SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-257
District Docket No. XIV-2008-0614E

IN THE MATTER OF

ELIZABETH M. GOLDMAN

AN ATTORNEY AT LAW

Decision

Argued: January 16, 2014

Decided: January 31, 2014

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

Respondent did not appear, despite proper notice.[1]

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 OAE pursuant to R. 1:20-13(c)(2), following respondent's guilty plea to second-degree robbery, in violation of RPC 8.4(b) (criminal act that reflects adversely on the

[1] Respondent was served with notice of oral argument by regular mail sent to her last known address, provided to the Office of Attorney Ethics (OAE) by her probation officer.

lawyer's honesty, trustworthiness or fitness as a lawyer). We agree with the OAE that disbarment is warranted in this case.

Respondent was admitted to the New Jersey bar in 1997. She has no history of discipline. In 2002, she was transferred to disability inactive status (DIS). In re Goldman, 170 N.J. 294 (2002). She remains on DIS.

According to an April 2, 2009 indictment, on five occasions, between February and April 2008, respondent entered and robbed eating establishments. She was charged with two counts of second-degree robbery, in violation of N.J.S.A. 2C:15-1a, three counts of first-degree armed robbery, in violation of N.J.S.A. 2C:15-1, and two counts of third-degree aggravated assault, in violation of N.J.S.A. 2C:12-1b(7).

On April 19, 2010, respondent pleaded guilty to one count of the indictment, admitting that she had robbed McMillan's Bakery on February 21, 2008, in violation of N.J.S.A. 2C-15-1a.[2] Respondent concealed her finger in a paper bag and told McMillan's employees "something to the effect of give me the

[2] That statute provides as follows:

> a. Robbery defined. A person is guilty of robbery if, in the course of committing a theft, he:
> (1) Inflicts bodily injury or uses force upon another; or
> (2) Threatens another with or purposely puts him in fear of immediate bodily injury; or
> (3) Commits or threatens immediately to commit any crime of the first or second degree.

money and nobody gets hurt." The remaining counts of the indictment were dismissed.

On July 16, 2010, respondent was sentenced to five years' imprisonment for second-degree robbery, subject to the No Early Release Act (N.J.S.A. 2C:43-7.2), which required her to serve eighty-five percent of her sentence, before she was eligible for parole. The appropriate fines and penalties were also imposed. Before sentencing respondent, the judge found two aggravating factors present, specifically, the risk of re-offending and the need for deterrence. In mitigation, the judge found that "there were substantial grounds tending to excuse or justify [respondent's] conduct, though failing to establish a defense." The judge concluded that "the aggravating factors clearly, convincingly and substantially outweigh the mitigating factors." The judge, nevertheless, decided to diverge downward three years from the eight-year term negotiated in the plea agreement, deeming it "fair and just under the circumstances."[3]

Following a review of the full record, we determine to grant the OAE's motion for final discipline. The existence of a criminal conviction is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986).

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[3] There was a great deal of discussion, during sentencing, about respondent's prior criminal record, which was unclear. It appears that she has a Municipal Court conviction for shoplifting and a Superior Court conviction for theft.

Respondent's guilty plea to second-degree robbery constituted a violation of RPC 8.4(b). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

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, supra, 118 N.J. at 445-46. Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

Attorneys who have been found guilty of theft, not robbery, have been disbarred when the circumstances have been egregious. See, e.g., In re Buonopane, 201 N.J. 408 (2007) (attorney, as owner and operator of approximately twenty car-wash and oil-lube facilities, was convicted of two counts of misapplication of $2.7 million in entrusted property and one count of failure to file corporate business tax returns with the intent to evade taxes; during a five-year period, the attorney withheld income and other taxes from his employees and failed to remit them to the government; he also failed to remit sales taxes that he had

collected); In re Hasbrouck, 152 N.J. 366 (1998) (attorney pleaded guilty to four counts of third-degree burglary, three counts of third-degree theft by unlawful taking, and one count of fourth-degree theft by unlawful taking; the attorney burglarized the homes and offices of doctors in four different counties in order to obtain prescription drugs; prior one-year suspension for obtaining a controlled dangerous substance by fraud and for uttering a forged prescription); In re Imbriani, 149 N.J. 521 (1997) (attorney who was also a Superior Court judge converted approximately $75,000 from his business partners; the attorney managed a real estate corporation that leased offices to medical doctors and converted the rent checks from the tenants to his own use; disbarment required because of commission of crime of dishonesty, for personal gain, over an extended period of time and during tenure as a judge); and In re Spina, 121 N.J. 378 (1990) (attorney acknowledged that, while employed by Georgetown University's International Law Institute, he deposited the University's funds into his personal account and converted $15,000 to his own use; the attorney pleaded guilty to a lesser-included offense of petty larceny and admitted that, during a two-and-one-half-year period, he had converted $32,000, in addition to the $15,000; the Court

determined that no discipline short of disbarment could be justified).

Not all instances of theft have resulted in disbarment, however. See, e.g., In re Bevacqua, 185 N.J. 161 (2005) (three-year suspension for attorney who was arrested for attempting to use a fraudulent credit card to purchase electronic items at a K-Mart store; his wallet contained six credit cards in different names and a driver's license with his picture and someone else's name; the attorney was charged with identity theft, credit card fraud, and theft; he was accepted into PTI); In re Boccieri, 170 N.J. 191 (2001) (three-year suspension for attorney who instructed a stock transfer agent to issue 42,500 shares of a company's common stock in his name; the company was the attorney's former client; the attorney alleged entitlement to the stock by way of legal fees; we remarked that, if not for the attorney's colorable claim of fees, he would have faced disbarment); In re Meaden, 165 N.J. 22 (2000) (three-year suspension for attorney who ordered golf clubs and other equipment worth $5,800 by using stolen credit card information); In re Breyer, 163 N.J. 502 (2000) (three-year suspension for law librarian who stole $16,000 in books from a library in the Administrative Office of the Courts); In re Infinito, 94 N.J. 50 (1983) (three-year suspension for attorney convicted of larceny

of property valued over $500 and conspiracy to commit larceny; the attorney and his wife appropriated several thousand dollars belonging to two adult sisters that a State facility had placed in the attorney's home as domestics; the stolen funds were the employees' savings; mitigating factors were considered, including the attorney's prior unblemished record, numerous civic and charitable contributions, and good reputation among his peers); In re Ragucci, 112 N.J. 40 (1988) (on a motion for reciprocal discipline, two-year suspension for attorney who converted to his own use a $194 check found on the floor of his apartment lobby; the attorney forged the payee's signature and deposited the check in his account); In re Burns, 142 N.J. 490 (1995) (six-month suspension imposed on attorney involved in several burglary and theft incidents, including $5 stolen from four cars); and In re Hoerst, 135 N.J. 98 (1994) (six-month suspension for attorney who, while a county prosecutor, withdrew $7,500 from the County's forfeiture fund to pay for a trip to California for himself, a female companion, the First Assistant Prosecutor, and the latter's wife, for the ostensible purpose of attending a conference; the funds were used to pay for air fare, lodging, and meals at the conference site; thereafter, the group spent three days in another location; in not imposing more severe discipline, the Court considered the absence of Attorney

General guidelines on official trips taken by members of a prosecutor's office and their spouses).

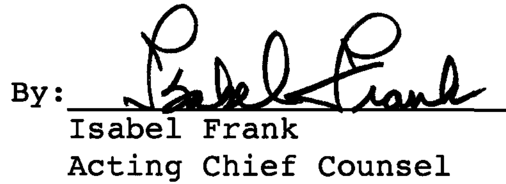
The question is whether respondent's guilty plea to second-degree robbery merits disbarment or a lengthy term of suspension.

During respondent's sentencing, the judge noted that she "does have serious mental issues." We are aware, from our review of the record, that she also suffers from a physical illness. Although we feel some measure of sympathy for respondent's numerous physical and mental health issues, the fact remains that she was found guilty of second-degree robbery, during which she placed people in fear of serious physical harm or even death. The sentencing judge found that aggravating factors outweighed mitigating factors and imposed a five-year sentence, eighty-five percent of which respondent must serve, before she is eligible for parole. As the Court held in <u>In re Hasbrouck</u>, <u>supra</u>, 152 <u>N.J.</u> at 371-372, "[s]ome criminal conduct is so utterly incompatible with the standard of honesty and integrity that we require of attorneys that the most severe discipline is justified by the seriousness of the offense alone." Here, too, the severity of respondent's crime does not require anything short of disbarment. We recommend that respondent be disbarred.

Member Doremus 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: 
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

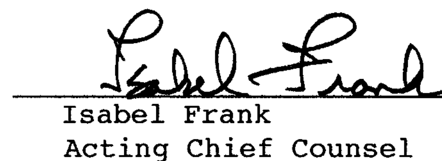
In the Matter of Elizabeth M. Goldman
Docket No. DRB 13-257

Argued: January 16, 2014

Decided: January 31, 2014

Disposition: Disbar

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



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