SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-138
District Docket No. XIV-2010-0004E

IN THE MATTER OF	
EUNGAM PETER SHIN	
AN ATTORNEY AT LAW	

Decision

Argued: July 16, 2015

Decided: December 16, 2015

Hillary Horton 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), pursuant to R. 1:20-14(a)(4), based on respondent's censure in New York for violations of RPC 3.3(a)(1) (false statement to a tribunal), RPC 3.3(a)(2) (failure to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal, or fraudulent act by a client), RPC 8.4(c)

(conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). We determine to impose a reprimand.

Respondent was admitted to the New York bar in 1997 and to the New Jersey bar in 1998. He has no prior discipline.

On January 22, 2009, respondent and the United States Bankruptcy Trustee for Region Two (trustee) executed a stipulation in the United States District Court for the Eastern District of New York, based on respondent's alleged unethical conduct in connection with his representation of Sung Ho Cho in that court (bankruptcy court).

On October 3, 2007, Cho retained respondent to file a Chapter 7 petition in the bankruptcy court. Cho wanted the petition filed within two weeks because of mounting gambling debts. A few days later, on October 8, 2007, respondent's mother passed away in his native South Korea. Respondent spent the next ten days in South Korea attending to the funeral. During that time, Cho repeatedly called respondent's office, in a hurry to have his petition filed. Upon respondent's return to the office, and still depressed about his mother's death, he immediately attended to Cho's matter. Bankruptcy rules require a debtor who files a bankruptcy petition to certify that he or she completed a credit counseling course. In a rush to satisfy his client's

demands, and in an apparent attempt to avoid having to file for an extension of time to complete the required credit counseling course, respondent completed the form representing that he, or someone from his office, had helped Cho complete the course.

On November 21, 2007, respondent filed the bankruptcy petition, as well as a number of ancillary documents, including a certificate of credit counseling, issued by Consumer Credit Counseling Service of Greater Atlanta, Inc. (CC). The certificate, a required attachment to the petition, stated that Cho had completed the credit counseling course on November 14, 2007, one week prior to the filing of the bankruptcy petition.

On January 31, 2008, Cho informed the bankruptcy trustee that he had terminated respondent's representation and had never taken the required credit counseling course.

When queried by the trustee about the credit counseling issue on February 6, 2008, respondent replied that he had helped Cho complete the required course. Two days later, Craig D. Robins, Esq., sent respondent a letter notifying him that he now represented Cho, who had told him that he had never participated in a credit counseling course in connection with the bankruptcy.

On February 19, 2008, the trustee filed a motion to dismiss Cho's bankruptcy petition. The motion hearing was scheduled for March 18, 2008. On March 10, 2008, the trustee filed an

application for an order to examine respondent and his staff under oath, as well as for the production of all documents relating to Cho's credit counseling.

At the March 18, 2008 motion hearing, respondent admitted that he had attended the credit counseling course on Cho's behalf. Respondent had provided Cho with the same financial information covered in that course, but in a written form. He did so after completing the course for Cho. With that information, the bankruptcy judge adjourned the hearing, pending further investigation by the trustee. On April 23, 2008, the bankruptcy court ordered respondent's examination.

On November 18, 2008, respondent appeared for his examination with his attorney, Randy Zelin. Before the examination commenced, however, the parties agreed to proceed by way of stipulation.

The parties agreed that respondent had engaged in a "continuous course of conduct in connection with the representation of bankruptcy clients relative to the taking and completion of credit counseling, for which monetary sanctions alone are ineffective and as such, [respondent] consents to injunctive relief." Specifically, respondent agreed to cease the practice of law before the United States District Court for the Eastern District of New York (including the bankruptcy court)

for a period of one year from the date of the entry of the stipulation and order.

Under the terms of the order, respondent was permitted to conclude several bankruptcy matters then pending in the bankruptcy court; required to complete twelve credits of continuing legal education in the area of bankruptcy law and four credits in legal ethics; and required to pay a $40,000 fine to the bankruptcy court.

Respondent completed the above requirements and, on January 29, 2010, was reinstated to practice law in the federal courts of the Eastern District of New York. In the interim, in May 2009, the New York State disciplinary authorities initiated a reciprocal discipline proceeding against respondent, presided over by Special Referee Jerome M. Becker, who concluded that respondent had failed "to have his client . . . present to take a credit counseling course as required by the Bankruptcy Code."

The special referee rejected three defenses to the imposition of discipline that respondent posited in his pleadings: 1) violation of due process; 2) infirmity of proof; and 3) unjustness of the imposition of discipline. All three arguments were found to be without merit because, "by virtue of [respondent's] own actions in entering into a 'Stipulation and Order Resolving United States Trustees [sic] Investigations on

Alleged Misconduct of E. Peter Shin, Esq.,' history cannot be re-written."

Although the special referee concluded that respondent had engaged in unethical conduct, he was critical of the sanctions imposed in the Eastern District of New York, particularly the $40,000 fine "for so minor an error." He also surmised that respondent may have misunderstood the bankruptcy code's requirement that a debtor be present for the credit counseling course, which was a "relatively new" code requirement at the time. According to the special referee, those courses are offered by private companies for a fee, are conducted by telephone or online, and are "purely a perfunctory process."

The online credit counseling questionnaire in Cho's case contained a check-off "certification box" for the debtor, stating as follows: "By checking this box, I am indicating that my attorney or my attorney's representative is helping me complete this session. (Please check if appropriate.)." According to the special referee:

> Clearly, the impression given is that the information requested could be provided by anyone familiar with the facts, regardless of whether the applicant was present or not. Nonetheless, [respondent] used exceedingly bad judgment in not having Mr. Cho present to complete the credit counseling application over the Internet. A mistaken good faith belief as to what

> constituted adequate assistance when Mr. Cho was unavailable [sic].
>
> [SMR16.][1]

The special referee believed that he was "compelled to take action against [respondent,] even though another jurisdiction has punished him severely," and that it was "no wonder [respondent's] counsel believes . . . that justice requires no further discipline be imposed against his client."

During his testimony before the special referee, respondent offered mitigation for his actions. In addition to his own testimony about the loss of his mother, respondent offered the character-witness testimony of his pastor, Minseok Yang, of the New York Korean Great Neck Church. Yang testified that respondent, a member of Yang's church for the past five years, is well known for his honesty and sense of responsibility; is a compassionate attorney, assisting the poor for free; and, as a church elder, visits sick people and prays with them as a means of encouragement. In addition, respondent is faithful, never misses religious services, and regularly studies the Bible. In Yang's words, "he's been trying very hard to follow God's road."

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[1] "SMR" refers to the special referee's June 14, 2010 report, attached to the OAE's supporting brief as Exhibit E.

Finally, the special referee found respondent to be contrite, having expressed remorse for his actions.

On February 2, 2011, based on the referee's findings, the New York Supreme Court, Appellate Division, Second Judicial Department, imposed a censure for respondent's misconduct.

In recommending a censure, the OAE cited In re Clayman, 186 N.J. 73 (2006) (censure), where the attorney made numerous misrepresentations on his client's Chapter 13 bankruptcy petition and schedules, in order to conceal information that would have placed the Chapter 13 plan in jeopardy. Specifically, in that case, the attorney misrepresented the amount of the client's outstanding debts to various persons and entities in the statement of financial affairs annexed to the petition. We found, as had the bankruptcy judge, that the attorney had abused the bankruptcy system and the trust placed in him by the Court. In the Matter of Eric J. Clayman, DRB 05-278 (December 28, 2005) (slip.op. at 23.)

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

> 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:

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

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). However, paragraph (E) applies. In New Jersey, discipline for respondent's misconduct would merit discipline less severe than a censure.

Here, respondent filed a document misrepresenting to the bankruptcy court that Cho had attended a mandatory credit counseling course, when it was respondent who had done so. Cho had been pressing him to file the bankruptcy petition as soon as possible, even while respondent was called away to South Korea for ten days to attend his mother's funeral. Respondent had fallen behind in the matter because of that emergency and, in a

lapse of judgment, made the misrepresentation to the court. In doing so, respondent violated RPC 3.3(a)(1), RPC 8.4(c), and RPC 8.4(d).

Respondent did not, however, violate RPC 3.3(a)(2), (failure to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting with attorneys an illegal, criminal, or fraudulent act by a client). Here, there is no evidence that Cho was involved in illegality, criminality, or fraud in the ordinary meaning of those words. We dismiss the charge as inapplicable.

In mitigation, respondent has no prior discipline since his 1998 admission to the New Jersey bar; was under pressure from his client at a time when he was mourning the loss of his mother; expressed remorse for his actions; and was known for his honesty and charity in his community, as expressed by his pastor.

