SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-285
District Docket No. XIV-2008-295E

IN THE MATTER OF	
KARIN R. WHITE-MORGEN	
AN ATTORNEY AT LAW	

Decision

Argued: January 21, 2010

Decided: March 4, 2010

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Gerard E. Hanlon 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 reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), following the Florida Supreme Court's July 10, 1997 disbarment of respondent, in a default matter, for her misconduct after an

automobile accident that killed her mother-in-law and sister-in-law and nearly killed her father-in-law. Specifically, respondent used her deceased mother-in-law's department store credit card to purchase items for either her use or the use of her then husband and forged her mother-in-law's signature on the sales slips. Respondent also converted "substantial amounts" of her father-in-law's funds during the time that he was incapacitated by the injuries sustained in the accident and was unable to handle his personal and financial affairs.

The OAE urged us to recommend respondent's disbarment. Respondent seeks the imposition of a reprimand. For the reasons expressed below, we agree that disbarment is warranted in this case.

Respondent was admitted to the New Jersey and Florida bars in 1985. At the relevant times, she was a resident of Cape Coral, Florida.

Respondent has been practicing law in New Jersey since mid-2005. Presently, she practices law with Robert A. Vort, LLC, where she has been an associate since June 2006.

In 1993, respondent received a public reprimand in Florida, with one-year probation, for "neglect of a legal matter and

technical trust accounting rule violations." She has no disciplinary history in New Jersey.

From October 20 to December 30, 1988 and from October 26, 1989 to July 7, 2005, respondent was on the Supreme Court's list of ineligible attorneys for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"). At some point, she claimed on the CPF form that, between 1996 and 2004, she was retired.

On October 31, 1996, the Florida Bar served respondent with a formal ethics complaint, charging her with having violated three of the Rules Regulating The Florida Bar. Two of the rules are equivalent to New Jersey RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

The third rule – Florida Rule 3-4.3 – appears to be procedural in nature, inasmuch as it defines the type of conduct that "may constitute a cause for discipline," such as the "commission by a lawyer of any act that is unlawful or contrary to honesty and justice, whether the act is committed in the course of the attorney's relations as an attorney or otherwise,

whether committed within or outside the state of Florida, and whether or not the act is a felony or misdemeanor."

After respondent failed to answer the Florida complaint that is the subject of this matter, Bar counsel filed and served a motion for default and also served on respondent a set of requests for admission. When respondent failed to either admit or deny the requests for admission, Bar counsel filed and served a motion to deem the requests admitted.

On February 7, 1997, a hearing on Bar counsel's motions took place before the Honorable Preston DeVilbiss, Jr., a Supreme Court of Florida referee. The hearing took place by telephone. Neither respondent nor anyone on her behalf appeared at the hearing. During the proceeding, Bar counsel represented to the referee that he had spoken to respondent "early on in the proceedings" and that she had "expressed a great deal of anger about what was occurring. In fact, she had indicated she felt it was civil in nature and not a matter for the Florida Bar to be involved in." Moreover, according to Bar counsel, respondent had "indicate[d] that she might elect to not participate in the proceedings because she felt it was unjust."

On March 14, 1997, the referee ordered that default be entered against respondent and granted Bar counsel's motion to

deem admitted the requests for admission served upon her. On that day, the referee presided over a hearing, notice of which had been provided to respondent at her Florida address and at an address in New Jersey. Again, neither respondent nor anyone on her behalf appeared at the hearing, which was held for the purpose of determining the discipline to be imposed for respondent's misconduct. At the hearing, respondent's father-in-law testified about her use of his monies and his wife's credit card, following the accident.

Upon the conclusion of the hearing, the referee stated on the record that "the Bar has proven factually the allegations in the complaint that's been filed against the respondent." The referee's finding was based on the allegations of the complaint, which were deemed admitted after respondent had defaulted. Further, the referee found that "the victim in this case was extremely vulnerable" and that respondent had committed "several acts of fraud and deceit."

On May 16, 1997, the referee issued a report, stating that "the allegations of the complaint are the facts upon which findings of guilt are founded." Specifically, the report stated:

> Respondent engaged in several acts of fraud and deceit committed upon a victim who was extremely vulnerable. Respondent forged her deceased mother-in-law's signature on a Dillard's credit card and purchased items for her own and/or her husband's use. She also converted money belonging to her father-in-law, using a portion of that money for a down payment on a house. These conversions occurred while the father-in-law was recovering from an automobile accident in which he was almost killed, and in which the mother-in-law and a sister-in-law did perish.
>
> [OAEaEx.J1-OAEaEx.J2.][1]

The referee found that respondent's misconduct violated the three Florida disciplinary rules with which she had been charged. The referee identified the following aggravating factors: (1) respondent's prior public reprimand; (2) her dishonest or selfish motive; (3) her pattern of misconduct; (4) the vulnerability of the victim; (5) respondent's substantial experience in the practice of law; (6) her indifference to making restitution, which was compelled by court order; and (7) her failure to participate in the proceedings.

---

[1] "OAEaEx.J" refers to the May 16, 1997 report of the referee in the Florida disciplinary proceeding that resulted in respondent's disbarment in that state.

On July 10, 1997, the Supreme Court of Florida entered an order approving the referee's report and disbarring respondent. Respondent did not report the Florida disbarment to the OAE, as required by rule, until 2008. By then, she had been practicing law in New Jersey for three years.

Inasmuch as this matter proceeded as a default in Florida, as with the Florida proceeding, our review of the record is limited to the allegations of the complaint.

According to the Florida ethics complaint, on October 22, 1994, respondent's father-in-law, John A. Morgen, was severely injured in an automobile accident that killed his wife and one of his daughters. Due to the severity of his injuries, Mr. Morgen was temporarily incapacitated and unable to handle his personal and financial affairs.

During Mr. Morgen's incapacity, respondent and her husband, John L. Morgen ("John"), approached Mr. Morgen and advised him to execute a power-of-attorney naming John as his attorney-in-fact. On October 24, 1994, Mr. Morgen executed such a power-of-attorney.

The complaint alleged that, between October 24, 1994 and January 9, 1995, without Mr. Morgen's knowledge or consent, and either with or without John's knowledge and approval, respondent

wrote checks against Mr. Morgen's checking account. According to the complaint, "[t]he proceeds of many of the above checks were used for Respondent's own personal needs and not for the benefit of Mr. Morgen."

During this time, Mr. Morgen was residing with respondent and John. Nevertheless, John had arranged for Mr. Morgen's bank statements to be sent to a post office box, rather than to John and respondent's home. When Morgen asked respondent to provide him with the banks statements, she refused.

In addition to respondent's use of Mr. Morgen's funds from his checking account, between October 31 and December 20, 1994, she used the then-deceased Mrs. Morgen's Dillard's department store credit card to purchase items for her personal use. Respondent forged Mrs. Morgen's signature on the sales slips.

Furthermore, without Mr. Morgen's knowledge or consent, respondent withdrew "substantial amounts of money" from his bank account and used it toward the down payment of a house purchased by her and her husband.

These allegations in the complaint also were the subject of the requests for admission that respondent did not answer and that were, therefore, deemed admitted by the referee.

In this motion for reciprocal discipline, respondent's counsel argued that we should impose only a reprimand, claiming that, if respondent had contested the Florida disciplinary action, which proceeded as a default, "she may have prevailed." Counsel asserted that respondent did not contest the Florida proceeding because she was emotionally incapable, due to her bipolar illness and the demands of taking care of her special-needs daughter. Moreover, counsel asserted that respondent was unemployed at the time and that her estranged husband was not providing her with any financial support.

The appendix to respondent's counsel's brief, submitted to us, includes an affidavit of her former husband, John. John asserted that he and respondent properly cared for his father and that neither of them committed any wrongdoing with respect to the handling of the father's financial affairs. Further, John claimed that he had authorized respondent to use the Dillard's card and that she had nothing to do with Mr. Morgen's financial affairs, except for the review of his bills. In short, John stated that "Karin was wronged."

In addition, respondent has submitted the report of a psychiatrist under whose care she has been since 1999. That doctor stated that respondent has consistently attended her

appointments, has been fully compliant with her treatment, and has been symptom-free for "several years." The appendix also contains several letters from clients and colleagues attesting to respondent's character and abilities as a lawyer.

Finally, we have been given a copy of a May 15, 2008 letter from New Jersey attorney Kim D. Ringler to former OAE director David Johnson. The letter formally notified the OAE of respondent's 1997 disbarment in Florida. The letter also requested that the notification be deemed timely on the grounds that respondent believed that she was authorized to practice law in New Jersey as of June 2005, when she paid $1300 to the CPF, and that she had disclosed the Florida disbarment to the lawyers for whom she worked in New Jersey.

Following a review of the record, we determine 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 it rests for purposes of a disciplinary proceeding in this state. We, therefore, adopt the findings of the Florida Supreme Court.

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:
>
> (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 unethical conduct established warrants substantially different discipline.

In this case, subsections (A) through (E) do not apply because disbarment is the appropriate measure of discipline for respondent's theft of Mr. Morgen's funds, as well as her unauthorized use of his deceased wife's credit card, which respondent accomplished by forging the wife's signature on the sales slips.

"[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).

Respondent received notice of the Florida disciplinary action and made a conscious decision not to participate in those proceedings. The Supreme Court of Florida, acting through a referee, entered orders deeming the allegations of the complaint admitted due to both respondent's default and her failure to reply to Bar counsel's requests for admission, which mirrored the complaint.

According to the allegations of the Florida complaint, which were deemed admitted, respondent wrote checks against Mr. Morgen's checking account without his knowledge or consent. Many of the checks were used for her own benefit, rather than Mr. Morgen's. For example, in one instance, respondent used the funds for a down payment on a house.

The complaint alleged that respondent wrote these checks "with or without John's knowledge and approval." Even if

respondent acted with John's approval, however, her acts were no less a misuse of her father-in-law's funds. That respondent's husband could have been aware of her actions or even approved them is irrelevant to a finding that respondent had converted the funds. Otherwise stated, even if it were true that, in at least one instance (the down payment on the house), John also benefited from respondent's actions, she is still guilty of the knowing, unauthorized use of her father-in-law's monies.

Moreover, respondent used her deceased mother-in-law's Dillard's credit card on at least eight different occasions and forged her mother-in-law's signature on the charge slips.

Based on these facts, the referee issued a report, finding that respondent had violated Florida disciplinary rules that are equivalent to New Jersey RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects) and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) by converting her father-in-law's funds and by using and forging the signature on her deceased mother-in-law's credit card. The Supreme Court of Florida approved the referee's report and disbarred respondent. Respondent never challenged the Florida findings or her disbarment.

Respondent's theft of Morgen's funds and her unauthorized use of Mrs. Morgen's credit card clearly constituted conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)). Moreover, her use of the credit card violated RPC 8.4(b), which addresses the commission of "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." In New Jersey, it is a crime of the fourth degree to take someone's credit card without that person's consent with the intent to use it. N.J.S.A. 2C:21-6(c) (credit card fraud). It matters not that respondent was neither charged with nor convicted of the crime. In re Gallo, 178 N.J. 115, 121 (2002) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime), and In re McEnroe, 172 N.J. 324 (2002). In McEnroe, we declined to find a violation of RPC 8.4(b) because the attorney had not been charged with the commission of a criminal offense. In the Matter of Eugene F. McEnroe, DRB 01-154 (January 29, 2002) (slip op. at 14). The Court reinstated the RPC 8.4(b) charge and found the attorney guilty of violating that rule.

With the exception of client, escrow, and law firm funds, not every theft committed by an attorney results in disbarment.

The discipline ranges from a reprimand to disbarment. See, e.g., In re Devaney, 181 N.J. 303 (2004) (reprimand for theft of prescription pads, which the attorney used to unlawfully obtain pain medication; numerous mitigating factors considered); In re Butler, 152 N.J. 445 (1998) (reprimand for attorney who sold a computer that belonged to his law firm; the attorney had unsuccessfully argued that the computer had been given to him in lieu of salary); In re Birchall, 126 N.J. 344 (1991) (reprimand for attorney who twice entered his former wife's home without permission and removed property to use as a negotiating tool to obtain more favorable visitation rights with his children; the attorney suffered from alcoholism); In re Jaffe, 170 N.J. 187 (2001) (three-month suspension following attorney's conviction of theft by deception; the attorney submitted health insurance claims knowing that he was not entitled to reimbursement for the cost of prescribed formula for his infant child, who had life-threatening medical problems); In re Pariser, 162 N.J. 574 (2000) (six-month suspension for deputy attorney general who committed petty thefts by stealing items from co-workers); In re Burns, 142 N.J. 497 (1995) (six-month suspension imposed on attorney involved in several burglary and theft incidents, including $5 stolen from four cars); In re Hoerst, 135 N.J. 98

(1994) (six-month suspension for attorney guilty of theft by failure to make required disposition of property; while a county prosecutor, the attorney 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 imposing only a six-month suspension, the Court considered the absence of Attorney General guidelines on official trips taken by members of a prosecutor's office and spouses); In re Farr, 115 N.J. 231 (1989) (six-month suspension for assistant prosecutor who, among other serious improprieties, stole PCP (phencyclidine) and marijuana from the evidence room in the prosecutor's office); In re Ragucci, 112 N.J. 40 (1988) (attorney 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 it in his account; on a motion for reciprocal discipline, the Court imposed the same level of discipline meted out in New York, a two-year suspension); In re Bevacqua, 185 N.J. 161 (2004) (three-year suspension for attorney who used a stolen credit card to attempt

to purchase merchandise at a store under an assumed name; at the time of his arrest, the attorney also had five more fraudulent credit cards and a wallet with a phony driver's license bearing his picture; the attorney's ethics history included a reprimand and a six-month suspension); 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, while on vacation in California, 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 firearms 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, in-person contact with victims of the Edison, New Jersey pipeline explosion mass disaster); 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 New Jersey Administrative Office of the Courts); In re Marinangeli, 142 N.J. 487 (1995) (three-year suspension for attorney who pleaded guilty to one count of theft of mail, under federal law, after he had used approximately four credit cards and cashed two checks, which he had stolen from mailboxes in the building where his mother resided; the attorney committed the theft to support his drug and alcohol addictions); In re Infinito, 94 N.J. 50 (1983) (three-year suspension imposed on attorney convicted of larceny of property and conspiracy to commit larceny, as a result of his and his wife's appropriation of several thousand dollars in employee savings of two adult sisters that the Division of Mental Retardation had placed in their home as domestics; the convictions outweighed the numerous mitigating factors, which included (1) the "family" relationship between the Infinitos and the sisters, which "resulted in an informal attitude concerning the sisters' funds;" (2) the fact that the conviction did not arise from misconduct in the practice of law; (3) the attorney's prior unblemished record and numerous civic and charitable contributions; and (4) the high regard felt for the attorney by his peers in the legal profession as well as

friends and neighbors); In re Gold, 115 N.J. 239 (1989) (five-year suspension (time-served) for attorney who pleaded guilty to aiding and abetting embezzlement; the attorney admitted that he did nothing to prevent his brother and law partner from misappropriating clients' funds); In re Buonopane, ___ N.J. ___ (January 31, 2007) (D-7 September Term 2006) (disbarment for attorney who owned and operated about twenty car-wash and oil-lube facilities and 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 disbarred after she was convicted of theft by unlawful taking and burglary of doctors' homes to obtain keys to their offices to obtain prescription drugs; the attorney had received a prior one-year suspension for obtaining a controlled dangerous substance by fraud and for uttering a forged prescription; the Court commented that the attorney's continuing pattern of illegal conduct demanded stronger discipline than would an isolated criminal incident); In re Obringer, 152 N.J.

