the fact that, while employed there, he knowingly misappropriated more than $25,000.

We, therefore, determine that, like the above attorneys who knowingly misappropriated law firms' funds and, in particular, Staropoli (who kept only $3,000 from a settlement) and LeBon (who

requested that the client issue a check to him for $6,000, rather than to the firm), respondent must be disbarred. We so recommend to the Court. In light of our disbarment recommendation for respondent's knowing misappropriation of law firm's funds, we need not determine the measure of discipline for his other serious offenses.

Member Zmirich voted to impose a three-year suspension. He was concerned that, as an associate of the B&L law firm, respondent may have believed that, notwithstanding the terms of his employment agreement with that firm, he had a colorable claim to the fees he retained.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Scott P. Sigman
Docket No. DRB 13-411

Argued: March 20, 2014

Decided: June 13, 2014

Disposition: Disbar

| ***Members*** | Disbar | Three-year Suspension | Reprimand | Dismiss | Disqualified | Did not participate |
|---|---|---|---|---|---|---|
| Frost | X | | | | | |
| Baugh | X | | | | | |
| Clark | X | | | | | |
| Doremus | X | | | | | |
| Gallipoli | X | | | | | |
| Hoberman | X | | | | | |
| Singer | X | | | | | |
| Yamner | X | | | | | |
| Zmirich | | X | | | | |
| Total: | 8 | 1 | | | | |

Ellen A. Brodsky
Chief Counsel