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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-270
District Docket No. XIV-05-099E

IN THE MATTER OF :
 :
MORTON STRUHL :
 :
AN ATTORNEY AT LAW :

 :

Decision

Argued: November 16, 2006

Decided: December 21, 2006

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

Respondent waived appearance for oral argument.

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 guilty plea in California to solicitation, acceptance or referral of fraudulent insurance claims, and willfully making or signing false tax returns. We recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1976, and to the California bar in 1988. The report of the New Jersey Lawyers' Fund for Client Protection states that respondent has been retired from the practice of law since May 2005. He was temporarily suspended in August 2005, as a result of the within matter. He remains suspended to date.

In June 2000, the Los Angeles District Attorney's Office began an investigation, based on information from the Federal Bureau of Investigation that respondent's law office was engaged in insurance fraud and capping.¹

An attorney named Walter Morehouse informed the District Attorney's Office that he had been employed by non-attorneys Michael and Jennifer Zhang as an attorney at the New Asia Law Offices, for a period of one month. Morehouse was hired to replace another attorney, Frank Hoffman, who advised Morehouse that capping had been taking place in the office.

While attempting to compile a client list, Morehouse learned that some of his files were missing. Michael Zhang informed him that he had transferred the files to other attorneys, including respondent, with whom he had "an

¹ "Capping" is the practice of paying individuals to refer personal injury cases to an attorney.

arrangement." Morehouse feared that kickbacks were being paid to medical providers, and that client trust accounts were being misused by the Zhangs. He terminated his employment at the New Asia Law Offices, and filed suit against the Zhangs, the New Asia Law Offices, and respondent.

In August 2005, following a criminal investigation, respondent appeared before the Honorable David M. Horowitz, a judge of the Superior Court of California. Pursuant to a plea agreement, respondent pleaded guilty to two counts of a first amended felony complaint, which charged him with solicitation, acceptance or referral of fraudulent insurance claims, in violation of California Penal Code §549, and willfully making or signing false tax returns, in violation of California Revenue and Tax Code §19705(a)(1).²

² California Penal Code §549 states:

Any firm, corporation, partnership, or association, or any person acting in his or her individual capacity, or in his or her capacity as a public or private employee, who solicits, accepts, or refers any business to or from any individual or entity with the knowledge that, or with reckless disregard for whether, the individual or entity for or from whom the solicitation or referral is made, or the individual or entity who is solicited or referred, intends to violate Section 550 of this code or Section 1871.4 of the Insurance Code is guilty of a crime, punishable upon a first conviction by imprisonment in the county jail for not more than

(Footnote cont'd on next page)

In respondent's Declaration, filed with the California court in August 2005, he stated that he had been hired to work at New Asia Law Offices, owned and operated by Michael Zhang and his wife, Jennifer Zhang. From 1995 through 2004, respondent allowed his name and license to practice law in California to be used as a "shill" for operations conducted first by Michael Zhang, in 1995, and later, in 1995 through 2004, by his daughter, Linda Zhang, who ran the practice as "The Law Offices of Morton Struhl." Due in large part to respondent's

(Footnote cont'd)

one year or by imprisonment in the state prison for 16 months, two years, or three years, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison or by imprisonment in the state prison and a fine of fifty thousand dollars (\$50,000).

California Revenue and Tax Code §19705(a)(1) states:

(a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under penalty of perjury, and he or she does not believe to be true and correct as to every material matter.

alcoholism, he "retreated and disengaged [himself] from the business of the office. [He] ignored blatant signs that cappers were being used by Linda Zhang." Respondent admitted knowing that several individuals working in the law office were cappers. At the time, respondent did not know how much the cappers were paid, but he did know that the amount of money paid to specific individuals was disproportionate to the amount of time they spent in the office. Linda Zhang ran all aspects of the law practice, with the exception of litigation matters that required an appearance by a lawyer. Virtually all communication in the office was done in Chinese, which respondent neither spoke nor understood.

Linda Zhang controlled the attorney trust and business accounts of the law office, and performed the accounting. Respondent repeatedly signed blank checks that Linda Zhang presented to him. On multiple occasions, respondent signed two checks in different amounts to the same client, at Linda Zhang's direction. Respondent believed that one of the two checks was the capper's fee, and that the other was Linda's Zhang's portion of the settlement. Moreover, respondent signed checks to payees that he did not recognize.

Respondent conceded that, during the time that he allowed Michael and Linda Zhang to manage New Asia Law Offices and Law

Offices of Morton Struhl, he breached his legal obligation "to investigate, oversee and cure the improper conduct of Michael Zhang, Linda Zhang and her associates."

In March 2006, Judge Horowitz sentenced respondent to five years' probation, conditioned on 180 days in the county jail, to be served through a house arrest by electronic monitoring. Respondent was required to pay restitution of \$14,000 to Liberty Mutual Insurance Company, \$1,520.20 to Farmers Insurance Company, \$7,170 to Safeco Insurance Company, and \$264,017.59 to the State of California Franchise Tax Board.

Respondent was allowed to resign from the California bar without admitting his misconduct.

The OAE recommended that respondent be disbarred.

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

Respondent pleaded guilty to solicitation, acceptance or referral of fraudulent insurance claims, and willfully making or signing false tax returns. He violated RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Each of respondent's acts of misconduct, standing alone, warrants serious

discipline. Combined, and considered in light of his complete abdication of his responsibilities as an attorney, they mandate his disbarment.

Attorneys in New Jersey who have been found guilty of insurance fraud have received suspensions ranging from six months to three years. See, e.g., In re Wiss, 181 N.J. 298 (2004) (in a matter brought by way of a motion for reciprocal discipline, a six-month suspension was imposed on an attorney who pleaded guilty to the fifth-degree crime of insurance fraud; the attorney had directed a member of his staff to falsely notarize a client's signature on forms that were then submitted to an insurance company, made misrepresentations on a court form about the source of the client referral, and failed to supervise his staff, resulting in misrepresentations designed to improperly obtain insurance payments); In re Eskin, 158 N.J. 259 (1999) (six-month suspension on a motion for reciprocal discipline, for attorney who forged and falsely notarized his client's signature on a notice of claim that was served after the deadline had expired, and served a second notice of claim misrepresenting the date of the injury; the attorney's intent was to give the appearance that the notice had been timely filed); and In re Berger, 151 N.J. 476 (1997) (two-year suspension imposed on an attorney who submitted false

information to his insurance agent with the intent to defraud the law firm's insurance carrier in connection with a fire loss).

In a series of related cases, three attorneys pleaded guilty to mail fraud arising from a scheme to defraud insurance companies. In In re Sloane, 147 N.J. 279 (1997), In re Takacs, 147 N.J. 277 (1997), and In re Kerrigan, 146 N.J. 557 (1996), the attorneys submitted false claims to insurance companies, in which they alleged that either they or their clients had sustained personal injury. Sloane pleaded guilty to one count of mail fraud and received a two-year suspension; Takacs was suspended for three years after pleading guilty to two counts of mail fraud; and Kerrigan was suspended for eighteen months because, at the time of the misconduct, he was not yet an attorney, and because he promptly notified and cooperated with disciplinary authorities.

The filing of a false income tax return also merits serious discipline. In two cases where the attorney was convicted of filing a false return, albeit at the federal level, the Court imposed eighteen-month suspensions. In In re D'Andrea, 186 N.J. 586 (2006), a reciprocal matter from Pennsylvania, the attorney pleaded guilty to filing a false federal tax return. He was sentenced to one-year probation, including six months' house arrest, and fifty hours' community service. In addition, he was ordered to pay a \$10,000 fine and \$34,578 in restitution to the

IRS. Similarly, in In re Kirnan, 181 N.J. 337 (2004), the attorney entered a guilty plea to an information charging him with filing a false federal tax return. He was sentenced to three years' probation, ordered to perform 300 hours of community service, and fined \$3,000.³

The most disquieting aspect of this case was respondent's "sale" of his license to practice law to the Zhangs. We saw a similar situation in In re Rosner, 120 N.J. 370 (1990), where the attorney's misconduct arose out of a real estate transaction. The Court adopted our findings in that matter:

In early March, Camerota [the client] purchased legal stationary for respondent. Camerota then prepared a letter to the seller's attorney for respondent's signature. The letter, dated March 19, 1986, acknowledged receipt and escrow of the \$75,000 deposit. Bills which totaled \$75,000 for alleged site improvements were also listed. Although respondent neither saw nor ever had possession of the \$75,000 deposit, and had no knowledge

³ In addition to these infractions, which form the basis for the OAE's motion, respondent allowed the use of cappers (runners) in his law office. Although that impropriety is not before us as a separate violation, it is part and parcel of respondent's overall misconduct. Presumably, the cappers obtained the clients whose claims became the basis for respondent's other misconduct. The use of runners, in and of itself, is a serious infraction. See, e.g., In re Pajerowski, 156 N.J. 509 (1998) (attorney disbarred for soliciting clients through his office manager/investigator; the attorney knew and condoned the investigator's assistance to clients in filing false medical claims).

of any site improvements, he signed the letter at Camerota's request

During his representation of Camerota, respondent's letterhead was being used by Camerota for 'different litigations, different business transactions.' In fact, respondent signed blank letterheads and gave them to Camerota to draft his own correspondence.

[Id. at 372.]

The Court also adopted our characterization of Rosner's conduct:

Respondent's actions in this matter were outrageous. Respondent completely abrogated his responsibilities as an attorney when he signed blank letterheads for his client's personal use. While respondent claims that his client had told him what the letters would contain, this cannot in any way absolve him of his improper conduct, given the tremendous potential for harm, not only to respondent, but to other attorneys, members of the public, and the justice system itself. In allowing Camerota the freedom to use respondent's signature at will, in essence selling his license to practice law, respondent permitted Camerota to engage in the unauthorized practice of law, and to perpetrate a fraud on an unknown number of unsuspecting individuals.

[Id. at 373.]

In imposing a three-year suspension, the Court considered that Rosner's actions did not involve a fraud on the court or criminal conduct. They involved one client, in a single transaction that took place within a short period of time. That is not the case here. Respondent allowed the Zhangs to use his license to practice law from 1995 through 2004. An unknown number

of clients were involved, as well as an unknown number of transactions. The magnitude of the fraud perpetrated by the Zhangs, with respondent's help, is unknown. What is known is that respondent's criminal conduct was far worse than Rosner's, who received a three-year suspension. We, therefore, recommend that respondent be disbarred.

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
William O'Shaughnessy, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

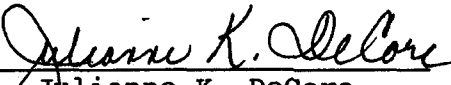
In the Matter of Morton E. Struhl
Docket No. DRB 06-270

Argued: November 16, 2006

Decided: December 21, 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:	9					


Julianne K. DeCore
Chief Counsel