

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-031
District Docket Nos. XIV-03-487E

IN THE MATTER OF
MITCHELL L. SINGER
AN ATTORNEY AT LAW

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Decision

Argued: April 21, 2005

Decided: July 21, 2005

Richard J. Engelhardt appeared for the Office of Attorney Ethics.

Michael S. Richmond appeared for respondent.

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"), based on respondent's disbarment in New York on October 28, 2004.

Respondent was admitted to the New Jersey bar in 1990 and the New York bar in 1978. He has no prior discipline in New Jersey. However, he was placed on the New Jersey Lawyers' Fund

2004, for failure to pay the annual attorney assessment. Moreover, on July 22, 2004, respondent was temporarily suspended in New Jersey on a motion by the OAE, after the OAE learned of his temporary suspension in New York. In re Singer, 180 N.J. 522 (2004).

In August 2002, a New York grand jury indicted respondent, charging him with two counts of third degree grand larceny and two counts of criminal possession of stolen property for the theft of \$85,000 from two clients.

The theft was discovered in December 2001, when respondent's clients received eviction notices from their landlords. The landlords were not receiving rental payments, which were to have been made by respondent from an escrow account established by the clients and controlled by respondent.

At the same time, the New York ethics authorities initiated an investigation, based on grievances filed by numerous of respondent's clients. Respondent failed to cooperate with the New York ethics authorities. Therefore, on November 26, 2002, the New York disciplinary authorities temporarily suspended him in that state.

The decision to temporarily suspend respondent, made by the New York Supreme Court, Appellate Division, First Judicial Department, stated that respondent had drafted about thirty

checks against his trust account, all of which were dishonored by his bank. Respondent thereafter failed to "repay debts to his clients and other individuals," and failed to cooperate with ethics authorities in the investigation of the matters. The New York Court also found the record to be "replete with examples" of a "shocking disregard for the justice system" and deliberate attempts to impede the ethics investigation.

In addition, the Court found that

[t]he record also contains substantial uncontested evidence of professional misconduct, including evidence of numerous instances in which respondent wrote checks that were dishonored and which, for the most part, remain unpaid, to clients, attorneys, and others as well as evidence that respondent misused his attorney trust account and escrow accounts, in some instances, using the funds in those accounts for personal matters without authority.

(Ex.C2.)

On August 7, 2003, respondent pleaded guilty to the charges of grand larceny in the third degree, in violation of New York Penal Law §155.35, which provides that a "person is guilty of grand larceny in the third degree when he steals property when the value of the property exceeds three thousand dollars. Grand larceny in the third degree is a class D felony." A class D felony provides for a term of imprisonment of up to seven years (New York Penal Law § 70.00).

During respondent's plea hearing, the court elicited the following factual basis for the plea:

THE COURT: Now, I'm going to direct your attention to approximately August 10, 2001. This arises out of your employment?

THE DEFENDANT: Yes, your Honor.

THE COURT: So that around that period of time, were you working at 350 Fifth Avenue in Manhattan?

THE DEFENDANT: Yes.

THE COURT: And did you, at that time, steal property?

THE DEFENDANT: Yes, your Honor.

THE COURT: And the value of that property was the escrow funds?

THE DEFENDANT: Yes.

THE COURT: And the funds exceeded three thousand dollars in value. Is that correct?

THE DEFENDANT: Yes, your Honor.

(Ex.D7-22 to 8-15.)

On August 5, 2004, respondent was sentenced to a five-year term of probation for his crimes. Thereafter, on October 28, 2004, the New York disciplinary authorities disbarred him, based on his grand larceny conviction.

The OAE recommended respondent's disbarment, based on his knowing misappropriation of client trust funds.

At oral argument before us, respondent's recently-retained counsel requested additional time to furnish us with respondent's psychiatric medical records, for purposes of mitigation. With no objection from the OAE to the introduction of such new materials, we carried the matter to our June 16, 2005 session to allow for the supplementation of the record with those additional documents.

Upon review of the full record, we determine to grant the OAE's motion for reciprocal discipline. We also adopt the findings of the New York Court.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a) (4), which states as follows:

. . . The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon 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 matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the misconduct 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 (E).

Respondent's criminal conviction for grand larceny was the controlling factor in New York's determination to disbar him. In New Jersey, the knowing misappropriation of trust account funds alone bears the most serious consequences for respondent's license to practice law in this state.

Respondent failed to maintain the \$85,000 intact in his trust account for its intended use - his clients' rental payments. Instead, he converted those funds to his own use. His conversion of the funds was delineated in the New York Court's original temporary suspension order. Unquestionably, respondent's misconduct amounted to the knowing misappropriation of client trust funds, a violation of RPC 1.15(a) and RPC 8.4(c).

In mitigation, respondent offered a narrative letter from

his psychotherapist, Lois M. Winston, who has been treating him since 2002, detailing respondent's anxiety and depression. In addition, respondent furnished medical records evidencing emergency care for anxiety on two separate occasions in October 2000 and January 2001. Those materials do not serve to excuse respondent's knowing misuse of trust funds. See, e.g., In re Greenberg, 155 N.J. 138 (1998) (attorney disbarred for converting \$7,500 of his law firm's funds by requesting that his clients make their fee checks payable to him; the attorney also obtained \$27,025 of the firm's funds for his personal use by submitting false disbursement requests over a one-year period; Greenberg asserted that he suffered from mental illness, which caused a loss of competency, comprehension or will, that he was out of touch with reality, and that he had no conscious awareness of his actions; the argument was framed as an affirmative defense to the knowing aspect of the misappropriation, and as mitigation to justify the conduct.)

Here, there was no evidence presented that respondent did not know what he was doing, or "suffered a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly, knowing, volitional and purposeful." In re Jacob, 95 N.J. 132, 138 (1984). Likewise, no amount of mitigation would suffice to excuse respondent's

misconduct. In In re Noonan, 102 N.J. 157, 160-61 (1986), the Court defined the requirements for a finding of knowing misappropriation:

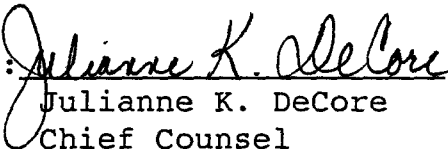
The misappropriation that will trigger automatic disbarment that is 'almost invariable,' id. at 453, consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money was used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment The presence of 'good character and fitness,' the absence of 'dishonesty, venality or immorality' - all are irrelevant. While this Court indicated that disbarment for knowing misappropriation shall be 'almost invariable,' the fact is that since Wilson, it has been invariable. [Footnote omitted.]

Nothing in the newly-submitted materials demonstrates that respondent did not know what he was doing when he knowingly misappropriated client funds. Under the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21

(1985), we determine to recommend respondent's disbarment.
Member 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Mitchell L. Singer
Docket No. DRB 05-031

Argued: April 21, 2005

Decided: July 21, 2005

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:	8					1


Julianne K. DeCore
Chief Counsel