SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-094
District Docket No. XIV-2015-0369E

IN THE MATTER OF

TATIANA FILIMONOVA POLEY

AN ATTORNEY AT LAW

Decision

Argued: May 18, 2017

Decided: September 12, 2017

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c), following respondent's conviction for third-degree grand larceny in New York, which constitutes a violation of RPC 8.4(b) (criminal conduct) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The OAE recommended respondent's disbarment. For the reasons expressed below, we determine to impose a one-year suspension.

Respondent was admitted to the New Jersey bar in 1998 and the New York bar in 1999. She has no history of discipline in New Jersey, but has been administratively ineligible to practice since August 24, 2015, based on her failure to pay the annual registration fee to the Lawyers' Fund for Client Protection.

On September 24, 2009, the New York Supreme Court, Appellate Division, Third Judicial Department (Third Judicial Department), suspended respondent, effective October 24, 2009, for failure to comply with the attorney registration requirements as of 2001. Almost six years later, on July 9, 2015, the Third Judicial Department disbarred respondent for violating New York's RPC 5.5(a) (unauthorized practice of law), RPC 8.4(d) (conduct prejudicial to the administration of justice), and RPC 8.4(h) (conduct that adversely reflects on an attorney's fitness).

In the interim, on October 24, 2013, the Kings County District Attorney's Office filed a criminal complaint against respondent, which sets forth facts relating to her unauthorized practice of law. On November 15, 2013, the Honorable Gene R. Lopez, Criminal Court, City of New York, filed a complaint with the Committee on Professional Standards, Third Judicial Department, which also briefly outlined respondent's misconduct. According to Judge Lopez' letter, on October 10 and 17, 2013, respondent, as the defendant's attorney, appeared before him in a criminal matter, New York v.

Alex Breytman, Supreme Court, Kings County. During respondent's appearance, she informed the judge that she was admitted to practice law in New York and offered him a business card listing her New Jersey office address.

Shortly after her appearance, the "Admissions Attorney" provided the judge with written confirmation that respondent had been suspended since October 24, 2009.

Thereafter, on October 24, 2013, respondent again appeared before Judge Lopez. When the judge informed her that she had been suspended, based on her "failing to register," respondent maintained that she had been unaware of her suspension, and "stated that she had neglected to register as a result of moving to Florida." Judge Lopez learned that, when respondent left the courtroom, she was arrested and subsequently charged with grand larceny in the third degree and other related charges.

The October 24, 2013 criminal complaint, filed by the Kings County District Attorney's Office, charged that respondent appeared on Breytman's behalf as Tatiana Filimonova and did "not dispute the fact that she [had been] suspended from the practice of law." A Kings County assistant district attorney (ADA), present during respondent's appearance in that matter, observed respondent represent to the court that she was admitted in New York and, further, observed her making legal arguments on Breytman's behalf.

Also on October 24, 2013, another ADA observed respondent admit that she is also known as Tatiana Filimonova-Poley and that she did not dispute that she had been suspended from the practice of law in New York.

According to the complaint, Svetlana Breytman had retained respondent to represent her son, Alex, in a criminal proceeding at the suggestion of a family friend. On October 17, 2013, Svetlana gave respondent a $5,000 check toward the $10,000 fee. Svetlana maintained that she would not have retained respondent or tendered a fee had she known respondent was suspended at the time. Therefore, respondent did not have permission or authority to take or possess the $5,000.

On January 8, 2014, a New York Supreme Court grand jury returned a ten-count criminal indictment, charging respondent with one count of grand larceny in the third degree, N.Y.P.L. §155.35(1); three counts of criminal contempt in the second degree, N.Y.P.L. §215.50(3); three counts of practicing law while disbarred, suspended, or convicted of a felony, N.Y. JUD art 15 §486; and three counts of practicing as an attorney, without being admitted and registered, N.Y. JUD art 15 §478.

On November 10, 2014, the New York Appellate Division Committee on Professional Standards (Committee) filed a petition of charges and specifications against respondent, charging her with

having violated RPC 5.5(a) (unauthorized practice of law), RPC 8.4(d) (conduct prejudicial to the administration of justice), and RPC 8.4(h) (conduct that adversely reflects on an attorney's fitness).

