SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-211
District Docket No. XIV-07-126E

IN THE MATTER OF	
TINA FELLOWS	
AN ATTORNEY AT LAW	

Decision

Argued: September 16, 2010

Decided: November 16, 2010

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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), based on respondent's disbarment in New York, following her guilty plea to two counts of second-degree grand larceny and one count of first-degree scheme to defraud.

The OAE argued that respondent violated RPC 8.4(b) (criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and urged her disbarment. We agree with the OAE and recommend that respondent be disbarred.

Respondent was admitted to the New Jersey bar in December 2003 and to the New York bar in January 2004. She has been temporarily suspended in New Jersey since May 21, 2007, following her criminal conviction. In re Fellows, 190 N.J. 600 (2007). She was disbarred in New York in March 2007.[1]

Respondent has been ineligible to practice law in New Jersey since September 25, 2006, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

In January 2006, respondent appeared before the Honorable Ralph Gazzillo, County Court Judge, Suffolk County, New York,

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[1] Disbarment in New York is not permanent. A disbarred attorney may seek reinstatement after seven years. 22 N.Y.C.R.R. 603.14(a)(2).

In January 2006, respondent appeared before the Honorable Ralph Gazzillo, County Court Judge, Suffolk County, New York, and entered a guilty plea to two counts of second-degree grand larceny, in violation of New York Penal Law §155.40, and one count of first-degree scheme to defraud, in violation of New York Penal Law §190.65.[2] Judge Gazzillo sentenced respondent to five years of supervised probation and imposed a $260 surcharge.

Respondent committed a "serious crime," as defined by R. 1:20-13(b)(2). Although the record is not very detailed, it is

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[2] Section 155.40 of the New York Penal Law provides: "A person is guilty of grand larceny in the second degree when he steals property and when: 1. The value of the property exceeds fifty thousand dollars. . . ."

Section 190.65 of the New York Penal law provides:

> 1. A person is guilty of a scheme to defraud in the first degree when he or she: . . .(b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons. . . .

permission. In one instance, the transfer was made to respondent herself. The property that respondent received was valued at nearly $100,200. The four properties together were valued at over $500,000.

Because of respondent's conviction of a felony, she was subject to Judiciary Law §90(4)(a), New York's automatic disbarment rule. She was disbarred by the Supreme Court of the State of New York Appellate Division: Second Judicial Department on March 6, 2007. Respondent did not advise the OAE of her criminal conviction or of her disbarment, as required by R. 1:20-13(a)(1) and R. 1:20-14(a)(1), respectively.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(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.

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

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was

predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

None of the above subsections apply in this instance. Respondent's conviction of grand larceny and scheme to defraud warrants no less than disbarment in New Jersey, the discipline imposed in New York.

The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

At the outset, we note that respondent was not an attorney, when she committed her criminal offenses. Rather, during the period of her criminal activity, March 1, 2003 to August 1, 2003, she completed and graduated from law school, and passed the July 2003 bar examination. She was admitted to the New Jersey bar in December 2003 and to the New York bar in January 2004, after her criminal conduct, but prior to her arrest.

Nevertheless, that respondent was not yet an attorney at the time of her criminal offenses is irrelevant to a determination that she violated the Rules of Professional Conduct. See, e.g., In re White, 191 N.J. 553 (2007) (one-year suspension for attorney who forged another woman's signature on a $54,000 student loan application for the attorney's own benefit while she attended law school; after she became an attorney she was charged with uttering a loan application purporting to be the act of another, without authority and with purpose to defraud; the attorney was placed in a six-month pre-trial intervention program, which she completed; the criminal charge was then dismissed); In re Jimenez, 187 N.J. 86 (2004) (eighteen-month suspension following an attorney's conviction for conspiracy to commit mail fraud and mail fraud, based on

attorney's participation in a scheme to submit fraudulent documents to a bank concerning the financial status of prospective borrowers with the intent of causing the banks to extend loans to home buyers who would otherwise not qualify for the loans; at the time of his criminal activity, the attorney was a law student); and In re Dade, 134 N.J. 597 (1994), (disbarment for attorney who pleaded guilty to theft by deception, admitting that, during a four-and-one-half year period, she issued to herself and cashed fifty-eight checks from her employer, State Farm Mutual Automobile Insurance Company; most of these checks, which totaled more than $450,000, were issued before Dade had been admitted to the bar).

