SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-399
District Docket No. XIV-2014-0660E

IN THE MATTER OF	:
WILLIAM G. SCHER	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 17, 2016

Decided: August 25, 2016

Charles Centinaro appeared for the Office of Attorney Ethics.

Respondent appeared pro se.

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 Affidavit of Resignation in New York, accepted by the Appellate Division of the Supreme Court of New York, First Judicial Department, wherein respondent admitted that he could not successfully defend disciplinary charges pending against him there, including a charge

that he had intentionally converted client funds to his own personal use.[1] We recommend that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1990. He also was admitted to practice in Connecticut (1985), New York (1986), the District of Columbia (1992), and North Dakota (1994). He has no prior discipline.

In respondent's July 25, 2014 affidavit of resignation, he recited the facts underlying his unethical conduct:

> I am aware that there is a pending investigation by the Departmental Disciplinary Committee regarding my handling of escrow funds in connection with a real estate matter, which I reported to the Committee at the urging of the firm. Specifically, I am aware that the Committee is reviewing evidence indicating that I intentionally converted for my own personal use, $29,118.67 in funds belonging to my client. The source of these converted funds was the buyers' down payment in connection with the sale of real property in Queens County, New York, totaling $30,800, which belonged to my client, the seller. The evidence, in the form of bank records, which is being reviewed by the Committee, further indicates that, instead of arranging for the $30,800 down payment to be deposited into a firm escrow account pending the closing, I deposited the funds into my personal account at JP Morgan Chase Bank and used $29,118.67 of the funds for my own personal expenses without permission or authority to do so. Finally, the evidence being reviewed by the Committee shows that I submitted a letter to the Committee in connection with the Committee's investigation, dated October 9, 2013, in which I falsely informed the Committee that my deposit of the funds into

[1] We note that the procedure by which respondent tendered his resignation in New York is the functional equivalent of New Jersey's disbarment by consent, pursuant to R. 1:20-10(a).

my personal account was a result of 'inadvertence' on my part.

[OAEbEx.1¶3.][2]

Respondent acknowledged that, if charges were brought against him based on the above misconduct, he could not successfully defend himself on the merits. Respondent further acknowledged that he could not apply for reinstatement to the New York bar for a period of seven years from the effective date of his resignation.[3]

On August 25, 2014, the Departmental Disciplinary Committee filed a motion with the Supreme Court of New York, Appellate Division, First Judicial Department, for an order accepting respondent's resignation. The court granted the motion on October 21, 2014, and entered an order striking respondent's name from the role of attorneys of that State, effective nunc pro tunc to July 25, 2014.

The OAE maintains that respondent's misconduct in New York violates New Jersey RPC 1.15(a) (knowing misappropriation), and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985); RPC 8.1(a) (false statement to disciplinary authorities); and RPC 8.4(c) (conduct involving

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[2] "OAEB" refers to the OAE's December 4, 2015 brief in support of the motion for reciprocal discipline.

[3] In New York, disbarment is not necessarily permanent. Rather, a disbarred attorney may apply for reinstatement after the passage of seven years. 22 N.Y.C.R.R. 603.14(a)(2).

dishonesty, fraud, deceit or misrepresentation). Thus, the OAE seeks respondent's disbarment.

In a December 22, 2015 brief to us, respondent urged a lesser sanction than disbarment, arguing that the OAE incorrectly concluded that the Wilson rule compels our Supreme Court to disbar attorneys found guilty of knowing misappropriation.

In support of his position, respondent cited four cases: In re Sears, 71 N.J. 175 (1976), In re Stout, 75 N.J. 321 (1978), In re Mirabelli, 79 N.J. 597 (1979), and In re Hughes, 90 N.J. 32 (1982). Stout, a "misuse of trust funds" case predated the Court's ruling in Wilson, while the conduct addressed in Sears, Mirabelli and Hughes was bribery, not knowing misappropriation.

In addition, respondent urged leniency because he "made full restitution to his client without need of any complaint" by the client; he had enjoyed an otherwise unblemished twenty-nine year career; and he self-reported his misconduct to New York disciplinary authorities.

The OAE urged us to reject respondent's plea for leniency, arguing that none of the circumstances he offered militate against disbarment and, further, characterizing his claim that he had self-reported his misconduct as disingenuous. Rather, the OAE noted, respondent self-reported his misconduct to disciplinary authorities in New York only at the urging of his partners.

Moreover, when respondent finally did report his misconduct, he lied to the New York disciplinary authorities by claiming that his deposit of client funds into his own personal account had been inadvertent. Finally, the OAE maintained, although respondent reported his New York resignation to New Jersey disciplinary authorities, he did not disclose that his resignation had been based on his admitted knowing misappropriation of client funds.

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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> (A) the disciplinary 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;
>
> (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 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 (E). Respondent admitted that he could not successfully defend himself against charges that he intentionally converted client funds for his own personal use. The discipline for respondent's "conversion" of client funds is the same in New Jersey as in New York – disbarment.

Respondent was required to deposit a $30,800 down payment check for the sale of his client's property into a law firm escrow account, pending the real estate settlement. Instead, respondent deposited the check into his personal account at JP Morgan Chase Bank, and used $29,118.67 of those monies to pay his own personal expenses, without the client's knowledge or authority to do so. He then falsely claimed, in an October 9, 2013 letter to New York disciplinary authorities, that he had inadvertently deposited the check into his personal account. He later admitted that his actions had been deliberate. Thus, he lied to the New York disciplinary authorities when he falsely claimed inadvertence.

In New Jersey, the intentional, unauthorized conversion of client funds, for the attorney's own personal use, constitutes knowing misappropriation. Here, respondent admitted the equivalent of having knowingly misappropriated more than $29,000 of his client's funds. Those funds were to have been held inviolate,

either in the attorney trust account for the client, or in escrow, pending the real estate settlement. By his failure to do so and his use of those funds for his own purposes, without his client's consent, respondent violated RPC 1.15(a). Respondent also lied when claiming inadvertence on his part, a violation of RPC 8.4(c). Although respondent later reimbursed his client for the entire amount he had taken, knowing misappropriation includes an "unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use, for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom." In re Wilson, supra, 81 N.J. 451,455 n.1. Moreover, in In re Noonan, 102 N.J. 157 (1986), the Court announced that it makes no difference "whether in fact [the attorney] ultimately did reimburse the client." Disbarment is required. Id. at 160.

None of the cases respondent cited have precedential value in these circumstances. Stout is a pre-Wilson knowing misappropriation case that resulted in a one-year suspension. The remaining three cases (Sears, Mirabelli, and Hughes) involve bribery, not knowing misappropriation.

We reject respondent's plea for leniency based on his replenishment of the client's funds of his own accord and in the absence of any client complaint. As noted above, the Court has

addressed the issue in Wilson and Noonan. Even a temporary unauthorized use of client funds for the lawyer's own purpose constitutes knowing misappropriation; reimbursement is irrelevant. Thus, we determine that, under the principles of In re Wilson, supra, 81 N.J. 451 and In re Hollendonner, 102 N.J. 21, supra, respondent must be disbarred.

Vice-Chair Baugh 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 William G. Scher
Docket No. DRB 15-399

Argued: March 17, 2016

Decided: August 25, 2016

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh						X
Boyer	X					
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich	X					
Total:	8					1

Ellen A. Brodsky
Chief Counsel