SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-175
District Docket No. XIV-04-268E

IN THE MATTER OF	
ANTHONY J. BRIGUGLIO	
AN ATTORNEY AT LAW	

Decision

Argued: July 21, 2005

Decided: September 14, 2005

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 was before us on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's criminal conviction for engaging in a scheme to defraud, in violation of New York Penal Law §190.65.

Respondent was admitted to the New Jersey bar in 1984. Since December 12, 1994, he has been ineligible to practice law

for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

On November 16, 2004, we reviewed a motion for reciprocal discipline filed by the OAE and voted to suspend respondent for six months for negligent misappropriation of trust funds. In the Matter of Anthony J. Briguglio, DRB 05-175 (November 16, 2004). That matter is pending final resolution by the Supreme Court. On January 18, 2005, the Court issued an order to show cause returnable on March 15, 2005. The Court advised respondent and the OAE to be prepared to address the issue of whether respondent's misappropriation of funds was negligent or knowing.

Before the return date of the order to show cause, however, the Court temporarily suspended respondent on March 4, 2005, pending the resolution of the within matter. Therefore, on March 14, 2005, the parties were advised that the order to show cause returnable on March 15, 2005 had been adjourned without a date.

Respondent consented to disbarment in New York, as explained below.

In a November 15, 2000 affidavit of resignation, respondent acknowledged that he had failed to properly safeguard funds that had been entrusted to him as a fiduciary. The OAE learned about respondent's disbarment from a bankruptcy judge in the United States District Court for the Southern District of New York

("USDNY"), after he sanctioned respondent for practicing before the court, despite his disbarment. There, respondent had filed bankruptcy petitions in two separate cases, listing himself as the attorney for the debtor. The bankruptcy court ordered respondent's name removed from the two cases and directed him to return any fees he had taken.

On May 18, 2001, in a reciprocal action, the USDNY also disbarred respondent.

On February 20, 2004, a felony complaint was filed against respondent in the City Court of Yonkers, New York, charging him with thirty-five counts of offering a false instrument for filing in the first degree, in violation of New York Penal Law § 175.35, and one count of practice of law by a disbarred attorney, in violation of New York Judiciary Law § 486.

On December 7, 2004, respondent pleaded guilty in the Supreme Court of New York, County of Westchester, to an information charging him with engaging in a scheme to defraud in the first degree, a violation of New York Penal Law §190.62, which provides that

> [a] person is guilty of a scheme to defraud in the first degree when he engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons.

The information to which respondent pleaded guilty provided that

> [t]he defendant, in the city of Yonkers and other locations within the County of Westchester and State of New York, on or about and between January 29, 2001 and February 10, 2004, did engage in a scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons and to obtain property from ten or more persons by falsely representing to clients in 35 different legal matters that he was an attorney duly admitted to practice in the State of New York, and as a result of such false representations did collect legal fees from said clients, who were unaware the defendant was not an attorney, having been disbarred by Order of the Supreme Court Appellate Division, Second Judicial Department, State of New York, on January 29th, 2001.
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> (Ex.J¶2).[1]

During respondent's December 7, 2004 plea hearing, he admitted that, between January 29, 2001 and February 10, 2004, he had engaged in a scheme to defraud ten or more persons (thirty-five clients) and to obtain property (legal fees) from them. He did so, claiming that he was an attorney duly admitted

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[1] The offense to which respondent pleaded guilty provides for a maximum four-year term of imprisonment. New York Penal Law §70.00.

to practice law in New York, knowing that he had been disbarred in that state on January 29, 2001.

On May 2, 2005, respondent was sentenced to a conditional discharge and placed on probation for three years.[2] A surcharge of $270 was also assessed.

As recently as March 7, 2005, in a letter to the OAE, respondent attempted to minimize his post-disbarment misconduct, stating that the numerous representations were all small landlord/tenant or traffic misdemeanor matters. Respondent noted that none of the matters involved New Jersey representations. In his letter to the OAE, he offered no explanation or mitigation for his conduct, and expressed no remorse for his numerous misdeeds.

In summary, respondent pleaded guilty to one count of engaging in a scheme to defraud in the first degree, admitting that, over a three-year period after his disbarment in New York, he continued to solicit new business, collected legal fees, and made court appearances on behalf of his hapless clients.

The OAE urged us to disbar respondent.

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[2] New York's conditional discharge is an alternative to incarceration, imposed upon a guilty plea or conviction; it is not an escape from prosecution. Rather, it allows the defendant to avoid a custodial sentence. New York Penal Law §65.05.

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

The existence of a criminal record is conclusive evidence of respondent's guilt. R. 1:20-13(c)(1), In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction for engaging in a scheme to defraud in the first degree is clear and convincing evidence that he violated RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer). Only the quantum of discipline remains at issue. R. 1:20-13(c)(2)(ii); 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." Id. at 445-46.

In similar cases, where attorneys have continued to practice law after having been suspended, the discipline has ranged from a two-year suspension to disbarment, depending on factors such as the attorney's level of cooperation with the disciplinary proceedings, the presence of other misconduct and the attorney's disciplinary history. See In re Wheeler, 140 N.J. 321 (1995) (two-year suspension for practicing law while

suspended, making multiple and repeated misrepresentations about the status of cases to clients, failing to reply to clients' repeated requests for information, and displaying gross neglect, pattern of neglect, lack of diligence, conflict of interest, dishonesty in issuing a check with knowledge that there were insufficient funds to cover it, negligent misappropriation of escrow funds, and failure to cooperate with disciplinary authorities);[3] In re Wheeler, 163 N.J. 64 (2000) (three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, in violation of RPC 8.4(c) and RPC 8.4(d), and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension for deliberately continuing to practice law after the Court denied her request for a stay of her suspension, failing to inform clients, adversary and the courts of her suspension, failing to keep complete trust records, and failing to advise her adversary of the location and amount of escrow funds; the attorney was also guilty of conduct involving dishonesty, fraud, deceit or misrepresentation, and

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[3] In that same order, but on a separate matter, the Court imposed a retroactive one-year suspension on the attorney for retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations. That matter came to us as a motion for reciprocal discipline.

had been previously suspended for three months); In re Beltre, 130 N.J. 437 (1992) (three-year suspension for appearing in court in one matter after having been suspended and for misrepresenting his status to the judge, failing to carry out his responsibilities as an escrow agent, lying to disciplinary authorities about maintaining a bona fide office, and failing to cooperate with an ethics investigation; the attorney had a prior three-month suspension from which he had not been reinstated); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent clients in bankruptcy cases after he was suspended, did not advise them that he was suspended, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent and then filed the petitions with the bankruptcy court; in another matter, he agreed to represent a client in a mortgage foreclosure after his suspension, accepted a fee, and took no action on the client's behalf; the attorney also made misrepresentations to the court, had been convicted of stalking a woman with whom he had had a romantic relationship, and had engaged in the unauthorized practice of law); and In re Costanzo, 128 N.J. 108 (1992) (disbarment for practicing law while suspended, pattern of neglect, lack of diligence, failure

to communicate with clients, and failure to commit rate or basis for fee to writing).

Respondent's case is similar to the disbarment cases above, Olitsky and Costanzo. While those attorneys had additional disciplinary violations not present here, they had not been disbarred in another jurisdiction, nor had their practices been found criminally illicit, as is the case here. This respondent fraudulently practiced law unabatedly for three years in numerous matters throughout New York State, after disbarment. In further aggravation, respondent faces a six-month suspension in an unrelated matter now pending with the Court.

Finally, there are no mitigating factors to consider. Respondent is unrepentant. When explaining his actions to the OAE, committed against thirty-five hapless clients, he gave not a hint of contrition. Disbarment is the only appropriate sanction when it is "unable to conclude that [an attorney] will improve his conduct." In re Cohen, 120 N.J. 304, 308 (1990), and where the totality of the evidence against the attorney reveals a pattern of intentional deception and dishonesty that clearly and convincingly demonstrates that "his ethical deficiencies are intractable and irremediable." In re Templeton, 99 N.J. 365, 376 (1985). There is no reason to believe that, if given another chance to practice law, respondent would conform his behavior to

that expected of attorneys of this state. For all of these reasons, and in order to protect the public from further harm, we vote to disbar him. Members Louis Pashman, Esq., Robert Holmes, Esq. and Reginald Stanton, Esq. did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

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 Anthony J. Briguglio
Docket No. DRB 05-175

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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:	6					3

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel