SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-378
District Docket No. XIV-2007-0431E

IN THE MATTER OF	:
KIMBERLY ANN KOPP	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 17, 2011

Decided: April 14, 2011

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

Andrew J. Cevasco appeared on behalf of respondent.

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

This matter came before us on a motion for final discipline, filed by the Office of Attorney Ethics (OAE), seeking a three-year suspension for respondent's guilty plea to identity theft, credit card theft, theft by deception and burglary. Based on respondent's guilty plea to all but the burglary charges, the Supreme Court temporarily suspended her, on October 10, 2007. In re Kopp, 193 N.J. 23 (2007).

For the reasons expressed below, we determine that a retroactive three-year suspension, with conditions, is the appropriate discipline in this case.

Respondent was admitted to the New Jersey bar in 2001. Although she has no history of discipline, she was temporarily suspended on October 10, 2007. In re Kopp, 193 N.J. 23 (2007).

On September 24, 2007, respondent entered a guilty plea to four counts of a seven-count indictment (one count of identity theft, third degree, N.J.S.A. 2C:21-17(a)(1); two counts of credit card theft, third degree, N.J.S.A. 2C:21-6(h); and one count of theft by deception, third degree, N.J.S.A. 2C:20-4). Specifically, from February 12 to June 5, 2006, respondent used Melanie Kopp's, identity to obtain several credit cards in Melanie's name, for the purpose of fraudulently using the cards for her own benefit. Melanie Kopp is respondent's sister. She used her sister's name without her sister's knowledge. In so doing, respondent defrauded not only the credit card companies, but also her sister. The banks or credit companies involved were Washington Mutual Bank, Orchard Bank, Credit One, Capital One, and First Premier. The thefts involved amounts greater than $500, but less than $75,000.

Respondent also pleaded guilty to an accusation, admitting that she acquired a "fictitious" MasterCard for an unlawful use.

The State recommended a "long-term" in-patient program and follow-up care, probation, and restitution.

To attend the sentencing hearing, respondent was released for the day from an in-patient treatment program at Spring House Halfway House for Women, in Bergen County.[1] According to the sentencing transcript, respondent had a very serious prescription drug and alcohol problem. She used alcohol excessively from the age of fifteen. Her family history suggested that there was alcoholism in her family. Respondent's counselor, Sonia Del Valle,[2] who was present at the sentencing hearing, told respondent's attorney that respondent was doing well in the in-patient treatment program, that she had the right attitude, and that she wanted to "straighten-out" her life.

The sentencing judge found that the mitigating and aggravating factors were in equipoise. The judge recognized that respondent had had a bright future ahead of her. The judge was sympathetic to respondent's plight and acknowledged that the potential loss of her law license would be significant, in light of all of the time she had invested to obtain a law degree.

---

[1] Spring House is a halfway house for females seeking recovery from alcohol and substance abuse.

[2] Sonia's last name was spelled differently in each one of the two sentencing transcripts.

The judge ordered respondent to serve a five-year term of probation and to pay $750 in fines and $200 per month for restitution ($5,472.88), following her discharge from Spring House. Respondent was to remain in Spring House for an additional six to eight months. If she were able to pay the restitution early and "stay out of trouble," the court would entertain a motion terminating her probation earlier.

Prior to respondent's January 18, 2008 sentencing on the credit card and identity theft charges, she was arrested on burglary charges. On March 31, 2008, she entered a guilty plea to two counts of an indictment (N.J.S.A. 2C:18-2 – burglary, third degree) for entering two residences in Paramus, New Jersey, without permission and with the intent to steal items from those locations.

According to the sentencing transcript on these charges, respondent had already been in the rehabilitation program at Spring House for five months, when she appeared for her May 15, 2008 sentencing on the burglary charges. Her counselor, Del Valle, was again present at the sentencing and stated that respondent's progress had been excellent. According to Del Valle, respondent was a model client, who attended meetings five days a week and participated in many programs, even though she was not always required to do so. Del Valle noted that

respondent had demonstrated a commitment to remaining sober and that her prognosis was excellent, depending on what she did once she left Spring House. According to Del Valle, respondent had been given all of the tools she needed to remain sober.