The sort of crimes that respondent committed result in disbarment in New York, as in New Jersey. In In re Lee, 188 N.J. 279 (2006), an attorney was disbarred in New York, following his guilty plea to one count of second-degree grand larceny. The attorney admitted that he had stolen more than $50,000 from his clients, the sellers of real estate, when he was given the buyer's downpayment to hold in escrow pending the closing. The attorney was disbarred in New Jersey. Similarly, disbarment in New Jersey also resulted after an attorney pled

guilty in New York to one count of second-degree grand larceny, one count of practice of law by a disbarred or suspended attorney, and one count of first-degree scheme to defraud. In re Magnotti, 181 N.J. 389 (2004). The attorney stole over $50,000.

In In re Lurie, 163 N.J. 83 (2000), an attorney was convicted, after a jury trial in the Supreme Court, New York County, of eight counts of scheming to defraud in the first degree, nine counts of intentional real estate securities fraud, three counts of grand larceny in the second degree, three counts of grand larceny in the third degree, and one count of offering a false statement for filing in the first degree. Lurie's conviction arose from his participation in a deliberate scheme to defraud the minority shareholders of five residential cooperative buildings (co-ops), which were sponsored and managed by Lurie and his wholly owned corporation. Lurie collected the residents' monthly maintenance payments, but failed to pay the mortgage loans secured by the buildings, failed to make the maintenance payments to the co-ops for his unsold shares, and failed to pay bills for water, oil, and taxes. During that time, Lurie paid himself a $15,000 monthly management fee from

the co-ops' bank accounts, resulting in income to him and to his company of over $435,000. Lurie did not disclose the defaults to the minority shareholders in financial reports or at board meetings. He also failed to disclose the massive debt and perilous financial situation of each co-op to potential purchasers of co-op shares. Ultimately, foreclosure actions were started because of the mortgage defaults. Lurie was disbarred in New York and in New Jersey.

We are aware that respondent's criminal conduct did not involve the practice of law. However, the Court has not hesitated to disbar attorneys involved in serious criminal activity, even when that activity has not involved their law practice. See, e.g., In re Goldberg, 142 N.J. 557 (1995) (two separate convictions for mail fraud and conspiracy to defraud the United States) and In re Spina, 121 N.J. 378 (1990) (guilty plea to a misdemeanor offense of "taking property without right" for taking more than $40,000 in checks intended as contributions to the attorney's employer, depositing them in his personal checking account and concealing his actions by various means, including the submission of false expense vouchers).

Respondent was convicted in New York of grand larceny and scheme to defraud. The New York courts that convicted her were in a position to evaluate the nature and degree of her criminal activity. The New York disciplinary system disbarred her. There is no reason to deviate from the penalty imposed by the sister jurisdiction, where the criminal offenses took place. Her misconduct evidenced a lack of the "honesty, integrity and dignity that are the hallmarks of the legal profession." In re Mintz, 101 N.J. 527, 536 (1986).

In light of the above, we determine to recommend respondent's disbarment.

Member Baugh would deny the motion for reciprocal discipline and instruct the OAE to proceed by way of a complaint and a hearing, in order to obtain a more complete record of respondent's role in the scheme.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Tina Fellows
Docket No. DRB 10-211

Argued: September 16, 2010

Decided: November 16, 2010

Disposition: Disbar

Members	Disbar	Suspension	Deny and Remand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh			X			
Clark	X					
Doremus	X					
Stanton	X					
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	8		1			

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel