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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-113
District Docket No. XIV-05-004E

IN THE MATTER OF :
MICHAEL JAMES BUONOPANE :
AN ATTORNEY AT LAW :
:

Decision

Argued: June 15, 2006

Decided: September 26, 2006

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Maureen Ruane 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"), based on respondent's criminal conviction for misapplication of \$2.7 million in entrusted property over a five-year period and failure to file tax returns with the intent to evade the payment of taxes. We recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1987. On April 6, 1992, he received a private reprimand for gross neglect

in his capacity as a certified public accountant. Specifically, respondent did not send to the state \$2,000 received from a client for sales taxes covering three calendar years. In the Matter of Michael J. Buonopane, Docket No. DRB 92-065 (April 6, 1992).

On June 29, 2005, respondent was temporarily suspended after pleading guilty to the criminal charges that are the subject matter of this motion for final discipline. In re Buonopane, 184 N.J. 158 (2005).

On November 30, 2004, a New Jersey State grand jury returned a twenty-five-count indictment against respondent. The indictment charged that respondent, the owner and operator of approximately twenty car-wash and oil-lube facilities, failed to pay federal and state taxes on behalf of his employees, although his businesses entities had withheld funds from employees' wages for that purpose; failed to turn over sales and use taxes collected from customers of his businesses; failed to file corporate business tax returns; and filed false or fraudulent New Jersey gross income tax returns. The indictment charged respondent and the relevant business entities with the following offenses: theft by failure to make required disposition of property received (N.J.S.A. 2C:20-9), misapplication of entrusted property (N.J.S.A. 2C:21-15), filing false or fraudulent New Jersey gross income tax returns (N.J.S.A. 54:52-10), failure to file New Jersey corporate business tax

returns (N.J.S.A. 54:52-8), and purposefully failing to turn over New Jersey sales and use tax (N.J.S.A. 54:52-15).

On June 3, 2005, respondent pleaded guilty to count two, charging him and one of his businesses, Mr. Good Lube, Inc., with misapplication of entrusted property, a second-degree offense (N.J.S.A. 2C:21-15); count eleven, charging him and Mr. Good Lube 10 Minute Oil Change, Inc. with failure to file corporate business tax returns, a third-degree offense (N.J.S.A. 54:52-8); and count twenty-five, charging him and many of his businesses with misapplication of entrusted property, a second-degree offense (N.J.S.A. 2C:21-15).

As seen in the plea transcript of June 3, 2005, the conduct that formed the basis for the guilty plea was respondent's (1) failure to remit to the government taxes withheld from wages of employees of Mr. Good Lube 10 Minute Oil Change, Inc., from January 1999 through January 2004; the relevant businesses were located in Freehold, Maplewood and Bloomfield, New Jersey (count two); (2) failure to file corporate business tax returns for the years 1999 through 2003, on behalf of Mr. Good Lube 10 Minute Oil Change, Inc., located in Freehold and Matawan, New Jersey, with the intent to defraud or evade payment of the corporate business tax (count eleven); and (3) from 1999 through 2004, willful failure to turn over New Jersey sales and use taxes collected from customers of a number of car-wash and oil-lube

businesses under the names of New Jersey Oil Centers, Inc., Mr. Goodlube 10 Minute Oil Change, Inc., Goodway Car Wash, Inc., t/a Country Sudser Car Wash, Mr. Good Lube, Inc., Flanders Carwash, Inc., t/a Country Sudser Car Wash, and Mr. Good Lube 10 Minute Oil Change, Inc., d/b/a Country Sudser, in Freehold and other locations in New Jersey. The remaining charges against respondent and his corporate entities were dismissed.

Respondent was required to pay a total of \$4,031,723.64 to the government: \$2,774,454.80 in principal, \$1,046,950.20 in accrued interest, and \$210,318.60 in penalties.

