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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-025
District Docket No. XIV-05-003E

IN THE MATTER OF
CHAK Y. LEE
AN ATTORNEY AT LAW

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Decision

Argued: March 16, 2006

Decided: April 28, 2006

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

Respondent was incarcerated at the time of oral argument and, although properly served, did not appear.

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") following respondent's disbarment in New York.

Respondent was admitted to the New Jersey and New York bars in 1990. Although he has no disciplinary history in New Jersey, on December 28, 2005, he was temporarily suspended after he pleaded guilty in New York to grand larceny. In re Lee, 185 N.J. 451 (2005).

On July 14, 2005, a grand jury in New York handed up an eleven-count indictment charging respondent with engaging in a scheme to defraud in the first degree, criminal possession of stolen property in the second degree, and grand larceny in the second and third degrees. The indictment charged that, from February 26, 2004 to September 15, 2004, respondent engaged in a scheme to defraud nine of his clients by stealing their funds that were to be held in escrow. On May 5, 2005, respondent pleaded guilty to one count of second degree grand larceny, in violation of Penal Law §155.40, admitting that, between February 26, 2004 and July 8, 2004, he stole more than \$50,000 from Grace Wong, a client.

On May 24, 2005, respondent was sentenced to incarceration for a period of one year to three years. He was ordered to pay restitution of \$774,840 to the New York Lawyers' Fund for Client Protection ("the Fund"). According to the Fund, the restitution order did not include an additional \$44,000 that it had paid to

another client of respondent. The Fund, thus, awarded a total of \$818,840 to ten of respondent's clients.

Previously, on December 28, 2004, the Appellate Division of the Supreme Court, First Department, State of New York, issued an order granting a motion of the Departmental Disciplinary Committee ("DDC") for respondent's immediate suspension. The opinion filed with the order provided that respondent's suspension was based on his failure to cooperate with the disciplinary investigation and uncontested evidence that he had converted escrow funds. Nine of respondent's clients had filed grievances with the DDC, alleging that he had absconded with funds representing down payments in connection with real estate transactions. On October 25, 2005, the same court disbarred respondent based on his guilty plea to the Class C felony of second degree grand larceny.

The DDC's motion for respondent's interim suspension reveals the following details about the Wong matter:

The Committee also received the August 10, 2004 disciplinary complaint filed against respondent by his client, Grace Wong, essentially alleging that respondent has absconded with \$128,000 in escrowed real estate downpayment [sic] funds.

According to the Wong complaint, respondent represented Ms. Wong and her husband, the sellers on a real estate contract, under which respondent was given the buyer's

\$128,000 (\$89,600 plus \$38,400) downpayment deposit to hold in escrow pending the closing. After several postponements, the closing was scheduled for July 9, 2004, on which date Ms. Wong received a telephone call from respondent's assistant to the effect that respondent was involved in an automobile accident, would be in the hospital for three weeks, and that Ms. Wong should seek another attorney to handle the closing. On July 13, 2004, with the representation of new counsel, the Wongs closed on this real estate contract. Ms. Wong's numerous attempts thereafter to contact respondent and to retrieve the \$128,000 he was given to hold in escrow were unsuccessful.

[OAEaAtt.4 at 8-9.]¹

The February 2004 [trust account] bank statement shows a deposit of \$89,600 on February 26, 2004, corresponding to the first downpayment in the Wong real estate matter

As early as March 4, 2004, the balance fell to \$84,554, an amount below the \$89,600 which was supposed to be held in escrow in connection with the Wong real estate matter, and it remained below \$89,600 until March 12, 2004.

On March 30, 2004, the balance again fell below \$89,600 (to \$21,517), and it remained below \$89,600 until May 14, 2004.

On June 23, 2004, the balance again fell below \$89,600 (to \$48,715), and it remained below \$89,600 thereafter in July of 2004,

¹ OAEa refers to the appendix of the OAE's January 19, 2006 brief.

with an ending balance on July 31, 2004 of only \$105.

[OAEaAtt.4 at 15-16, references to exhibits deleted.]

According to the OAE's brief, respondent is presently incarcerated at a correctional facility in Malone, New York.

The OAE contends that respondent's criminal conviction demonstrates violations of RPC 8.4(b) (criminal act that reflects adversely on an attorney's honesty, trustworthiness and fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Relying on In re Wilson, 81 N.J. 451 (1979), and In re Iulo, 115 N.J. 498 (1989),² the OAE urges us to recommend respondent's disbarment.

Following a review of the full record, we determined to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

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:

² The attorney in Iulo was disbarred following his conviction of two counts of misapplication of entrusted funds.

- (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;
- (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With respect to subparagraph (E), attorneys in New Jersey who knowingly misappropriate client or escrow funds are permanently disbarred. See In re Wilson, *supra*, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985). Although respondent was disbarred in New York, a disbarred New York attorney may seek reinstatement seven years after the effective date of disbarment, pursuant to 22 N.Y.C.R.R. 603.14. In effect, thus, disbarment in New York is equivalent to a seven-year suspension.

Here, respondent pleaded guilty to second degree grand larceny, admitting that he stole client funds. The existence of a

criminal conviction is conclusive evidence of his guilt. R. 1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's theft of client funds, as demonstrated by his guilty plea to grand larceny, constituted a violation of RPC 8.4(b) and (c). 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).

As mentioned above, in New Jersey, attorneys who knowingly misappropriate client or escrow funds are permanently disbarred, pursuant to In re Wilson, supra, 81 N.J. 451 (1979), and In re Hollendonner, supra, 102 N.J. 21 (1985). We, thus, vote to recommend respondent's disbarment.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

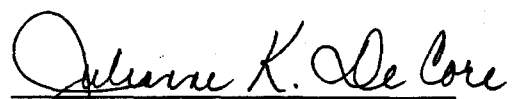
In the Matter of Chak Y. Lee
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Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X					
O'Shaughnessy	X					
Boylan	X					
Holmes	X					
Lolla	X					
Neuwirth	X					
Pashman	X					
Stanton	X					
Wissinger	X					
Total:	9					


Julianne K. DeCore
Chief Counsel