

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. 99-440

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IN THE MATTER OF  
STEVEN JOHN BERNOSKY  
AN ATTORNEY AT LAW

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Decision

Argued: February 3, 2000

Decided: May 22, 2000

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

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

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"), pursuant to R. 1:20-14, following respondent's September 27, 1999 disbarment by consent from the Pennsylvania bar.

Respondent was admitted to the New Jersey bar in 1993. On April 19, 2000, he was temporarily suspended in New Jersey, pending the final resolution of this matter.

On October 21, 1996, the United States Bankruptcy Court for the Eastern District of Pennsylvania approved respondent to be the attorney for Morris Schiff Co., Inc., a debtor in possession under Chapter 11 of the Bankruptcy Code. On November 15, 1996, property owned by Schiff was sold for \$14,149.32 and a check for that amount was issued to "Steven J. Bernosky, Bankruptcy Trustee for Morris Schiff Co., Inc."

Instead of depositing the check in Schiff's bank account, as he was required to do, respondent deposited the check in his personal bank account.

In December 1997, Schiff's bankruptcy case was converted to a Chapter 7 liquidation case. At a January 30, 1998 meeting between respondent and a creditor of Schiff, respondent acknowledged that he had received the \$14,149.32 and promised to relinquish those funds to the creditor. He did not do so.

On April 16, 1999, respondent pleaded guilty, in the United States District Court for the Eastern District of Pennsylvania, to one count of bankruptcy fraud/embezzlement. He thereafter consented to disbarment from the Pennsylvania bar.

On November 15, 1999, he was sentenced to five years' probation. The sentencing court also required him to pay \$14,149.32 in restitution to Schiff's creditor.

The OAE urged us to recommend respondent's permanent disbarment.

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Upon a de novo review of the full record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5) (another jurisdiction's finding of

misconduct shall establish conclusively the facts on which the Board rests for purposes of a disciplinary proceeding), we adopted the findings of the Supreme Court of Pennsylvania.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a), which directs that

[t]he 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 upon which the discipline in another jurisdiction was predicated that it clearly appears that:

- (A) The disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) The disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) The disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (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 misconduct established warrants substantially different discipline.

We agree with the OAE that subsection (E) is applicable here, namely, that respondent's misconduct warrants substantially different discipline in New Jersey. In Pennsylvania, a disbarred attorney may apply for reinstatement after five years. In New Jersey, however, disbarment is permanent.

Respondent admitted that, while serving as the attorney for a debtor in possession, he

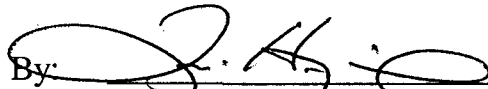
knowingly misappropriated the company's funds. Although he agreed to repay the funds to the creditor entitled to receive them, he did not do so. He thereafter pleaded guilty to bankruptcy fraud/embezzlement.

It is well-settled law in New Jersey that the knowing misappropriation of client funds or of escrow funds will result in permanent disbarment. In re Hollendonner, 102 N.J. 21 (1985) and In re Wilson, 81 N.J. 157 (1979).

Therefore, we unanimously determined to recommend that respondent be disbarred from the practice of law. Three members did not participate.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/22/00

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**  
**DISCIPLINARY REVIEW BOARD**  
**VOTING RECORD**

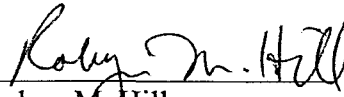
**In the Matter of Steven John Bernosky**  
**Docket No. DRB 99-440**

**Argued: February 3, 2000**

**Decided: May 22, 2000**

**Disposition: Disbar**

| Members       | Disbar   | Suspension | Reprimand | Admonition | Dismiss | Disqualified | Did not Participate |
|---------------|----------|------------|-----------|------------|---------|--------------|---------------------|
| Hyerling      | x        |            |           |            |         |              |                     |
| Boylan        | x        |            |           |            |         |              |                     |
| Brody         | x        |            |           |            |         |              |                     |
| Lolla         |          |            |           |            |         |              | x                   |
| Maudsley      |          |            |           |            |         |              | x                   |
| Peterson      | x        |            |           |            |         |              |                     |
| Schwartz      |          |            |           |            |         |              | x                   |
| Wissinger     | x        |            |           |            |         |              |                     |
| <b>Total:</b> | <b>5</b> |            |           |            |         |              | <b>3</b>            |

  
Robyn M. Hill  
Chief Counsel