At the sentencing hearing on these charges, respondent stated that, for the first time in her life, she felt that she was on the right path, taking the advice of her counselor, sponsor, and others in the program. She vowed that she was committed to staying sober, considering it the most important thing in her life.

The sentencing judge placed respondent on probation for four years, conditioned on her completing the Spring House program, an eight- to twenty-four month program; her following through with any evaluations and whatever aftercare that was necessary; and her having no contact with the victims. The judge also imposed fines totaling $280.

In its brief, the OAE argued that respondent's crimes required a significant term of suspension. The OAE highlighted that, after the filing of the January 2007 accusation and the May 2007 indictment, while awaiting to enter a guilty plea on the charges, respondent had burglarized two residential homes on September 8, 2007. The OAE noted that the residents must have felt threatened by respondent because her sentence on the

burglary charges had included a "no-contact order with the victims."

In recommending a minimum three-year suspension, the OAE relied on cases in which where attorneys received three-year suspensions for identity theft, via credit card fraud, In re Bevacqua, 185 N.J. 161 (2005); In re Meadon, 165 N.J. 22 (2000); and In re Marinangeli, 142 N.J. 487 (1995). The OAE also cited In re Hasbrouck, 152 N.J. 366 (1998), where the attorney was disbarred for her guilty plea to four counts of burglary, four counts of theft, and four years imprisonment. Hasbrouck burglarized doctor's homes and stole personal property and keys to their medical offices to steal prescription drugs. The disbarment was based on Hasbrouck's pattern of misconduct; she had received a one-year suspension for obtaining a controlled dangerous substance, to which she had become addicted, by uttering a forged prescription.

In the OAE's view, because respondent's crimes were not as egregious as those committed by Hasbrouck and because she had no ethics history, a minimum three-year suspension was warranted. The OAE recommended that, as a condition of reinstatement, respondent provide proof of recovery from her alcohol and prescription drug addictions.

Respondent's counsel, in turn, argued that the presence of numerous mitigating factors warranted the imposition of a less severe penalty, such as a censure or a short-term suspension. Counsel added that, if a suspension were to be imposed, it should be retroactive to the date of respondent's temporary suspension, October 10, 2007.

In support of lesser discipline, counsel cited a number of cases inapposite to this case, where the sole crime committed was the use or possession of an illegal substance: In re Sarmiento, 194 N.J. 164 (2008) (three-month retroactive suspension to the attorney's thirty-day suspension in Florida for possession of Ecstacy; the State of Florida declined to file charges against the attorney); In re Filomeno, 190 N.J. 579 (2007) (censure for attorney who by accusation was charged with a single count of conspiracy to possess cocaine; the attorney was not required to plead guilty to the charges before entering into a pretrial intervention program (PTI), made great efforts at rehabilitation, and was released from PTI early); and In re Zem, 142 N.J. 638 (1995) (reprimand for a young attorney who used cocaine briefly while coping with her mother's and brother's deaths; the attorney was not required to be treated for drug use; the charges against her were dismissed after she successfully completed PTI).

Appended to counsel's brief was a certification from respondent, setting forth her journey through addiction and recovery, and a supplemental certification attaching various letters from her counselor, AA sponsor, sister, and former employer. Respondent's certification chronicled the beginning and, hopefully, the end of her addictions as follows:

Respondent's addictions began at an early age. In 1997, when she started Seton Hall Law School, she had difficulty dealing with the resulting stress and began using alcohol and Xanax. Although, at an unspecified point, she had been charged with a disorderly person's offense for alcohol-related offenses, she did not perceive herself as having a problem and did not seek help.

After passing the bar exam, respondent clerked for the Honorable Thomas Zampino, J.S.C., during the September 2000 to August 2001 term. Afterwards, she worked for two different law firms.