Lack of candor to a tribunal has resulted in discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of Roger B. Radol, DRB 08-385 (February 25, 2009) (admonition for attorney who represented a client in a divorce and a bankruptcy matter; the attorney filed divorce documents and a bankruptcy petition that denied the client's ownership interest in marital realty, even though he knew that the client paid the

mortgage on that property; the attorney claimed that the discrepancy was based on the client's misunderstanding of the attorney's internal office questionnaire and that the attorney later transferred that information to the pleadings; stipulated violation of RPC 3.3(a)(1); no prior discipline; swift action taken to correct the misstatements in both matters); In the Matter of Richard S. Diamond, DRB 07-230 (November 15, 2007) (admonition for attorney who filed certifications with the family court making numerous references to attached psychological/medical records, which were actually mere billing records from the client's medical provider; although the court was not misled by the mischaracterization of the documents, the conduct nevertheless violated RPC 3.3(a)(1)); In the Matter of Lawrence J. McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an Assistant Prosecutor, to an affidavit in support of an emergent wiretap application moments before its review by the court, knowing that the court might be misled by his action; in mitigation, it was considered that the superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it occurred); In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition for

attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias; unaware of the client's significant history of motor vehicle infractions, the court imposed a lesser sentence; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but left undated, certifications of proof in anticipation of defaults; thereafter, when staff applied for a default judgment, at the attorney's direction, staff completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise non-lawyer employees); In re Manns, 171 N.J. 145 (2002) (attorney reprimanded for misleading the court, in a certification in support of a motion to reinstate the complaint, as to the date the attorney learned of the dismissal of the complaint; the attorney also lacked diligence in the case, failed to expedite

litigation, and failed to properly communicate with the client; prior reprimand); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, when that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board Of Immigration Appeals; the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Monahan, 201 N.J. 2 (2010) (attorney censured for submitting two certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal; the attorney also practiced law while ineligible to do so for failure to pay the attorney annual assessment); In re Clayman, supra, 186 N.J. 73 (censure imposed on attorney who made numerous misrepresentations about the financial condition of a bankruptcy client in filings with the bankruptcy court; he did so to conceal information detrimental

to the client's Chapter 13 bankruptcy petition; in mitigation, the attorney was one of the first attorneys to be reported for his misconduct by a new Chapter 13 trustee who had elected to strictly enforce the requirements of the bankruptcy rules, rather than permit more lax "common practices" of bankruptcy attorneys under the previous trustee; no prior discipline; no personal gain or venality); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home and who drafted a false certification for the client, which was submitted to the court in a domestic violence trial); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; in fact, the attorney had made contact with the witness four days earlier; compelling mitigation justified only a three-month suspension); In re Hasbrouck, 186 N.J. 72 (2006) (attorney suspended for three months for, among other serious improprieties, failing to disclose to a judge his difficulties in following the judge's exact instructions about the deposit of a $600,000 check in an escrow account for the benefit of the parties to a matrimonial action; instead of

opening an escrow account, the attorney placed the check under his desk blotter, where it remained for eight months); In re Forrest, 158 N.J. 428 (1999) (attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator was suspended for six months; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, the attorney obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared; the attorney was suspended for six months); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal

court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing).

Respondent's conduct is distinguishable from that in the admonition cases. In those cases, the attorney either swiftly admitted wrongdoing and took prompt remedial steps and/or the tribunal in question was not actually deceived by the attorney's actions. Here, however, respondent did not "come clean" about his actions or remedy the wrongdoing, and the bankruptcy court was misled by his actions.

Respondent's actions were, thus, more serious than the admonition cases. They were also less serious than the censure case cited by the OAE, Clayman, supra, which involved pervasive and multiple misrepresentations. Finally, the censure and suspension cases involve far more serious and complex wrongdoing than is present here.

In aggravation, however, had Cho not retained new counsel, respondent's wrongdoing may never have come to light, for he failed to inform his client that he had acted on his behalf with respect to the credit counseling course.

In mitigation, respondent has an unblemished disciplinary history during his seventeen years of practice. Moreover, at the time of his misconduct, was depressed and distraught at the

time, having just returned from a ten-day trip to South Korea for his mother's funeral, which delayed the filing of Cho's bankruptcy petition. Cho was pressuring respondent, even while he was attending to the funeral, in order to stave off his gambling creditors. Finally, respondent's pastor gave him high marks as a man of honesty and integrity, with a concern for the less fortunate around him.

On balance, given the mitigation presented, and in view of the extraordinary sanctions already imposed on respondent, including a $40,000 fine to the bankruptcy court, we find that a reprimand is the appropriate sanction for the totality of his wrongdoing. Member Clark did not participate.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Eungnam P. Shin
Docket No. DRB 15-138

Argued: July 16, 2015

Decided: December 16, 2015

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark						X
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich			X			
Total:			7			1

Ellen A. Brodsky
Chief Counsel