SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-041

IN THE MATTER OF

BRIAN D. SPECTOR

AN ATTORNEY AT LAW

Decision

Argued: September 11, 2003

Decided: October 2, 2003

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Richard F.X. Regan appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us based on a recommendation for discipline filed by special master Kenneth R. Meyer.

Respondent was admitted to the New Jersey bar in 1982. He has no disciplinary history.

The ethics complaint alleged violations of RPC 1.15(b) (failure to promptly notify a client or third person of the receipt of funds in which the client or third person has an

interest and failure to promptly deliver funds that the client or third person is entitled to receive), RPC 1.15(c) (failure to safeguard funds in which an attorney and a third person claim interests), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

In March 1992, respondent became "of counsel" to the Nagel & Rice law firm ("N&R"), pursuant to a February 21, 1992 letter agreement. The letter agreement provided that respondent was to be paid a $2,000 "weekly draw" based "on the assumption that [his] originations, calculated on a twelve month period of time, will be $350,000." If respondent's pro-rated originations exceeded $350,000, N&R would "consider paying [him] additional monies from the profits of the firm." Respondent was expected to "generate approximately 2,000 billable hours per year." N&R agreed to provide respondent with medical insurance, gasoline and telephone credit cards and to cover professional expenses. The agreement was to be reviewed at the end of the year "to determine whether any modifications or changes should be made including the possibility of partnership."

Although not covered by the letter agreement, N&R also hired respondent's former secretary, hired an associate to assist respondent and provided malpractice insurance coverage to respondent.

By letter dated March 19, 1993, respondent informed N&R that he was dissatisfied with his of counsel status, his compensation and his sharing of his secretary's and associate's time. Shortly thereafter, Jay Rice, N&R's managing partner, met with

respondent to discuss respondent's concerns. Respondent's originations had not met the $350,000 figure, pro rated for the 1992 partial year. However, respondent told Rice that he believed he was entitled to a bonus because he had billed 300 hours on two of Rice's matters, the Reale bankruptcy matters. None of N&R's other attorneys had sufficient bankruptcy practice experience to handle the Reale matters. During respondent's discussion with Rice, a $25,000 bonus figure was discussed, although there is a dispute as to who mentioned that figure.

N&R gave respondent a $16,000 bonus and increased his weekly draw to $2,250. However, respondent was dissatisfied with his compensation and his failure to attain partnership. In July 1993, he informed Rice that he would be leaving N&R to form a law partnership with his stepbrother, Douglas Ehrenworth. N&R agreed that, so long as respondent kept up his billable hours, he could stay at N&R until he had set up a new office. Respondent remained at N&R until November 30, 1993. During that time, respondent, Rice and David Lentz, another N&R partner, negotiated the terms of a separation agreement.

On November 4, 1993, Rice sent a memorandum incorporating a proposed separation agreement to respondent. It stated that respondent would receive 35% of fees collected from his clients through December 31, 1993. As to fees collected after December 31, 1993, Rice stated

> we did propose to pay 30% from monies received in January and February 1994 and 25% thereafter. You were not agreeable to these numbers and we did not reach a meeting of the minds concerning same. The firm therefore has agreed not to formally set the percentages to be paid for the time period

> after January 1, 1994. In 1994, we will review the amount of collections you were able to bring into the firm in 1993. To the extent that you are unable to bring in the types of dollars that you discussed could be brought in 1993 it is unlikely that the firm will be willing to increase the percentage originations. If however you are successful in bringing in monies in excess of the anticipated collections for 1993 such that it is only a small amount of account receivable due and owing, the firm would then consider modifying its percentage formula. We also need to agree on a fee arrangement for work going forward after your departure.

Respondent returned the separation agreement to Rice with hand-written notations that he expected "at least the 30% to be paid for 1/1/94 to 2/28/94 while we work out the open issues." Respondent also wanted to add specific dates for N&R's payments to him. On November 18, 1993, Rice informed respondent that N&R did not agree to the modifications. It is undisputed that the separation agreement encompassed the terms of respondent's separation from N&R, subject to further mutually agreeable modifications. Apparently, however, the parties had different interpretations as to whether the percentages for the post-December 1993 receipts were "minimums."

During November 1993, respondent separately recorded his time for clients that were ultimately going to become clients of his new firm, Spector & Ehrenworth ("S&E").[1] He recorded approximately 110 hours of his November time to S&E, even though he was still with N&R. He billed only 42.1 hours for N&R. Prior to November 1993, respondent had billed at least 150 hours per month for N&R. N&R was not aware of respondent's separate billing.

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[1] There was one October 1993 billing entry in a bankruptcy matter in which respondent was seeking to be appointed the attorney for the creditors' committee. Respondent testified that he actually recorded that time to S&E in November 1993.

Respondent testified that he was expected to bill 2,000 hours per year but that there was no minimum monthly requirement. As of November 1993, he had already exceeded his 2,000 hours, pro rated for the eleven months he was at N&R. He recorded some of his November 1993 time to S&E because: (1) Lentz had warned him that N&R would likely renege on the separation agreement; (2) under the separation agreement, N&R reserved the right to fix the percentage it would pay for fees received after January 1, 1994, when he had initially been led to believe that the 1994 percentages in the separation agreement were "floors" or minimums; (3) N&R reassigned respondent's secretary to work for another attorney; (4) N&R ordered letterhead without respondent's name; (5) to "create a level playing field in anticipation that [N&R] may not honor the agreement" and (6) to better his bargaining position by gaining control of the funds. Respondent admitted that he intended to temporarily conceal his billings from N&R until "we sat down to resolve our differences."

Rice testified that, when he questioned respondent, in December 1993, about why he had billed few hours the previous month, respondent replied that he had had little time to work on his files because of the time spent putting together his new office. Respondent denied having made that statement to Rice

On December 14, 1993, respondent sent out N&R invoices to his clients accompanied by letters on S&E letterhead. In each letter, respondent stated that the invoice was N&R's "final bill," directed the client to pay N&R directly and stated that he would bill the client separately for his November time. At about the same time,

respondent sent out S&E bills for his November time. N&R was aware that respondent was sending out N&R's bills but was not aware of respondent's December 14, 1993 letter or the separate S&E bills.

On December 21, 1993, N&R sent respondent $35,916.53, the amount due under the separation agreement for the collections on respondent's originations through November 30, 1993.

On December 31, 1993, respondent telephoned Rice to inform him that a client, Nova, had sent him a $10,000 check and requested that the check be the full and final payment on a $30,000 bill. During that conversation, respondent and Rice disagreed about the effect of "write-downs" and "write-offs" on respondent's compensation from N&R.

By letter dated January 3, 1994, respondent complained to Rice about various issues, including the "write-downs" and "write-offs," and stated that

> unless I receive written confirmation from you by noon on January 4, 1994 that you will honor our agreement and pay me 35% of fees collected in December by no later than January 17, 1994, I will consider the firm to have anticipatorily breached the agreement, and will proceed as necessary to protect my interests.
>
> Second, as to the post-January 1, 1994 receipts and the payment to me of my portion, I would like to meet with you and [Nagel] by the end of this week to resolve all open issues. If you are unwilling to meet, I will assume that you have no interest in attempting to resolve the open issues or are intentionally delaying such resolution, and I will again react accordingly.

Rice wrote in reply that respondent's prior denial of "write-offs" had been instrumental in getting the N&R partners to agree to give respondent 35% of originations

through December 1993. He reminded respondent of the benefits he had received and complained that respondent had spoken with N&R's employees about their possible employment with S&E. Rice concluded his letter by stating "we are prepared to discuss these issues with you. But, we will not accede to your time table, ultimatums or threats."

On January 7, 1994, respondent sent letters to the N&R clients who had received his December 14, 1993 letter stating that

> [i]n order for me to more closely monitor payments made on account of [N&R]'s final bill to you, a portion of which payments I am entitled to receive pursuant to my separation agreement, I would greatly appreciate your disregarding my previous instruction and instead direct all such payments to me at my new firm (payable to me). Immediately upon receipt, I will forward to [N&R] its portion of such payment.

Although the January 7, 1994 letters indicated that respondent had sent copies of the letters to Rice, respondent never forwarded the copies.

Respondent began receiving payments on the bills in January 1994. The monies received from N&R's invoices were deposited in S&E's trust account. The monies obtained from S&E's invoices for respondent's November 1993 time were deposited in S&E's business account. S&E used those monies. As of January 21, 1994, respondent owed $5,571.15 to N&R, but there was only $2,559.71 in S&E's business account. Similar deficits existed on January 28, January 31, February 22 and March 11, 1994. In fact, on two of the dates, S&E's business account was overdrawn.

Respondent testified that he had intended that all of the monies owed to N&R were to be put in escrow and that the failure to do so was the result of mistake or lack of communication between him and Ehrenworth, who was responsible for S&E's billing and

finances. He did not learn that the fees had been deposited in S&E's business account until sometime during the litigation. As to the charge that, at times, there was not sufficient funds in S&E's business account to pay N&R, respondent stated that S&E had a line of credit; that, throughout the relevant time, at least $60,000 was available from that line; and that N&R owed him more in fees than he owed N&R.

Ehrenworth confirmed that he was responsible for S&E's billing and finances. However, he had little recollection about the deposit of N&R's fees in S&E's business account. Until the arbitration, he had believed that the monies had been deposited in S&E's trust account. Ehrenworth hypothesized that he had deposited the funds in the wrong account because, at the time, he was still working at his Jersey City office, while simultaneously trying to get S&E's office in Florham Park running smoothly, he did the banking "late at night," and there were S&E invoices for the payments. According to Ehrenworth, S&E did not need the fees from respondent's November 1993 billings to pay its bills, S&E never experienced any cash flow problems, the line of credit and the fees from his 1993 billings were sufficient to meet S&E's initial expenses, and S&E had more work than he and respondent had anticipated.

On January 27, 1994, respondent complained to N&R that he had not received his 35% of the December 1993 fees collected by N&R. Rice replied that "any agreement to pay you a percentage of collections was breached by your failure to disclose material facts and your conduct...including but not limited to your...working only 40 hours in

November does relate to 1993 receipts...Therefore, we can not separate 1993 issues from 1994."[2]

In February 1994, respondent filed suit against N&R and its partners.

On March 30, 1994, Rice advised respondent that certain clients had not paid their bills and that N&R intended to "contact [the clients] with regard to their balance, and submit statutory letters where required." Thereafter, Nagel told Ehrenworth that he believed that respondent had recorded his N&R time as S&E time and that N&R intended to subpoena S&E's clients.

By letter dated April 13, 1994, respondent remitted six trust account checks, totaling $10,514.74, to N&R for fees collected from six clients from the N&R invoices. Respondent retained $4,085.82, representing 30% of the fees collected in January and February 1994 and 25% of the fees collected in March 1994.

Respondent and Rice met on April 14, 1993. At that meeting, respondent told Rice that he had billed some of his November 1993 time through S&E. On April 18, 1994, respondent provided Rice with an accounting of the fees he had billed and collected for his November 1993 time, along with a $9,966.66 S&E check. He retained $4,065.34, representing 25% to 35% of the amount collected, depending upon the paid date.

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[2] N&R never paid respondent 35% of the $33,581 in fees ($11,753) collected in December 1993. N&R also collected $17,966 in February 1994, $32 in March 1994, $37,541 during the remainder of 1994, $17,028 in 1995 and $14,932 in 1996, but did not remit any monies to respondent.

The A&B Dump Truck and Wenczel Tile Bankruptcy Matters

During October and November 1993, respondent worked on several bankruptcy matters, including efforts to have S&E appointed counsel to the creditors' committees of the A&B Dump Truck and Wenczel Tile bankruptcy matters. N&R's employees typed the applications and one of N&R's associates attended a creditors' meeting in the A&B Dump Truck matter. After respondent left N&R, the bankruptcy court approved S&E's retention as counsel for the creditors' committees in both matters. In 1994, respondent filed fee applications on behalf of S&E, seeking fees for "pre-retention" as well as "post-retention" time. The pre-retention time included respondent's time when he was at N&R.

In the Wenczel Tile matter, the bankruptcy court initially approved S&E's retention and request for fees nunc pro tunc to November 15, 1993. N&R intervened in the matter, seeking disgorgement by S&E for fees for pre-December 1993 work. The court approved N&R's application.

In the A&B Dump Truck matter, respondent withdrew S&E's application for pre-retention fees and limited his request to fees for work done after December 13, 1993. The court granted S&E's application and determined that N&R's application for disgorgement of fees by S&E was moot.[3]

In addition to the fee issue, the complaint charged that respondent failed to advise the bankruptcy court of the "proposed fee splitting arrangement" with N&R (the

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[3] A third bankruptcy matter, the Capitol Ring matter, was mentioned in the arbitration. However, the ethics complaint contained no charges related to the matter.

separation agreement), in violation of 11 U.S.C. §504, and that such failure violated RPC 8.4(c) and RPC 8.4(d). The issue of whether the separation agreement violated 11 U.S.C. §504 was addressed at the hearing on the fee applications in the A&B Dump Truck matter. At that time, Judge Judith Wizmur stated that "the proscription against the sharing of compensation...involves not a question of changing of firm identities, but rather a sharing of compensation, for instance, in referral fees or the like, which, of course, are not permitted." Judge Wizmur distinguished that type of prohibited fee splitting from situations where attorneys change firms, situations "that we deal with constantly on an ongoing basis...And, they need not disclose as long as their new associations don't impact upon their opportunity to continue to assert lack of disinterestedness and no adverse interest."

The Haggerty, Donahue & Monaghan Matters

In June 1992, the law firm of Haggerty, Donohue & Monaghan ("Haggerty") retained N&R to represent it in two matters: Kennedy and Fitzpatrick ("the Haggerty matters"). Respondent was the originating attorney. The retainer agreement provided for a reduced hourly rate and a 20% contingent fee. Respondent took both Haggerty matters with him to S&E.

Respondent settled the Haggerty/Fitzpatrick matter for $225,000. By letter dated March 11, 1994, respondent represented to Haggerty that he would deposit $5,683.41 from the $100,000 first settlement check "into a separate escrow I have established for

fees due [N&R]" and that he would hold Haggerty harmless from any claim by N&R for fees. According to the letter, S&E retained $10,615.29 from the first $100,000 settlement check and intended to retain $20,000 from the second $125,000 settlement check. Respondent paid N&R the $5,683.41 on April 13, 1994.

Respondent settled the Haggerty/Kennedy matter for approximately $80,000. It is unclear from the record when that settlement occurred.

In respondent's April accountings to N&R, he only credited N&R with the hourly fees, not the contingent fees. Respondent took the position that N&R was not entitled to any of the contingent fee, "only its hourly time adjusted upwards from the reduced hourly rate that [Haggerty] had been billed."

The Litigation and Arbitration

On February 3, 1994, respondent filed suit against N&R and its partners. Following extensive discovery, the case was referred to binding arbitration.

The arbitrator, retired Justice Robert Clifford, found that respondent was "wrong – badly wrong – in the way he handled his separation" from N&R. Justice Clifford did not believe, however, that respondent's "mindset bore any tinge of malice or corruption or wickedness"; but was a "response to an ill-conceived conviction that [N&R] had failed to abide by its employment agreement with him and...was prompted by an almost paranoid fear that the firm was out to cheat him." Justice Clifford found that respondent was not entitled to any percentage of fees after January 1, 1994 and that he was liable to N&R for

the following damages, all without interest: (a) $35,916.35 – N&R's payment to respondent for originations through November 1993; (b) $4,065 – monies withheld by respondent for November 1993 time; (c) $4,085.82 – monies withheld by respondent on N&R's bills; (d) $10,000 – monies paid respondent by a client, Nova, in December 1993 on an N&R bill;[4] (e) $16,008.94 – from the contingent fee in the Haggerty matters. Justice Clifford did not award N&R its legal fees or expenses in connection with the litigation, pre-judgment interest or punitive damages.

Respondent disputed that his conduct was unethical because "at the time I believed that I was acting in good faith based on what had transpired up until then, what I was told at or around that time, and my overall dealings where I firmly...at the time I believed I was right." He conceded that, "in hindsight," his actions were "a poor exercise of judgment."

Respondent presented the affidavits of thirteen clients and attorneys who testified to his honesty, trustworthiness and good character. He was also the secretary of the District X Fee Arbitration Committee from September 1995 to August 1999.

The special master found that respondent (1) failed to promptly notify N&R of his receipt of funds in which N&R had an interest and failed to promptly deliver those funds to N&R, in violation of RPC 1.15(b); (2) failed to safekeep funds in which N&R had an

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[4] According to respondent, Nova's check was made payable to N&R and he returned the check to Nova when Rice told him that N&R would not accept it in full payment of the $30,000 owed to N&R.

interest, in violation of RPC 1.15(c); and (3) made misrepresentations to N&R and his clients, in violation RPC 8.4(c). As to respondent's misrepresentations and his "secretive actions in obtaining N&R's funds," the special master concluded that they "amounted to a contrived, systematic 'cover-up' aimed at securing N&R funds to which [respondent] was not entitled." The special master also observed that respondent did not admit that he had obtained N&R's funds until after Rice threatened to pursue collection actions against respondent's clients and that, even after he agreed to remit monies to N&R, he "withheld various origination percentages to which he was not entitled."

The special master found no clear and convincing evidence that respondent's failure to advise the bankruptcy court of the separation agreement violated any ethics rules. "To make a different finding would require an interpretation of certain Bankruptcy Laws which were not the subject of any expert testimony at the hearing...it is not clear to me whether the circumstances herein involve fee-splitting as contemplated by the bankruptcy code."

The special master found that respondent's actions came "perilously close to the level of knowing misappropriation and provide a strong case for [respondent's] disbarment pursuant to In re Siegel, 133 N.J. 162 (1993)." He stated that the OAE's recommendation of a three-month suspension was "the most compelling factor in my decision and must wonder out loud about what I would have recommended if the OAE had pressed for disbarment." He also noted that respondent "had to have known that N&R would learn of his scheme through discovery in the lawsuit that he filed."

The special master found the following mitigating factors: respondent's "otherwise general good character, prior spotless record, honesty, and trustworthiness as reflected in the myriad letters of recommendation from [his] colleagues...[his] service to the New Jersey Bar [and his] willingness (although somewhat delayed) to admit his actions...were 'inappropriate' (though not unethical)."

The special master recommended that respondent be suspended for three months.

Upon a de novo review of the record, we are satisfied that the special master's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

While still employed by N&R, respondent secretly billed most of his November 1993 time through S&E, without N&R's knowledge or consent.

In December 1993, he sent out N&R's invoices and advised the clients to pay the fees to N&R. However, respondent later requested that the clients forward all payments to him, represented that he would forward to N&R its share of the payment, and indicated that copies of the letters were sent to N&R. However, respondent did not send the copies to N&R, did not inform N&R of his actions and did not forward the payments to N&R.

The payments on the S&E invoices for respondent's November 1993 time were deposited in S&E's business account and used by S&E. However, both respondent and Ehrenworth testified that they intended that the payments be deposited in a trust account. Ehrenworth, who handled the firm's finances, hypothesized that he had mistakenly deposited them in the business account because there were S&E invoices for those

payments, he was trying to run two offices, there were problems in one of the offices, and he did the firm's bookkeeping late at night. Therefore, the evidence is that the failure to escrow the payments was the result of a mistake.

Respondent did not account to N&R for the funds he had wrongfully taken until April 1994, after Rice and Nagel indicated that they intended to subpoena respondent's clients. However, the evidence is that, when respondent sought a meeting with N&R in early January 1994, N&R refused to meet with him.

Respondent remitted to N&R a net amount, retaining between 25% and 35% of the fee, despite the fact that there was no agreement pertaining to fees received after December 1993.

Respondent never accounted to N&R for the Haggerty fees. Rice testified that N&R did not learn that respondent had received the Haggerty fees until 1997. Respondent also attempted to deprive N&R of fees in the A&B Dump Truck and Wenczel Tile bankruptcy matters.

With respect to the charge that respondent's failure to mention the separation agreement in his fee applications violated 11 U.S.C. §504, we agree with the special master that there was no clear and convincing evidence that respondent's conduct was unethical. The bankruptcy court stated that the statute did not apply in situations where an attorney changed law firms so long as the attorney's new association did not impact on his or her ability to continue to "assert lack of disinterestedness and no adverse interest."

Therefore we dismissed the charge that respondent's failure to mention the separation agreement violated RPC 8.4(c) and RPC 8.4(d).

In summary, there is clear and convincing evidence that respondent violated RPC 1.15(b), RPC 1.15(c) and RPC 8.4(c).

The issue is whether respondent's misconduct amounted to a knowing misappropriation of law firm funds, which would warrant his disbarment. In re Siegel, supra, 133 N.J. 162. In Siegel, a partner in a large law firm converted in excess of $25,000 of the law firm's funds by submitting false disbursement requests. Between 1986 and 1989, Siegel engaged in thirty-four separate acts of misconduct. The Court disbarred him. "We see no ethical distinction between a lawyer who for personal gain willfully defrauds a client and one who for the same untoward purpose defrauds his or her partners." Id. at 167.

The Court rejected Siegel's argument that his conduct was aberrational because of the number of acts and the three-year time period. The Court also rejected his contention that his misconduct was the result of disillusionment with the "firm culture." Finally, the Court rejected his contention that he should not be disbarred because of his record of service to his clients, the profession and the community. The Court acknowledged that Siegel's record was "outstanding," but stated that the "importance" of such factors as reputation, prior trustworthy professional conduct and good character is "diminished 'where misappropriation is involved.'" Id. at 171, quoting In re Wilson, 81 N.J. 451, 459-60 (1979).

The attorney in In re Greenberg, 155 N.J. 138 (1998) was also a partner in a large law firm. Between August 1992 and August 1993, Greenberg obtained $27,025 in law firm funds for his personal use by submitting false disbursement requests. Furthermore, in June 1991, he settled a case for $42,500, then requested that the insurance company issue two checks, one for $35,000 payable to his clients and one for $7,500 payable to him personally. The insurance company instead issued two checks for $21,250 payable to both Greenberg and his clients. Greenberg endorsed both checks and sent them to his clients, with the request that they return a $7,500 check payable to him. When the clients complied, Greenberg kept the $7,500. When the referring law firm sought a referral fee, Greenberg's check request indicated that the funds were needed for reimbursement of expert fees in another case. The Court disbarred Greenberg. See also In re Weiss, 147 N.J. 336 (1997) (disbarment where the attorney, for more than two and one-half years, kept for himself $76,000 in legal fees that rightfully belonged to the law firms with which he was associated).

The OAE did not seek respondent's disbarment because respondent's "motive [was] to merely secure and hold the funds until severance" and he had an "entitlement to an interest in the funds."

There have been several cases where attorneys who have improperly taken law firm funds have not been disbarred because it was determined that their actions did not amount to a knowing misappropriation of law firm funds. In re Glick, 172 N.J. 319 (2002); In re Paragano, 157 N.J. 628 (1999); and In re Bromberg, 152 N.J. 382 (1997).

In In re Glick, supra, 172 N.J. 319, the attorney entered into an agreement with a law firm, whereby he would receive a base annual salary plus benefits, reimbursement of expenses and profit sharing. Glick was to oversee a unit concentrating on personal injury cases and PIP medical arbitration work. Previously, Glick had maintained a solo practice and he continued to maintain his attorney business account to deposit fees earned from that practice. Almost from the inception of his association with the law firm, Glick and the firm disagreed about the unit's productivity and about Glick's share of the firm's profit.

Between 1994 and 1997, Glick deposited checks totaling $12,747.50 in his own attorney business account. The checks had been made payable to him and the majority of the fees were for his services as an arbitrator on insurance matters originated by him. However, Glick admitted that the fees were due to the firm and that he had taken them without the firm's knowledge or consent. He stated that he had retained the fees as a form of self-help to compensate him for what he perceived as the firm's failure to properly calculate his profit share. Glick received a reprimand.

In In re Paragano, supra, 157 N.J. 628, the attorney, who was the majority stockholder and managing partner in a two-lawyer firm, committed fourteen acts of deception over a sixteen-month period by mischaracterizing more than $16,000 of personal disbursements as firm expenses in the firm's business account checkbook. Paragano received a six-month suspension.

In In re Bromberg, supra, 152 N.J. 382, the attorney entered into an agreement with two other attorneys in February 1994. Although the parties later disagreed as to whether the agreement created a partnership, Bromberg reasonably believed that he was a partner. Problems surfaced soon after the agreement was signed because of dissatisfaction with the amount of fees generated by Bromberg. In September 1994, the attorney who controlled the firm's finances told Bromberg that he would no longer receive his $8,000 monthly salary, despite the fact that the agreement provided that he would receive it through the end of 1994. There were some discussions about Bromberg's sharing of fees that he generated but no alternate agreement was reached.

In late October or early November 1994, Bromberg requested that one of his corporate clients send its fee checks directly to him. The client did not reply to the request and Bromberg did not pursue it. However, Bromberg asked the firm's accounts receivables clerk if he could examine the firm's mail because he was expecting mail from his prior law firm. That was untrue. On November 13 or 14, 1994, Bromberg intercepted an envelope from his client containing two checks payable to the firm, in the amounts of $3,260.18 and $3,355.38. He endorsed the checks by signing the firm's name and his own name and deposited them into his attorney business account, which he had maintained because he was still receiving fees from his prior law practice.

Bromberg continued to work for the firm. There were additional discussions concerning his sharing of fees but he did not receive any monies from the firm. In late November or early December 1994, he told his "partner" that he had taken the checks. It

was eventually agreed that Bromberg would remain with the firm until the end of December 1994 because he was to begin selecting a jury for ten cases in New York.

Although the OAE argued that Bromberg should be disbarred for knowing misappropriation of law firm funds, he received a reprimand. We found that Bromberg

> reasonably believed that he was a partner with that firm. Even if [Bromberg's] belief was mistaken, that belief led him to understand that he was entitled to receive the checks from [the client]. [Bromberg] had not been paid any salary for October or November. He was experiencing cash flow problems and he felt that [his partner] had unilaterally breached the letter-agreement. Thus, he resorted to 'self-help.' That is not to say that [Bromberg] acted correctly or justifiably...[he] did not have the mens rea to steal. In his mind, he was advancing to himself funds to which he was absolutely entitled. He acted out of self-righteousness. It is the manner in which [Bromberg] chose to make things right that is reproachable.
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> In the Matter of Arthur D. Bromberg, Docket No. DRB 97-129, DRB decision at 19-20 (December 16, 1997).

Like Glick and Bromberg, respondent resorted to "self-help" because he believed that (1) N&R had not abided by their employment agreement with him; (2) the separation agreement did not accurately reflect his prior discussions with Rice and Lentz; and (3) N&R would not abide by the separation agreement.

Like Bromberg, respondent did not have the mens rea to steal. Respondent's commencement of the litigation is evidence that he truly believed that N&R had breached the separation agreement and that his actions were, at least, defensible. As found by the special master, respondent could not have reasonably believed that he would be able to conceal his actions once he started the litigation. Former Justice Clifford, the arbitrator,

stated that, while respondent's actions were "badly wrong," he did not believe that his "mindset bore any tinge of malice or corruption or wickedness."

Respondent's actions were improper and unethical. However, they do not amount to a knowing misappropriation of law firm funds.

In determining the appropriate discipline, we also took into account the fact that the misconduct occurred over a short period of time nearly ten years ago, that it was aberrational, and that respondent has enjoyed an otherwise exemplary career, as attested to by his clients and other attorneys.

Based on the foregoing, we determined to reprimand respondent. One member did not participate.

We further determined to 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
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

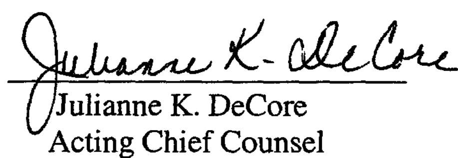
In the Matter of Brian D. Spector
Docket No. DRB 03-041

Argued: September 11, 2003

Decided: October 2, 2003

Disposition: Reprimand

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley			X				
O'Shaughnessy			X				
Boylan							X
Holmes			X				
Lolla			X				
Pashman			X				
Schwartz			X				
Stanton			X				
Wissinger						X	
Total:			7			1	1



Julianne K. DeCore
Acting Chief Counsel