76 (1997) (an attorney who also was the trustee in a bankruptcy matter devised an elaborate scheme to steal funds from the registry of the bankruptcy court; in disbarring the attorney, the Court considered that the theft was the result of premeditation, that the attorney submitted false documents to a tribunal, and that he otherwise engaged in a course of fraud, deceit and misrepresentation upon a tribunal); 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; he 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).

Guided by the above cases, we find that a long-term suspension would have been appropriate for respondent's theft of Mr. Morgen's funds alone (Infinito). Another long-term suspension would have been appropriate for her unauthorized use of her deceased mother-in-law's credit card, together with the forging of her signature (Bevacqua, Meaden, and Marinangeli). Combined, however, respondent's criminal acts warrant nothing short of disbarment in New Jersey. She knowingly converted funds that rightfully belonged to her father-in-law, an infirm, vulnerable relative who had recently suffered the loss of his wife and daughter under tragic circumstances, and who trusted respondent and her husband for the maintenance of his well-being at the time. We, therefore, recommend that the Court order her disbarment.

We need not dispose of the multiple, eleventh-hour arguments of respondent, offered in favor of her request for the imposition of a reprimand. First, although the Florida disbarment was entered in a default matter, respondent had notice of that proceeding and refused to participate in it. Second, after the proceeding had concluded and disbarment was imposed, she did nothing to challenge or overturn the Florida decision. Instead, respondent moved to New Jersey, began to

practice law here in 2005, and now seeks to attack the Florida judgment in this forum, more than twelve years later, after failing to report her disbarment to the OAE for eleven years. We consider the latter another aggravating factor in this case.

Third, under the rules, our review of the matter is limited to the Florida record, which is closed. We are precluded from considering her former husband's affidavit, the letter from her current psychiatrist attesting to her current condition, and respondent's own affidavit, which was not submitted to us until a week prior to argument in this matter.

This "evidence" was not made a part of the Florida proceeding. Moreover, respondent has presented no medical evidence even suggesting that she suffered from any mental illness at the time of her misconduct or the disciplinary proceeding, more than twelve years ago, or that it played any role in her actions.

The numerous letters from individuals who ostensibly hold respondent in high regard are not sufficient to overcome her misconduct. As noted above, she stole money from her father-in-law, at a time when he was vulnerable and fighting for his life. She used her deceased mother-in-law's credit card, going so far as to actually forge her mother-in-law's signature. For

whatever reason, she refused to participate in the Florida disciplinary proceeding, which resulted in her disbarment. She has managed to avoid the consequences of that decision in this State (where she has now practiced law for more than four years) by failing to disclose the Florida disbarment to the OAE, as required by the New Jersey Court Rules.

The Board majority's decision to recommend respondent's disbarment was not reached without consideration of the alleged personal difficulties that respondent has endured. Because, however, the charges of conversion were deemed admitted in Florida, where the disciplinary matter proceeded on a default basis; because we cannot consider what amounts to respondent's collateral attack on the Florida judgment; because, in reciprocal discipline proceedings, the findings of another jurisdiction are deemed conclusively established (R. 1:20-14(c)(1)); because the nature and magnitude of respondent's conduct fall squarely within disbarment cases in New Jersey; and because whatever mitigation she attempted to offer in this proceeding was untested and, therefore, unproven, the Board majority was compelled to recommend her disbarment.

Members Clark, Doremus, Wissinger, and Zmirich voted for a three-year suspension, finding it to be sufficient discipline for respondent's infractions.

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 Karin R. White Morgen
Docket No. DRB 09-285

Argued: January 21, 2010

Decided: March 4, 2010

Disposition: Disbar

Members	Disbar	Three-year 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:	5	4				

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel