SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-371
District Docket No. XIV-2017-0313E

IN THE MATTER OF

JOSEPH PETER BARRETT

AN ATTORNEY AT LAW

Decision

Argued: January 18, 2018

Decided: April 13, 2018

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

John McGill, III 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 an order from the Supreme Court of the State of Utah (SCSU) suspending respondent for 150 days. Respondent was found guilty of violating the equivalents of New Jersey RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Siegel, 133 N.J. 162 (1993) (knowing misappropriation of law

firm funds); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE recommended that respondent be disbarred. Respondent requested that we impose a 150-day suspension, the identical sanction imposed in Utah, retroactive to March 24, 2017, the effective date of his Utah suspension.

For the reasons detailed below, we find that respondent committed knowing misappropriation, and recommend his disbarment.

Respondent earned admission to the New Jersey bar in 1997 and to the Utah bar in 1998. He has no history of discipline in either jurisdiction.

The SCSU issued an opinion in this case, dated February 22, 2017. Additionally, in connection with the disciplinary hearing held in Utah's Third Judicial District, the parties stipulated to certain facts, after which the Honorable Robert P. Faust issued a written decision. In sum, Judge Faust found that respondent improperly bartered with two clients for legal services in return for construction work on his home, thereby depriving his law firm, Snow, Christensen & Martineau P.C. (SCM), of more than $20,000 in legal fees. Respondent's former partner, Andrew Morris, the president of SCM, testified that all fees for legal services performed by SCM attorneys were the

property of SCM, pursuant to SCM's employee contracts. Additionally, he testified that SCM attorneys were prohibited from performing legal work outside of their employment with the firm. Respondent, a shareholder at the firm, served on SCM's policy and procedures committee, and, thus, was familiar with the firm's policies regarding writing off clients' bills.

After the disciplinary hearing, Judge Faust determined that respondent had knowingly misappropriated law firm funds. The SCSU affirmed that finding. Utah disciplinary authorities requested that respondent be disbarred, and that the SCSU announce disbarment to be the presumed sanction for the knowing misappropriation of law firm funds. The SCSU, however, declined to announce such a presumed sanction, and, instead, imposed a 150-day term of suspension for respondent's misconduct, the quantum of discipline supported by Utah disciplinary precedent.

The Richard Williams Matters

In June 2007, respondent began providing legal services for Richard Williams, who formally had retained SCM to represent his son in a pending criminal matter, and had advanced a retainer fee, which the firm held in trust. Over the course of the next three years, respondent provided services in respect of that criminal matter and additional criminal matters for

Williams' son, as well as in a collections matter for Williams' company, Dick's Backhoe and Sewer Connection.

In the summer of 2008, and again in the summer of 2010, Williams performed construction work at respondent's personal residence. In June 2010, respondent requested that his firm write off over $7,400 from Williams' bill for legal services. Around the same time, an acquaintance of Williams began building a wrought-iron railing at respondent's home, but never finished it. In July 2010, Williams provided respondent with a check for $3,500, which respondent deposited in a personal account. In the stipulation of facts entered by the parties, respondent admitted that SCM "was unaware that Mr. Williams paid $3,500 directly to [respondent] for legal services."

During his testimony, however, respondent asserted that Williams had proposed that the third party construct the railing as a "kind gesture," and had later insisted on paying respondent the $3,500 so that he could hire another contractor to finish the railing. Respondent maintained that he had written off Williams' bill as a professional courtesy, not as part of a quid pro quo arrangement, so that Williams would continue to refer clients to him. As of 2012, of the $8,612.07 in fees and costs billed to Williams, SCM had received only $700. Respondent had

written off the remaining $7,912.07. In addition, Williams had paid $3,500 directly to respondent.

Judge Faust rejected respondent's testimony, wherein he wholly denied committing any misconduct. Rather, Judge Faust found Williams, who refuted respondent's version of events, credible. Specifically, during the Utah ethics hearing, Williams testified that he and respondent had reached a verbal agreement to exchange the provision of legal services for the construction of the railing, stating "we traded work" for legal fees. Williams understood his direct payment of $3,500 to respondent to be the balance of the amount he owed for the legal work that respondent had completed in his behalf, given the third party's failure to complete the railing. Judge Faust determined that the "$3,500 paid by Mr. Williams to [respondent] belonged to" SCM.

The David Petersen Matter

In November 2010, respondent began providing legal services to David Petersen, who had retained SCM to represent him in a custody matter, and had advanced a retainer fee, which the firm held in trust. Although SCM regularly billed Petersen over the course of the representation, he did not pay those bills. In August 2011, Petersen, who was a co-owner of D&T Landscaping, began building a shed on respondent's property. Thereafter,

respondent requested that his firm write off Petersen's entire legal bill, a sum of $8,913.54. Moreover, once Petersen had substantially completed the shed, the firm, at respondent's direction, refunded the entirety of Petersen's $2,500 retainer. Respondent then paid Petersen $5,000 for the shed, which Petersen testified had cost more than $15,000 to build. On December 14, 2011, respondent wrote a letter to Petersen which stated that SCM "had provided $10,577.25 in legal services" to him.

During the ethics hearing, respondent asserted that he wrote off Petersen's bill and refunded his retainer because he believed Petersen was unable to pay and needed money to go visit his son, who lived in Hawaii. Again, Judge Faust did not find credible respondent's testimony, wherein he wholly denied committing any misconduct; rather, he found his testimony "misleading."

Judge Faust, however, found Petersen credible. Petersen testified that he and respondent had a "handshake agreement" whereby he would build the shed at respondent's home in exchange for legal services, stating "we looked at doing some trade work." Judge Faust determined that SCM was "entitled to the value of the construction service performed" by Petersen at respondent's residence.

In February 2012, SCM confronted respondent over unrelated reimbursement requests that he had submitted which the firm determined to be improper. The firm ultimately reported respondent to Utah disciplinary authorities. Shortly thereafter, respondent resigned from the firm, and the parties reached a confidential settlement.

The SCSU affirmed Judge Faust's factual finding that respondent had knowingly and intentionally misappropriated approximately $20,000 in funds belonging to his law firm, causing actual injury to SCM. No compelling mitigating factors were found to apply. In aggravation, respondent was found to have committed his misconduct knowingly and intentionally. Consequently, the SCSU imposed a 150-day term of suspension on respondent.

* * *

In his brief to us, respondent argued that due process and R. 1:20-14(a)(4)(D) require that the OAE's request for disbarment be denied and that the same discipline imposed in Utah – a 150-day suspension - be imposed in New Jersey. Specifically, respondent argued that he "was deprived of the opportunity to develop meritorious defenses [to knowing misappropriation of law firm funds] in the Utah plenary proceedings," including a defense that he was engaged in a "law

firm [business] dispute" prior to the filing of the underlying Utah ethics case.

A review of the hearing transcript discloses that Judge Faust permitted respondent to introduce evidence of a dispute with his firm as it related to the credibility of the witnesses — particularly, his partners, who had initiated the ethics complaint. Respondent made no argument and made no attempt to expand his use of the purported dispute to establish a defense of entitlement or self-help in the Petersen and Williams matters. Indeed, in respect of the dispute, respondent testified that he was summoned into a conference room to meet with the president of SCM, the chairman of the board, and an employment attorney. During that meeting, respondent testified, he was confronted with a "red well of [his] reimbursement forms" and was questioned about his activities and whereabouts as they related to those reimbursement requests. Neither the Petersen nor the Williams write-off was mentioned during that meeting.

Additionally, respondent asserted that, because Utah had no legal precedent imposing disbarment for the knowing misappropriation of law firm funds, he was deprived of the opportunity "to develop a full relevant record of potential defenses to knowing misappropriation of law firm funds recognized under New Jersey law." Finally, respondent maintained

that the sanction of disbarment was not necessary to protect the public.

In support of his due process argument, respondent relied on his April 9, 2013 answer to Utah disciplinary authorities, in response to an informal ethics complaint, wherein he had claimed that the ethics charges pending against him amounted to "a business dispute between former partners" that "does not rise to either a violation of the Rules of Professional Conduct or criminal conduct." In support of that purported business dispute defense, respondent cited multiple instances of conflict with his partners, beginning in October 2011 and continuing until respondent's resignation from SCM, in February 2012, stating that the "chronology reinforces that what is really at issue is a business dispute."

In that same answer, however, respondent asserted that he wrote off Williams' bill for legal services "out of compassion for Mr. Williams and his son," not "in exchange for services performed by Mr. Williams." As to the Petersen matter, respondent disputed "any claim that he and Mr. Petersen agreed to trade legal services for construction work in October 2010 or at any other time." He maintained that he wrote off Petersen's bill for legal services to maintain their referral relationship and not "jeopardize a valuable business prospect for [SCM] over

a rather small" fee. Respondent did not address the obvious discrepancy in his due process argument – that his conduct vis-à-vis both Williams and Petersen predated his asserted business dispute with SCM.

At oral argument, we identified the chronological discrepancy in respondent's due process argument, and invited his counsel to explain the argument in the context of the Williams and Petersen matters. Despite our multiple requests, counsel refused to offer a proffer of the evidence that respondent might have presented to support such a business dispute defense. Instead, he repeatedly referred us to respondent's April 9, 2013 answer, submitted in the Utah disciplinary matter; repetitively asserted that respondent had been prevented from developing evidence that he was engaged in a business dispute with his law firm; and maintained that he had not reviewed the entire record of the Utah disciplinary proceedings, and, therefore, did not want to "inadvertently walk into a trap."[1]

* * *

[1] In his brief to us, respondent also asserted that he is under treatment for failing to recognize "boundary issues" with clients. He maintains that these issues contributed to the conduct underlying this matter.

Following a review of the full record, we determine to grant the OAE's motion for reciprocal discipline. We adopt the SCSU's disciplinary findings and determine that respondent's conduct violated RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Siegel, 133 N.J. 162 (1993) (knowing misappropriation of law firm funds); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

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:
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> (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 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.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With respect to subparagraph (E), however, a review of New Jersey case law reveals that disbarment is the appropriate quantum of discipline for respondent's misconduct.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

As Judge Faust and the SCSU found, respondent engaged in clandestine quid pro quo agreements with two law firm clients, whereby he deprived his law firm of more than $20,000 in legal fees in return for the performance of construction work at his home. Respondent committed this misconduct, despite having signed an employment agreement, as a shareholder at his law firm, which expressly required that all legal fees generated by SCM employees be paid to the firm. Consequently, Judge Faust and the SCSU found respondent guilty of knowing misappropriation of law firm funds and imposed a 150-day term of suspension,

declining Utah ethics counsel's request for a presumptive sanction of disbarment for the knowing misappropriation of law firm funds.

In the face of those findings, respondent now seeks to relitigate the facts, asserting that "he was deprived of the opportunity to develop meritorious defenses [to knowing misappropriation of law firm funds] in the Utah plenary proceedings," including a defense that he was engaged in a "law firm [business] dispute" prior to the filing of the Utah ethics complaint. We find his claim to be both meritless and disingenuous.

During the plenary hearing in Utah, respondent, who was represented by counsel, testified, called witnesses, cross-examined witnesses, and vigorously defended the charges levied against him. He presented a staunch defense to those allegations, denying that he had made such arrangements with his clients and insisting that, as a shareholder in his firm, he had written off the clients' bills with proper authority, for legitimate reasons, which benefitted his firm.

Although respondent asserted the existence of a business dispute in his answer to the Utah complaint, as noted previously, at no point during the hearing did he attempt to connect his conduct in the Williams and Petersen matters to the

alleged business dispute. Rather, he offered testimony of a dispute with his firm only for purposes of credibility and for establishing his former firm's motive for having submitted the ethics complaint against him. Now, in the face of significantly harsher discipline in this State, respondent is seeking to color those write-offs as a legitimate business dispute with his firm. Yet, counsel rebuffed multiple opportunities for a proffer of respondent's defense in the context of the Williams and Petersen matters. Based on counsel's refusal to accept those opportunities, and on respondent's own answer to the Utah ethics complaint, which clearly demonstrates that the business dispute arose well after he had made these write-offs in return for personal services from those clients, we can conclude only that the true facts are as found by Judge Faust and the SCSU. Thus, respondent is guilty of knowing misappropriation of law firm funds, in violation of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Siegel, 133 N.J. 162 (1993), as well as RPC 8.4(c).

The only remaining issue, thus, is the appropriate discipline for respondent's misconduct.

Unlike New Jersey, Utah does not generally impose disbarment for the knowing misappropriation of law firm funds. In In re Sigman, 220 N.J. 141 (2014), a recent New Jersey

opinion addressing the theft of law firm funds, the Court stated that it has:

> construed the 'Wilson rule, as described in Siegel,' to mandate the disbarment of lawyers found to have misappropriated firm funds '[in] the absence of compelling mitigating factors justifying a lesser sanction, which will occur quite rarely.'
>
> [Sigman, 220 N.J. at 157 (quoting In re Siegel, 133 N.J. 162, 167-68 (1993).]

In Siegel, the Court addressed, for the first time, the question of whether knowing misappropriation of law firm funds should result in disbarment. During a three-year period, Siegel, a partner at his firm, had converted more than $25,000 of law firm funds by submitting false disbursement requests to the firm's bookkeeper. Id. at 163-64. Although the disbursement requests listed ostensibly legitimate purposes, they represented Siegel's personal expenses, including landscaping services at his residence, tennis club fees, personal legal fees, and a mortgage service fee for his mother-in-law. Id. at 164-65. While the payees were not fictitious, the stated purposes of the expenses were. Ibid.

Although we did not recommend the attorney's disbarment, the Court agreed with our dissenting public members, who "saw no ethical distinction between the prolonged, surreptitious misappropriation of firm funds and the misappropriation of client

funds." Ibid. The Court concluded that knowing misappropriation from one's partners is just as wrong as knowing misappropriation from one's clients, and that disbarment was the appropriate discipline. Id. at 168.

In In re Greenberg, 155 N.J. 138 (1998), the Court refined the principle announced in Siegel. Greenberg was also disbarred, after misappropriating $34,000 from his law firm partners, over a sixteen-month period, and using the ill-gotten proceeds for personal expenses, including mortgage payments and country club dues. Id. at 153, 159. He improperly converted the funds by endorsing two insurance settlement checks to a client, rather than depositing the checks in his firm's trust account. Id. at 141. Per his instructions, the client then issued checks for legal fees directly payable to Greenberg. Ibid. Additionally, the attorney falsified disbursement requests, and used those proceeds to pay personal expenses. Id. at 141-43.

In mitigation, Greenberg asserted that a psychiatric condition, which he attributed to childhood development issues and depression, made him unable to form the requisite intent to misappropriate his firm's funds. Id. at 153. Additionally, he submitted over 120 letters from peers and community members, testifying to his reputation for honesty and integrity. Id. at 162. Determining that Greenberg appreciated the difference

between right and wrong, and had "carried out a carefully constructed scheme," the Court rejected his mitigation and disbarred him. Id. at 158, 162.

In In re Staropoli, 185 N.J. 401 (2005), the attorney received a one-year suspension in Pennsylvania and Delaware, but was disbarred in New Jersey, for retaining a $3,000 legal fee, two-thirds of which belonged to his firm. Staropoli, an associate in a Pennsylvania law firm, was aware that contingent fees were to be divided in certain percentages between the firm and its associates, if the associates originated the cases. In the Matter of Charles C. Staropoli, DRB 04-319 (March 2, 2005) (slip op. at 2). In May 2000, Staropoli settled a personal injury case he had originated, earning a contingent fee. Ibid. The insurance company issued a check payable to both him and the client. Ibid. He did not tell the firm of his receipt of the check and deposited it in his personal bank account, rather than the firm's account. Ibid. He then distributed $6,000 to the client and kept the $3,000 fee for himself. Ibid.

In August 2000, Staropoli left the firm without disclosing his receipt of the fee in the personal injury case. Id. at 3. The firm learned of his misconduct when the insurer called the firm seeking the client's post-settlement release. Ibid. When the firm confronted Staropoli, 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. Ibid. In May 2001, he made restitution to the firm for its portion of the fee. Ibid.

At the Pennsylvania disciplinary hearing, Staropoli expressed remorse and embarrassment. Id. at 4. In addition, two lawyers, from the very firm from which he misappropriated the funds, testified to his good character. Id. at 5. At no point, during either the Pennsylvania or New Jersey disciplinary proceedings, however, did Staropoli assert that he misunderstood his firm's fee-sharing policies; that there was a genuine dispute about his entitlement to the entire fee; or that he had resorted to "self-help" because the firm denied him compensation to which he was entitled. Id. at 20. Rather, he admitted that he misappropriated the legal fees due to financial need and anger at the firm, caused by the imminent termination of associates, including him. Ibid.

We issued a divided decision. Four members found that the attorney's single aberrational act should not require "the death penalty on [Staropoli's] New Jersey law career." Id. at 22-23. Those members were convinced that his character was not permanently flawed or unsalvageable. Id. at 23.

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 had advanced no other valid reason for his misappropriation of law firm funds. Id. at 19-20, 22. The Court agreed and disbarred the attorney.

See also In re Malanga, 227 N.J. 2 (2016) (attorney, who was a shareholder in his firm, disbarred for knowingly misappropriating client and law firm funds, repeatedly, over the course of years; although the attorney asserted that he had committed no misappropriation of funds, the evidence revealed that he had engaged in a methodical scheme designed to render his invasion of funds undetectable; the attorney had also fabricated court documents to conceal from his clients his mishandling of their cases); In re Leotti, 218 N.J. 6 (2014) (attorney, who was an associate, disbarred for knowingly misappropriating funds from his law firm; in six cases, the attorney instructed clients to pay fees directly to him; he then retained the funds for his personal benefit); In re Epstein, 181 N.J. 305 (2004) (attorney, who was an associate, 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); and In re LeBon, 177 N.J. 515 (2003) (attorney, who was of counsel, disbarred for diverting $5,895.23

of law firm funds by instructing a client to make a check for fees payable to him; he directed his secretary to confirm the instructions).

The misappropriation of law firm funds has not always met with disbarment. Lesser sanctions have been imposed where attorneys have been engaged in business disputes with their law firms. In In re Nelson, 181 N.J. 323 (2004), the attorney took funds from his law firm while in the midst of a partnership dispute. In the Matter of Ronald J. Nelson, DRB 04-057 (May 19, 2004) (slip op. at 3-4). He had learned that legal malpractice lawsuits had been filed against the firm and had been concealed from him; that attorneys in the firm had made improper payments of referral fees to other attorneys; that one of his partners had been trying to "steal" his clients so that the partner would receive credit for generating the fees paid by those clients; and that, contrary to his expressed position, law firm funds had been expended for such items as payment of sanctions imposed on individual attorneys in the firm or payment to an accountant to reconcile an individual attorney's accounts. Id. at 6. Nelson received a reprimand.

In In re Glick, 172 N.J. 319 (2002), the attorney entered into an agreement with a law firm, whereby he would receive a base annual salary, plus benefits, reimbursement of expenses,

and profit-sharing. In the Matter of Adam H. Glick, DRB 01-151 (January 29, 2002) (slip op. at 2). Glick was responsible for supervising a unit concentrating on personal injury cases and PIP medical arbitration work. Ibid. Because Glick had a prior solo practice, he continued to maintain his attorney business account to deposit fees earned from that practice. Ibid. Almost from the inception of his association with the law firm, Glick and the firm disagreed about his unit's productivity and about Glick's share of the firm's profits. Id. at 2-3.

Between 1994 and 1997, Glick deposited checks totaling $12,747.50 in his own attorney business account. Id. at 4. The checks had been made payable to him and the majority of the fees were for his services as an arbitrator on insurance matters that he originated. Ibid. However, Glick admitted that the fees were due to the firm, and that he had taken them without the firm's knowledge or consent. Ibid. He stated that he had retained the fees as a form of self-help to compensate him for the firm's failure, in his view, to properly remit his profit share. Ibid. Glick, too, received a reprimand. See also 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).

In In re Bromberg, 152 N.J. 382 (1998), the attorney entered into an employment agreement with two other attorneys, in February 1994. In the Matter of Arthur D. Bromberg, DRB 97-129 (December 16, 1997) (slip op. at 3). Although the parties later disagreed over whether the agreement created a partnership, Bromberg reasonably believed that he was a partner in the firm. Id. at 3-4. Compensation problems surfaced almost immediately, due to dissatisfaction with the amount of fees Bromberg generated. Id. at 5-6. In September 1994, the attorney in control of the firm's finances informed Bromberg that he would no longer receive his $8,000 monthly salary, despite the fact that the executed agreement provided that he would receive that sum through the end of 1994. Id. at 6-7.

By September 1994, Bromberg was receiving no income from the firm. Id. at 9-10. In late October or early November 1994, Bromberg requested that one of his corporate clients send its legal fee checks directly to him. Ibid. The client did not reply to the request and Bromberg did not pursue it. Ibid. Subsequently, however, Bromberg asked the firm's accounts

receivables clerk to permit Bromberg to examine the firm's mail, and misrepresented that he was expecting mail from his prior law firm. Id. at 7-8. On November 13 or 14, 1994, Bromberg intercepted an envelope from his client, containing two checks payable to the firm, in the amounts of $3,260.18 and $3,355.38. Ibid. He endorsed those checks by signing the firm's name and his own name, and deposited them in his own business account, which he had maintained because he was still receiving fees from his prior law practice. Ibid.

In late November or early December 1994, he told his "partner" that he had taken the checks. Id. at 9. It was eventually agreed that Bromberg would remain with the firm until the end of December 1994, because he was to begin selecting a jury for matters in New York. Ibid.

Although the OAE argued that Bromberg should be disbarred for knowing misappropriation of law firm funds, he, too, received only a reprimand. Id. at 18. We found that Bromberg

> reasonably believed that he was a partner with that firm. Even if [Bromberg's] belief was mistaken, that belief led him to understand that he was entitled to receive the checks from [the client]. [Bromberg] had not been paid any salary for October or November. He was experiencing cash flow problems and he felt that [his partner] had unilaterally breached the letter-agreement. Thus, he resorted to 'self-help.' That is not to say that [Bromberg] acted correctly . . . [but he] did not have the mens rea to

> steal. In his mind, he was advancing to himself funds to which he was absolutely entitled. He acted out of self-righteousness. It is the manner in which [Bromberg] chose to make things right that is reproachable.
>
> [Id. at 19-20.]

Finally, in Sigman, the attorney, an associate at a Pennsylvania law firm, misappropriated legal fees and referral fees, over a four-year period, repeatedly violating the terms of his employment contract. Sigman, 220 N.J. at 145. Sigman knew he was prohibited from handling client matters and referrals independent of the firm, but did so anyway, and instructed clients to issue checks for fees directly to him. Id. at 147-48. In total, he misappropriated $25,468 from his firm. Id. at 145.

After the firm terminated his employment, but prior to the imposition of discipline in Pennsylvania, Sigman successfully sued his prior employer, resulting in the award of $123,942.93 in legal and referral fees that the firm had wrongfully withheld from him. Id. at 151. During disciplinary proceedings, he did not raise the monetary dispute with his prior firm as justification for his misappropriation. For his violations of RPC 1.15(a), RPC 1.15(b), RPC 3.4(a), and RPC 8.4(c), the Pennsylvania Supreme Court, citing substantial mitigation, suspended him for thirty months. Ibid.

The OAE moved for reciprocal discipline, recommending that Sigman be disbarred; we agreed. Id. at 152. The Court, however, imposed a thirty-month suspension, identical to the discipline imposed by Pennsylvania, citing compelling mitigating factors: respondent had no disciplinary history in Pennsylvania or New Jersey; he submitted character letters exhibiting his significant contributions to the bar and underserved communities; he readily admitted his wrongdoing and cooperated with disciplinary authorities; he did not steal funds belonging to a client; his misappropriation occurred in the context of fee payment disputes and a deteriorating relationship with his firm, where he ultimately was vindicated; and his misconduct was reported only after the conflict over fees had escalated. Id. at 161. Moreover, the Court noted that the unique nature of the payment and receipt of referral fees in Pennsylvania warranted substantial deference to that jurisdiction's disciplinary decision. Id. at 160-61.

The Court concluded that, in law firm misappropriation cases, the "sanction of disbarment should not turn on whether an attorney contends that his misappropriation of firm resources is justified . . . or candidly admits that his conduct was wrong." Id. at 162. The Court found no difference between Sigman's misappropriation and that of the attorneys in Bromberg, Glick, Spector, and Nelson, despite respondent's failure to

affirmatively assert a justification, such as the business dispute or "self-help." Ibid.

Here, respondent's due process arguments are unpersuasive, and, notably, respondent cites no New Jersey disciplinary precedent in support of his position. Respondent bears the burden of showing "that it clearly appears that . . . 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." As discussed previously, respondent fell woefully short of that burden. Moreover, the applicable Rule does not, and never has been found to, contemplate respondents adapting their defenses to ethics charges on a jurisdiction-by-jurisdiction basis, dependent on potential sanctions. Rather, the Rule states that "[a] final adjudication . . . that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state."

The fact that New Jersey precedent for such misconduct is disbarment does not render insufficient the due process afforded respondent during the Utah proceedings; nor should he get a second bite at defending the case, based on New Jersey's stern treatment of such misconduct. Pursuant to New Jersey stare

decisis, disbarment is the measure of discipline for respondent's offenses, in order to protect the New Jersey public from an attorney who would steal from his own firm.

Furthermore, respondent's knowing misappropriation of his law firm's earned legal fees shares none of the mitigating characteristics that distinguished the misappropriation committed by the attorneys in Sigman, Bromberg, Glick, Spector, and Nelson, and, thus, spared them the ultimate sanction of disbarment. Rather, respondent's misconduct is most akin to that of Siegel and Greenberg - misconduct that requires disbarment. Specifically, there was neither a colorable business dispute between respondent and his firm, nor the presence of compelling mitigation. Rather, like Siegel, Greenberg, and Staropoli, respondent misappropriated funds from his firm for his own benefit. In this case, that benefit was the performance of construction work on his personal residence.

As a shareholder and a member of SCM's policy and procedures committee, respondent was acutely aware of his contractual obligations to the firm and the firm's policies regarding writing off clients' bills. Accordingly, respondent should be disbarred.

Chair Frost and Member 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
Bruce W. Clark, Vice-Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph P. Barrett
Docket No. DRB 17-371

Argued: January 18, 2018

Decided: April 13, 2018

Disposition: Disbar

Members	Disbar	Did not participate
Frost		X
Baugh	X	
Boyer	X	
Clark	X	
Gallipoli	X	
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich		X
Total:	7	2

Ellen A. Brodsky
Chief Counsel