On March 9, 2015, the Committee filed a notice of motion for default. As noted above, on July 9, 2015, the Third Judicial Department found respondent guilty of violating RPC 5.5(a) and RPC 8.4(d) and (h), remarking that, although she had been given an opportunity to submit mitigation, she failed to do so. The Third Judicial Department, therefore, disbarred respondent "in order to protect the public, deter similar misconduct and preserve the reputation of the bar."

On December 22, 2015, before the Honorable Daniel K. Chun, Kings County, Criminal Division, respondent entered a guilty plea to third degree grand larceny, N.Y.P.L. §155.35, in return for five years of probation and restitution. She admitted that, from about October 5 through October 17, 2013, she stole Svetlana Breytman's property, valued at in excess of $3,000. The judge released respondent from incarceration that day. On March 2, 2016, Judge Chun sentenced respondent accordingly. Because she had been unable to make any significant restitution since her plea, the judge ordered that respondent pay $5,000 in restitution to Breytman and imposed mandatory surcharges and fees.

The OAE argued that respondent's conviction of third-degree grand larceny is conclusive proof that she committed a criminal act, thereby violating RPC 8.4(b) and RPC 8.4(c).

According to the OAE, attorneys who have been convicted of grand larceny in New York routinely have been disbarred in New Jersey, citing In re Szegda, 193 N.J. 594 (2008) (attorney admitted stealing more than $50,000 of client and escrow trust funds); In re Lee, 188 N.J. 279 (2006) (attorney defrauded nine clients by stealing more than $50,000 from them); In re Magnotti, 181 N.J. 389 (2004) (attorney practiced law while suspended and admitted defrauding ten or more victims, and stealing more than $50,000 from one client); In re Boyd, 126 N.J. 223 (1991) (attorney misappropriated more than $77,000 from a client's estate); In re McCoole, 165 N.J. 482 (2000) (attorney knowingly misappropriated client funds on at least three occasions and used some of the funds for office expenses); and In re Lurie, 163 N.J. 83 (2000) (attorney stole money from minority shareholders of five residential co-ops sponsored and managed by his management company; we found that the attorney was involved in a "protracted scheme to defraud").

The OAE further maintained that even attorneys convicted of third and fourth-degree grand larceny in New York have been disbarred in New Jersey, citing In re Singer, 185 N.J. 163 (2005)

(converting client funds for the attorney's own use) and In re Hsu, 163 N.J. 559 (2000) (theft of client funds).

The OAE added that practicing law while suspended "could" warrant disbarment. To support this proposition, the OAE referred to In re Walsh, 202 N.J. 134 (2010) (attorney disbarred in a default matter for practicing law while suspended, gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities; prior reprimand, censure, and six-month suspension in two matters; all matters proceeded as defaults); In re Olitsky, 174 N.J. 352 (2002) (attorney disbarred for practicing law while suspended, knowingly making a false statement of fact or law to a tribunal, offering evidence the lawyer knows to be false, conduct involving dishonesty, fraud, deceit, or misrepresentation, and conduct prejudicial to the administration of justice; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions); and In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for misconduct in nine matters that included practicing law while suspended, gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, and failure to communicate a fee in writing; prior private reprimand and a reprimand).

In this case, the OAE reasoned that disbarment was warranted, based on respondent's conviction for grand larceny for accepting a

$5,000 fee to which she was not entitled due to her suspension, and her related ethics violations.

* * *

Following a review of the record, we determine to grant the OAE's motion. A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty plea to grand larceny establishes a violation of RPC 8.4(b). Pursuant to that Rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of many 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).

The OAE compared respondent's conduct to that of attorneys who were convicted of larceny, but cited cases involving the theft of client funds – knowing misappropriation. Although the OAE's submission established that respondent admitted that she "stole" funds from Svetlana Breytman, the theft involved the taking of a fee to which she was not entitled because of her New York suspension, not an outright and unauthorized taking of client trust funds. As demonstrated by the record, respondent provided services to Alex Breytman, until she was removed as his counsel. Thus, the controlling cases in this matter are those involving practicing law while suspended, not knowing misappropriation cases.

The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Brady, 220 N.J. 212 (2015) (one-year retroactive suspension; after a Superior Court judge appointed a trustee for the attorney's law practice, that attorney consented to the entry of an order restraining him from practicing law; he then represented a client in two separate matters; a few months later, the Court temporarily suspended the attorney in an unrelated matter; aware that the Court had suspended

him, the attorney, thereafter, represented a third client, on three occasions, before a municipal court; the attorney also failed to comply with the requirements of R. 1:20-20, governing suspended attorneys; prior three-month suspension and temporary suspension; considerable mitigation considered, including the attorney's diagnosis with a catastrophic illness, followed by a failed marriage, a failed business, the collapse of his personal life, and eventual homelessness); In re Bowman, 187 N.J. 84 (2006) (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented clients in court, and acted as planning board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Marra, 170 N.J. 411 (2002) (Marra I) (one-year suspension for practicing law while suspended in two cases, and substantial recordkeeping violations, despite having previously been the subject of a random audit; on the same day that the attorney received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, having previously received a private reprimand, a reprimand, and a three-month suspension); In re Viteritto, 227 N.J. 391 (2017) (two-year suspension in a default for attorney who, in three separate matters, practiced law while suspended in at least three client matters, which is a criminal

offense and, thus, a violation of RPC 8.4(b), failed to communicate the basis or rate of the fee in writing, failed to cooperate with disciplinary authorities, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, and engaged in conduct prejudicial to the administration of justice, by failing to comply with R. 1:20-20 governing suspended attorneys); In re Wheeler, 140 N.J. 321 (1995) (Wheeler I) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also made multiple misrepresentations to clients; displayed gross neglect; and engaged in a pattern of neglect, negligent misappropriation, and a conflict of interest, and failed to cooperate with disciplinary authorities); In re Marra, 183 N.J. 260 (2005) (Marra II) (three-year suspension for attorney found guilty of practicing law while suspended in three matters; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; ethics history included a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within

one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by R. 1:20-20(a), and failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) (Wheeler II) (attorney received a three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior one-year suspension on a motion for reciprocal discipline and, on that same date, two-year consecutive suspension for practicing while suspended); In re Walsh, Jr., supra, 202 N.J. 134 (attorney disbarred on a certified record for practicing law while suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of the grievance; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimanded in 2006, censured in 2007, and suspended twice in 2008); In re Olitsky,

supra, 174 N.J. 352 (disbarment for attorney who agreed to represent four clients in bankruptcy cases after he was suspended, did not advise them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, the attorney continued to represent a client in a criminal matter after the attorney's suspension; the attorney also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions); and In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with the Board that he limit his practice to criminal matters).

This case does not involve the knowing misappropriation of client funds, which requires automatic disbarment. Rather, respondent was suspended for failing to comply with registration requirements in New York and engaging in the unauthorized practice

of law. She did not have an ethics history, as did the above attorneys and only one client matter was involved.

Under the circumstances present here, respondent's guilty plea to grand larceny, which falls far short of the knowing misappropriation of client funds, does not warrant disbarment. Rather, based on the above precedent for practicing while suspended, we determine that a one-year suspension is appropriate for respondent's violations of RPC 5.5(a), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d).

Chair Frost and Member Hoberman voted to impose a two-year suspension. Member Gallipoli voted to recommend respondent's disbarment based on her conviction for third-degree grand larceny.

Vice-Chair Baugh and Members Rivera and Zmirich 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 Tatiana Filimonova Poley
Docket No. DRB 17-094

Argued: May 18, 2017

Decided: September 12, 2017

Disposition: One-year suspension

Members	One-year suspension	Two-year suspension	Disbar	Did not participate
Frost		X		
Baugh				X
Boyer	X			
Clark	X			
Gallipoli			X	
Hoberman		X		
Rivera				X
Singer	X			
Zmirich				X
Total:	3	2	1	3

Ellen A. Brodsky
Chief Counsel