At the January 20, 2006 sentencing proceeding, the Deputy Attorney General made the following statement:

In November 2003 Howard Solomon from the Department of Labor sent the defendant a letter telling him to pay his contributions to the State or face criminal charges. Months later he never heard from the defendant, the case was referred to the Division of Criminal Justice, and a criminal investigation began.

At that point the Department of Labor had knowledge of just one payroll account of Mr. Buonopane. You see, he had a payroll service that automatically magnetically filed wage reports to the State. The significance of that is that because the State had those wage reports they were able to pay unemployment and disability benefits to Mr. Buonopane's employees without receiving any contributions to the unemployment and disability funds. The State estimates that on average it paid out \$50,000 a year in unemployment and disability benefits over the course of years, monies that will never be fully recouped.

But more significant than that was the criminal investigation revealed something even more egregious. They discovered two other payroll accounts where wage reports were not sent to the State. And as a result of not receiving those wage reports, employees of Mr. Buonopane who filed for unemployment disability benefits were never able to get those benefits. There were instances where these employees had to hire attorneys, file appeals to get the benefits that they were lawfully and legally entitled.

The defendant breached the trust of all the employees regarding the amounts of money he withheld from their paychecks. The money was entrusted to him and ended up in his pocket. The fact that the crimes the defendant stands convicted of are pecuniary in nature does not mitigate his conduct. These were purposeful deceptions that show clearly that the defendant knew his conduct would cause serious harm and therefore mitigating factors 1 and 2 should be clearly rejected.

With regard to B6, that defendant will be compensating the State for his misconduct, the State's request for a five year prison sentence is taking into account that restitution that he's made. The monies that he's remitted to the State are the employee's withholding taxes that he withheld from his employees and the State sales taxes that he charged his customers. The State has made numerous concessions in arriving at his restitution amount as well. The Division of Taxation has abated 95 percent of its penalty. That has also had the reciprocal effect of reducing his interest payment to the State.

In addition to paying out unemployment benefits while no monies were coming into the funds, the State also paid a lot of tax refunds when none of those monies were coming into the State as well. The State

will never really recuperate or be fully compensated for the defendant's misconduct.

. . . .

With regard to B8 and B9, these two mitigating factors again relate to aggravating factor A3 and have no merit. The judgments filed by the State over the years have been a complete and total failure to deter the defendant from continuing to defraud the State. Defendant's dealing with State officials throughout the years demonstrate his contempt for the law, and confirms that he is a significant risk to commit new offenses because he will continue to operate, he continues to be a custodian or trustee over entrusted funds of the State.

. . . .

The defendant has had countless opportunities to deal with the State officials prior to a criminal investigation and do the right thing. Instead the defendant constantly deferred the State's request, coming up with reasons for not having his financial records, reasons for not complying. Consistent with all these encounters was defendant's concealment of the size in earnings and employment of his businesses. When confronted with a notice that he was the target of a State Grand Jury investigation, he told the State official I only have seven Mr. Goodlubes [sic] and three Country Sudser carwashes.

It is the position of the State that anyone who intentionally deceives State officials in an unlawful attempt to avoid responsibility is more threatening to the community and less deserving of leniency than a defendant who respects the process and admits responsibility. The defendant obtained, by deception, over \$4 million. Although the defendant is returning the monies to the government, it fails to take into account other monies and the profits

that he's had, he's earned from these monies.

He's made significant investments in real estate where he's earned tremendous amounts of money as well as expanded his business to now it's over, now it's 21 locations. The State's request for five year prison sentence is absolutely reasonable. The small businessman who timely and accurately remits his payroll sales taxes must know that their honesty has not been in vain. Likewise, the thousands of employees in the State who have custodialship [sic] over sales tax and payroll taxes must know the seriousness of stealing government funds.

This case has nothing to do with poor judgment, mismanagement or carelessness. It has everything to do with deception, deceit and defiance. The aggravating factors clearly outweigh the mitigating factors, and the State has taken into account the restitution made [to] the State and is recommending a five year prison sentence. Thank you.

[OAEbEx.E14-22.]¹

Respondent was sentenced to four years in prison, the midpoint of the range (three to five years) for such offenses. The judge commented that "[t]his is a significant tax fraud case, it may be the largest of its kind, that is as to this type of tax."

At oral argument before us, respondent's counsel stated that respondent was incarcerated and "served hard time" for several

¹ "OAEb" refers to the OAE's brief.

months in Monmouth County and at Southern State Correctional Facility. He was subsequently accepted into the New Jersey Intensive Supervision Program, which continues to monitor him.

Also at oral argument, respondent's counsel challenged some of the Deputy Attorney General's statements at sentencing, quoted in the OAE's brief:

Deputy Attorney General, at sentencing, did set forth a number of factors about this case that are true and correct. And in the course of that recitation she also included various arguments, conclusions, and characterizations that, frankly, we take issue with. For example, at one point she writes -- or she says, and it's written in the Office of Attorney Ethics's brief, that when Mr. Buonopane was confronted by a State official, he told them -- it was in connection with the grand jury investigation -- he told them that he had only ten Mr. Good Lube locations and three Country Sudser Car Wash locations. We don't have the means to know when Mr. Buonopane was approached, what question was asked of him, or how he responded. And truth be told, he does have numerous locations and different operations, many of which operate under different names. Now obviously the point of the [Deputy Attorney General's] statement to the Court was to imply that Mr. Buonopane was being less than candid and less than truthful, but we don't know whether the question was directed to particular businesses under particular names or not, and that is right throughout that statement of facts, and it is all designed to show that there is this larger scheme or pattern. But in reality, the offenses of conviction are narrow and discreet [sic] and we just don't have a sufficient basis to know whether the rest of the characterization has any support because there

certainly is none in the record here today.

[BT10-11.]²

The OAE urged us to recommend respondent's disbarment. The OAE noted that

[r]espondent, who in addition to being an attorney is also a certified public accountant, knew he was liable for taxes, yet, instead of remitting the taxes to the government, he expanded his businesses, consisting of twenty-one locations, purchased three expensive homes and made large investments in real estate. From 1999 through 2004, respondent obtained more than \$4,000,000 by deception and misapplication.³ Respondent's conduct was not engendered by any other motive than pure, unadulterated greed.

[OAEb8.]

According to respondent's counsel, a suspension of two to three years is the appropriate discipline for several reasons: because the crimes were unrelated to the practice of law; because respondent has "learned his lesson," and has made the restitution required of him; and because respondent has taken

² BT refers to the transcript of oral argument before us.

³ According to the plea transcript, the amount that respondent failed to remit to the government was approximately \$2,770,000. The \$4,000,000 in restitution includes principal, interest, and penalties.

steps (such as using outside accountants) to ensure that his businesses are run honestly.

Counsel's brief states that respondent's "strong desire to manage his own affairs and to provide security and comforts for his family became distorted over time. [Respondent] acknowledges that he 'let [his] own arrogance and greed get in the way of good sense and better judgment.'" As to this last statement, counsel explained that

[w]hen read in context . . . Mr. Buonopane was conveying the reason that he engaged in the underlying misconduct: he was overextended in his various work efforts; he wished to succeed and achieve in each and he thought he should be able to do so on his own, without assistance from anyone else. These facts, in combination, led him to fail to fulfill obligations that he fully recognizes he should have been fulfilling. Mr. Buonopane's unequivocal admission of guilt and his display of sincere contrition should not be used to assail him, but rather should be considered mitigative. Furthermore, Mr. Buonopane's ability and willingness to identify and admit the underlying reasons why he engaged in the offense conduct provides strong indicia that Mr. Buonopane appreciates fully the gravity of his misconduct and that he is unlikely to repeat it again.

[Rb13.]⁴

⁴ Rb refers to respondent's counsel's brief.

Following a review of the record, we determine to grant the OAE's motion for final discipline.

The existence of a criminal record is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1), In re Gipson, 103 N.J. 75, 77 (1986). Therefore, no independent examination of underlying facts is necessary to determine guilt of the crime used as a basis for establishing a violation of the Rules of Professional Conduct. In re Iulo, 115 N.J. 498, 500 (1989). The only issue to be determined is the quantum of final discipline to be imposed. R. 1:20-13(c)(2).

Respondent's conviction of two counts of misapplication of entrusted funds and one count of failure to file corporate business tax returns is clear and convincing evidence that he violated RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer).

The level of discipline imposed in disciplinary matters involving the commission of a crime depends on numerous 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, at 445-46.

While the fact that an attorney's crimes were not committed in his or her professional capacity may qualify as a mitigating

factor, see In re Franklin, 71 N.J. 425, 429 (1976), serious crimes unrelated to the practice of law warrant disbarment. See, e.g., In re Scola, 75 N.J. 58 (2002) (disbarment for attorney guilty of third-degree theft by deception and third-degree witness tampering; the attorney participated in a check-kiting scheme that caused an \$81,000 loss to the bank and netted the attorney \$4,000 in illegal gains); In re Denker, 147 N.J. 570 (1997) (attorney disbarred for money-laundering purported drug proceeds; the attorney received \$100,000 and then issued numerous negotiable instruments, each in amounts less than \$10,000, to avoid reporting requirements for currency transactions; the attorney received \$6,500 as a fee); and In re Lunetta, supra, 118 N.J. 443 (disbarment for attorney guilty of conspiracy to receive, sell, and dispose of \$200,000 in stolen bearer bonds; the attorney agreed to deposit in his trust account the proceeds from the sale of the bonds; the illegal enterprise realized \$170,000, from which the attorney received \$20,000 to \$25,000; the attorney was disbarred even though he did not participate in the theft of the securities or in the structuring of the scheme, readily admitted his participation in the crime, and testified against his co-conspirators).

An attorney who failed to pay federal income and social security taxes on behalf of his employees was suspended for six months. In re Esposito, 96 N.J. 122 (1984). Esposito pleaded

guilty to a violation of 26 U.S.C. 7203 for one calendar quarter. He received a probationary sentence of one year and was ordered to pay a \$5,000 fine. Although Esposito's secretary had prepared tax forms for his signature, he failed to perform the simple ministerial duties of reviewing, signing, and mailing the forms. During that period, Esposito was coping with the serious illness of his mother.

Unpersuaded by the fact that the unpaid taxes had remained untouched in Esposito's business account, the district ethics committee found him guilty of unethical conduct, pointing to the ease with which the returns could have been filed.

The then-members of our Board found that, unlike cases in which attorneys have been disciplined for failure to pay income tax, Esposito's conduct "was not marked by any attempt at personal gain." Id. at 132. Taking that factor into account, along with the emotional distress due to his mother's lengthy illness and consequent death, the Board recommended that Esposito be suspended for six months. The Court agreed with that recommendation.

In another case, the attorney received a reprimand for his failure to pay the federal withholding taxes in an unspecified amount and New Jersey unemployment compensation taxes of at least \$11,000 over a five-year period. In re Frohling, 153 N.J. 27 (1998). In addition, the attorney misrepresented to his

employees and to tax authorities, through W-2 forms, that the taxes had been retained.

In In re Gold, 149 N.J. 23 (1997), an attorney's failure to pay his secretary's social security and federal and state income taxes for two calendar years, coupled with serious conflict of interest situations, caused him to receive a six-month suspension.

As to the payroll taxes, which, with interest and penalties, approximated \$40,000, the attorney in Gold claimed no knowledge of the delinquency, saying he thought his secretary was attending to that obligation; his secretary denied that the remittance of payroll taxes was part of her duties. The Board found that the evidence did not clearly and convincingly establish that the attorney's failure to pay the taxes had been intentional; the six-month suspension was predicated also on the conflict of interest violations.

We find that, compared with the conduct of the above attorneys, respondent's violations were much more serious. In Esposito, the conduct that formed the basis for the guilty plea was confined to one quarter. One mitigating factor was that the taxes had remained inviolate in the attorney's business account. In Frohling, the conduct spanned a five-year period and resulted in unspecified taxes due to the federal government and at least \$11,000 due to the state. In Gold, the unpaid taxes, interest,

and penalties amounted to \$40,000 and involved two calendar years.

In all of the above cases, there was no evidence that the employees sustained any harm because of the attorneys' failure to pay the taxes.⁵

In character and in scale, the conduct involved here is far more serious than that involved in any of those cases. Here, there is no question that respondent's conduct was intentional, that it was sustained, and that it was motivated solely by considerations of personal gain, involving the misuse of millions of dollars of entrusted funds. And here, in contrast to those other cases, innocent parties -- respondent's own employees -- were hurt through the denial of benefits because of respondent's failure to file wage reports.

Respondent also pleaded guilty to failure to file business tax returns for four calendar years "with the intent to defraud or evade payment of the corporate business tax."

Attorneys who evade, or seek to evade, the payment of income taxes typically receive two-year suspensions. In re Rakov, 155 N.J. 593 (1998) (two-year suspension for attorney with an unblemished disciplinary record, convicted of attempted

⁵ In Gold, the conduct that resulted in economic injury to the secretary was the conflict of interest, as opposed to the non-payment of payroll taxes.

income tax evasion for five calendar years; the attorney did not report interest paid to him on personal loans); In re Batalla, 142 N.J. 616 (1995) (two-year suspension imposed on attorney who pleaded guilty to one count of tax evasion by underreporting his earned income in two calendar years); In re Nedick, 122 N.J. 96 (1991) (two-year suspension for attorney who pleaded guilty to failure to report as taxable income \$7,500 in cash received in payment of legal fees in one calendar year); and In re Gurnick, 45 N.J. 115 (1965) (attorney suspended for a period of two years after he pleaded nolo contendere to a charge of tax evasion for one calendar year).

In addition, respondent pleaded guilty to a failure to remit to the government, for a period of five years, sales and use taxes collected from customers of a number of his car-wash and oil-lube businesses.

Respondent's purported mitigation -- that his "desire to manage his own affairs and to provide security and comforts for his family became distorted over time" -- rings hollow. Rather, an abiding greed appears to have been the prime motivator.

Although respondent's conduct does not fall within the purview of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client funds) and In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation of escrow funds), the magnitude of his criminal offenses requires his disbarment. For

a period of four to five years, he intentionally misused over \$2.7 million in entrusted funds by willfully failing to remit to federal and state authorities taxes withheld from employees and by failing to turn over New Jersey sales and use taxes paid by customers of his numerous businesses. He willfully failed to file corporate tax returns for four calendar years, with the intent to evade the payment of taxes. His overall criminal offenses resulted, in the words of the sentencing judge, in one of the most significant tax fraud cases of this kind. In all, the idea of his remaining a member of the bar is untenable. We are compelled to recommend his disbarment.

Member Boylan recused himself.

We also 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
William J. O'Shaughnessy
Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

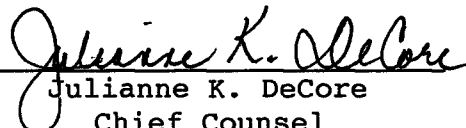
In the Matter of Michael James Buonopane
Docket No. DRB 06-113

Argued: June 15, 2006

Decided: September 26, 2006

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X					
Pashman	X					
Baugh	X					
Boylan					X	
Frost	X					
Lolla	X					
Pashman	X					
Stanton	X					
Wissinger	X					
Total:	8				1	


Julianne K. DeCore
Chief Counsel