Following the World Trade Center tragedy, respondent began suffering from depression, sought treatment with a psychiatrist, who prescribed Prozac, and began self-medicating with alcohol and other prescription drugs. Other factors in her life resulted in her steadily increasing her use of alcohol and pills, which affected her work performance. She changed jobs twice and

believed that she had been discharged from the second law firm because her alcohol use had led to a poor work performance. Thereafter, respondent taught a course at Montclair State University, during the 2003 spring semester, and held a series of temporary legal positions through May 2005.

Respondent's alcohol and drug use continued to worsen. In January 2005, her psychiatrist convinced her to enter a detoxification program. Later, she unsuccessfully participated in several in-patient and out-patient treatment programs.

Respondent incurred significant credit card debt supporting her prescription drug habit. In March 2006, she obtained the first credit card in her sister's name to help support her benzodiazepine addiction. By June 2006, she was abusing alcohol and benzodiazepine. A "vast amount of [her] activity [was] a total blackout." She was in and out of emergency rooms and detoxification programs and lied to everyone about her problem.

Respondent lacked options to support her habit and turned to "more brazen criminal" activity, which led to her criminal convictions. When her mother learned of her conduct, her mother kicked her out of the house. Later, her father also kicked her out of his house because he could not tolerate her "compulsive drinking." She was in and out of homeless shelters. In the

winter of 2007, she spent some time at the Mentally Ill Chemically Addicted Unit, at Bergen Regional Medical Center.

Although respondent was arrested, in October 2007, for the Paramus burglaries, she was in such bad shape that she could neither recall committing the crime nor believe that she was capable of stealing. The day of her arrest was the lowest point in her life. She was filled with "shame, guilt, remorse, regret and self-loathing" and drank until she passed out. She awoke feeling suicidal and knew that, if she did not get help, she would not live much longer.

Because of respondent's unconventional living situation, she did not recall receiving the Supreme Court's order temporarily suspending her. She first became aware of the suspension on January 18, 2008, when she appeared for sentencing. The judge indicated to her that her license would be suspended and that she might be disbarred. Nevertheless, at that point in time, her daily struggles with her addictions were paramount to the status of her law license.

October 16, 2007 was the last day that respondent had a drink or took unprescribed medications. On that date, after drinking heavily, she was admitted to the Bergen Regional Medical Center, but was turned away from the "detox" unit because of a lack of beds. She was, however, admitted to the

psychiatric ward, when she informed a doctor that she was suicidal.

Eventually, on December 13, 2007, respondent was admitted into Spring House. It was the "turning point" in her life. While residing there, she attended between five and seven "outside" AA meetings and two "in house" meetings per week for a total of approximately 360 meetings. In addition, she attended five groups daily and met once a week with her counselor for one-on-one counseling sessions. She also participated in family sessions every other Sunday, which her family frequently attended.

In April 2008, respondent began working at Eisele's Nursery, in Paramus. She also met with a counselor from the New Jersey Lawyers' Assistance Program (NJLAP), who recommended that she attend two other group meetings. She did so.

In August 2008, knowing that her law license was suspended, respondent did not seek employment as an attorney. At the time, however, she was unaware that R. 1:20-20 prohibited her from working at a law firm in any capacity. She, therefore, obtained employment at Sean Callagy's, a small Oradell, New Jersey, law firm, as a legal assistant. During her job interview, she did not mention her criminal record or her suspension, but only that she had formerly practiced law and no longer wished to do so.

Respondent began working for Callagy's firm on September 8, 2008. She created arbitration statements for PIP arbitrations and occasionally performed legal research. At no time did she counsel clients, sign correspondence, pleadings or other documents, work independently of a supervising attorney, or appear at arbitrations in court. It was not until November 2010, when she received the OAE's motion for final discipline and spoke to a counselor at NJLAP, that she learned that her employment was in violation of R. 1:20-20. On November 8, 2010, she informed Callagy of her suspension and immediately resigned from her position with the firm.

As of the date of her submission to us, December 2010, respondent had attended four to five AA meetings per week, for a total of nearly 500 meetings, had attended Lawyers Concerned for Lawyers (LCL) and Women Attorney Peer Counselor (WAPC) group meetings, and had also attended an aftercare program at Spring House for about four months, after her December 2008 discharge.

Respondent went through AA's twelve-step program, is a member of the Spring House Alumnae Association, was scheduled to begin serving as a resident assistant there, and volunteered for various activities with AA.

As of the date of respondent's certification, December 23, 2010, she had been sober for more than three years. She stated

that, if her license to practice is restored, she hopes to use it to help other women, at Spring House, who are facing legal problems.

As indicated previously, along with her certification, respondent submitted letters from various individuals, including her sister, two former Spring House residents, her former employer, her addiction counselor, and her sponsor.

By letter dated December 17, 2010, Denise C. Golonka, MA, LAC, LCADC, from NJLAP, set out respondent's involvement with NJLAP, her recovery process. Golonka indicated that, according to the criteria of the Diagnostic and Statistical Manual of Mental Disorders, respondent satisfied the criteria for "Sustained Full Remission" for substance dependence. Golonka saw no current issues that adversely affect respondent's fitness to practice law and opined that respondent's awareness of substance abuse and dependency issues could only positively influence her career and those around her.

By letter dated December 10, 2010, respondent's Spring House counselor, Del Valle, explained the Spring House programs and the steps that respondent had taken while there. According to Del Valle, respondent took responsibility for addressing all of the legal issues that directly resulted from her substance-abuse problems.

Del Valle noted that respondent's random, supervised drug and alcohol screenings were all negative, discussed respondent's progress and her employment, and further noted that respondent has demonstrated a willingness and commitment to remain sober. According to Del Valle, respondent adapted well to living at Spring House, adhered to the rules, completed all of her assigned chores and assignments, cooperated with staff, offered assistance to staff and peers, and actively participated in her treatment plan. Del Valle remarked that respondent had set a positive example for her peers and had became a role model to them.

Del Valle added that respondent continued to attend AA and LCL meetings and seemed committed to serving the AA community. She concluded that, if respondent continued to work in a twelve-step program, there was a reasonable probability that she would remain sober.

Sean Callagy stated that respondent had been in his employ for two years; that, when she received the Notice of Motion for Final Discipline, she revealed her history of addiction, recovery, and criminal record to him; and that, when she learned from a NJLAP individual that she was in violation of R. 1:20-20, she immediately resigned from his firm.

Callagy reiterated that respondent at no time engaged in the practice of law. He asserted that the person that he grew to know was not the same person whose actions had led to a criminal record and license suspension. He found that her attitude and behavior demonstrated a complete reformation of character. It was his opinion that she would be able to serve clients and the administration of justice honorably and responsibly.

According to Callagy, respondent had been a valuable asset to his firm and was greatly missed; she had demonstrated great working habits, strong leadership, and character. He added that he hoped for her swift return to his law firm, upon her reinstatement to the bar.

Respondent's counsel urged us to consider the ultimate purpose of discipline, that is, not to punish the attorney, but to protect the public. Citing In re Shaffer, 140 N.J. 148, 158 (1995), he noted that a suspension after rehabilitation may itself "jeopardize . . . recovery, undermine rehabilitation and incite relapse."

As mentioned earlier, counsel argued that, if a suspension is to be imposed, it should be retroactive to the date of her temporary suspension. In support of his argument, counsel cited a number of cases in which retroactive suspensions have been imposed: In re Sarmiento, 197 N.J. 164 (2008); In re Parsonnett,

153 N.J. 37 (1998); In re Barbour, 148 N.J. 74 (1997); and In re Marinangeli, 142 N.J. 487 (1995).

As to respondent's violation of R. 1:20-20, counsel noted that respondent did not willfully violate that rule, that the violation was merely technical in nature, and that, given the purpose of attorney discipline -- protection of the public -- harsh discipline for that violation was not warranted.

Following a review of the motion for final discipline, we determine to grant it.

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 identify theft, credit card theft, theft by deception and burglary establishes that she violated RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonest, fraud, deceit or misrepresentation). Hence, the sole issue here 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." In re Principato, supra, 139 N.J. at 460 (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).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997). Offenses that evidence ethical shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. In re Schaffer, supra, 140 N.J. at 156.

In gauging the suitable measure of discipline for this respondent, we considered that, generally, identity theft or credit card fraud results in a three-year suspension. See, e.g., In re Bevacqua, 185 N.J. 161 (2005) (attorney arrested for

attempting to purchase items at a K-Mart store totaling $519.15 by using a fraudulent credit card bearing another person's name; when the store's security personnel requested identification from the attorney, he offered a wallet full of identification in the other person's name; the attorney was charged with identity theft, credit card fraud, and theft; he was enrolled into PTI and stipulated that his conduct violated RPC 8.4(b); prior reprimand and six-month suspension; In re Meaden, 165 N.J. 22 (2000) (during a California vacation, attorney stole a credit card number while in a camera store and then attempted to commit theft by using the number to purchase $5,800 worth of golf clubs, which he had delivered to a New Jersey address; the attorney also made multiple misrepresentations on fire-arms purchase identification cards and handgun permit applications by failing to disclose his psychiatric condition and his involuntary psychiatric commitment, as required by law; the attorney had a prior reprimand for making direct, personal contact with victims of the Edison New Jersey Pipeline Explosion Mass Disaster); and In re Marinangeli, supra, 142 N.J. 487 (suspension retroactive to date of temporary suspension; attorney removed approximately four credit cards and two checks from mailboxes in the building where his mother lived; the attorney was sentenced to three years probation and was required

to undergo urinalysis testing, treatment for his narcotics addiction, if necessary, and to make restitution ($21,734.21) of money obtained from his illegal use of the various credit cards and checks used to support his addictions to alcohol and crack cocaine).

More severe discipline was imposed on an attorney who engaged in a pattern of illegal conduct. See In re Hasbrouck, supra, 152 N.J. 366 (disbarment for attorney convicted of theft by unlawful taking and of burglary of doctors' homes to obtain keys to their offices to have access to prescription drugs; the attorney had a prior one-year suspension for obtaining a controlled dangerous substance by fraud and for uttering a forged prescription; the Court found that the attorney's pattern of illegal conduct demanded stronger discipline than would an isolated criminal incident).

Respondent's conduct was most similar to Marinangeli's (three-year retroactive suspension). They both used the fruits of their criminal conduct to support their addictions.

We are aware of and troubled by respondent's employment at a law firm, during the period of her temporary suspension. Nevertheless, her quick actions, once she learned of that impropriety, support her contention that she committed the violation unwittingly. Because of respondent's unstable living

conditions, it is possible that she did not receive the Court's notice of suspension. Once she was able to fight her way back to sobriety and learned from the NJLAP that she could not work in a law firm, she immediately resigned from her job at the Callagy firm.

We have given great consideration to the evidence, in the record before us, that respondent has made tremendous gains in her efforts at drug and alcohol rehabilitation, that she is eager to move forward with her life, and is sincere in her resolve to remain sober. As the Court recognized in In re Shaffer, supra, 140 N.J. at 158, a suspension after rehabilitation may itself "jeopardize . . . recovery, undermine rehabilitation and incite relapse." We, therefore, find that a three-year suspension is sufficient discipline for the aggregate of respondent's violations. Given the mitigating circumstances present here, we determine that, as in Marinangeli, the suspension should be retroactive to October 10, 2007, the effective date of respondent's temporary suspension.

We also determine that, prior to reinstatement, respondent must provide proof of fitness to practice law, as attested by a mental health practitioner approved by the OAE, as well as proof of continued participation in a drug/alcohol rehabilitation program until further order of the Court.

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 Kimberly A. Kopp
Docket No. DRB 10-378

Argued: February 17, 2011

Decided: April 14, 2011

Disposition: Three-year retroactive suspension

Members	Disbar	Three-year Retroactive Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel