SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-121

IN THE MATTER OF	:
	:
MARC M. SCOLA	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 16, 2002

Decided: September 3, 2002

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 based on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), following respondent's guilty plea to theft by deception and witness tampering.

Respondent was admitted to the New Jersey bar in 1993. On July 9, 2001, he pleaded guilty to one count of third-degree theft by deception, in violation of N.J.S.A. 2C:20-4 and N.J.S.A. 2C:2-6, and one count of third-degree witness tampering, in

violation of N.J.S.A. 2C:28-5(a)(1). The factual basis for the plea was elicited by respondent's counsel at the plea proceeding:

> Q As to Count Two, Mr. Scola, between January 1st, 1997 and May 31st, 1997, did you obtain property of another in excess of $500 through deception?
>
> A Yes.
>
> Q Did you purposely cause checks totaling approximately $40,125, which were drawn on a checking account of Pell Enterprises (phonetic) at First Union National Bank to be paid?
>
> A Yes.
>
> Q Did you cause the checks to be paid by creating and reinforcing a false impression that Pell Enterprises was sufficiently funded when you knew that it was not?
>
> A Yes.
>
> Q Did you also handwrite on the memo section of a few checks?
>
> A Yes.
>
> Q And did you personally deliver a few of the checks to persons who actually cashed the checks?
>
> A Yes.
>
> Q And did you personally receive approximately $4,000 from the checks that were paid?
>
> A Yes.
>
> Q As to Count Three. On or about October 19th, 1999, did you, believing that an investigation was pending or about to be instituted, knowingly attempt to induce Scott Waltershy (phonetic) to testify and inform falsely?
>
> A Yes.

Q Specifically, concerning the checks drawn on the Pell Enterprises account, for which there were insufficient funds, did you tell Scott Waltershy to say that he, Scott Waltershy, did not have any relevant knowledge, when he actually did?

A Yes.

[Exhibit B at10-11]

A more detailed presentation of the pertinent underlying facts is found in respondent's Adult Presentence Report. The factual recitation is taken from a July 19, 2001 letter to the Morris County Probation Department from Deputy Attorney General Thomas R. Clark:

1. <u>The Check-kiting Scheme</u>

In early May, 1997, First Union National Bank ('First Union') was victimized by a check-kiting scheme that involved two corporate checking accounts, one maintained at First Union, and another maintained at Summit Bank. The conspirators controlled both checking accounts. Three checks from the account at Summit, in the name of Amblin, Inc., were deposited into the account at First Union, in the name of Pell Enterprises, Inc., over the course of two days. Those checks created the impression that the balance in the Pell Enterprises account was as high as $92,458. Federal law required that First Union consider the funds valid before the bank could present those checks to Summit Bank for collection. Knowing that, the conspirators recruited a number of individuals to present checks against the Pell Enterprises account before First Union learned that the checks written against the account of Amblin, Inc. would not be honored by Summit Bank. In a three-day span, beginning the morning after the first two checks from Amblin, Inc. had been deposited into the account of Pell Enterprises, twelve different persons (including two of the conspirators) cashed twenty checks written against the Pell Enterprises account, before First Union learned that the Amblin, Inc. checks were not good. First Union lost a total of approximately $81,166.31 as a result of this fraud.

Scott Walterschied, an attorney, was the central conspirator. Walterschied controlled the account of Amblin, Inc., which belonged to his occasional client, Robin Hastey, also known as Robin Biddiscombe. Walterschied incorporated Pell Enterprises, Inc., in January, 1997, identifying the deceased father-in-law of another conspirator, Carl Heintz,

as the President of the corporation, and Heintz's girlfriend, Rahiza Alvarez, as the Vice President of the company. Walterschied directed Alvarez to open the account at First Union, in February, 1997, and thereafter personally controlled that account as well.

The persons who cashed the checks against the Pell Enterprises account were recruited in two groups. Heintz and Alvarez recruited four of the check cashers, and cashed some of the checks themselves. The other group was recruited by Walterschied's law partner at the time, Marc Scola. Scola eventually recruited six individuals, who were either witting or unwitting participants. Scola personally delivered checks to those persons, and instructed a number of them on which branch to cash their checks at, and when. This was important because it was a central design of the scheme that the checks be presented at various branches in Essex, Union and Morris Counties, fifteen branches in all, at different times over three days. This was done to minimize the likelihood that the conspiracy would be detected, and to maximize the conspirators' unlawful profits.

Telephone records demonstrate, for example, that Walterschied called one branch of First Union, and then immediately called a business office where two of the check cashers, and Scola, were then located. Later that day, those two of Scola's recruits cashed one check each at the same First Union branch that Walterschied had called. One of those two check cashers testified before the state grand jury that Scola personally handed the check to him that day in the individual's office, and that Scola directed him to proceed to the specific First Union branch where the individual presented the check. From all this, the plain and logical inference is that Walterschied called the branch to assure himself that the checks would be accepted, and then instructed Scola to tell the check cashers to proceed to that branch.

Telephone records also demonstrate that one of the individuals Scola recruited left her home, spoke on the telephone with Scola, cashed a check at a First Union branch close to Scola and Walterschied's office, and then, fifteen minutes later, cashed another check at a second First Union branch, located closer to that person's home, but also located farther from her office than the first First Union branch. This chain of events indicates that Scola delivered the checks to the other individual that day, and also directed that person to cash the checks at different branches of First Union.

2. <u>Scola's Plea to Count Two</u>

Count Two charges Scola with the theft of approximately $40,125, through the presentation to First Union of eight checks. Those checks were

presented by five separate individuals, who were all clients or personal friends of Scola. (Among the checks included in Count Two are the four checks discussed in the two immediately preceding paragraphs of this letter.) In addition, the State's handwriting expert has determined that Scola added handwritten information to three of those checks, numbers 120, 121, and 122. The information, added to the 'memo' section of the checks, concerned fictitious reasons for the issuance of the checks. (He wrote 'excavation' on one, 'camera system' on another, and 'paving/driveway' on the third). This was designed to contribute to the false impression that the checks were validly issued. [Footnote omitted].

As part of his guilty plea, Scola acknowledged that he personally received $4,000 in proceeds from the scheme.

3. <u>Scola's Witness Tampering</u>

On October 19, 1999, Walterschied, who had been arrested six days earlier, and had agreed at that time to cooperate with the State Police, went to Scola's house to discuss the investigation of the scheme with Scola. I am enclosing a transcript of the conversation. Briefly, Scola and Walterschied discussed how they would shift the blame for the scheme to Heintz. In addition, Scola told Walterschied that Walterschied should tell investigators that he knew nothing about the scheme.

[Exhibit C at 1-3]

Respondent was sentenced on December 7, 2001. Prior to imposing sentence, Judge Bozonelis commented:

Then I will sentence you on this matter. Of course you've pled guilty to third-degree theft by deception, as you know, and third-degree tampering of – with witnesses.

You are an attorney and were an attorney at the time. This involved a check-cashing scheme with your law partner, Scott Walterschied. Mr. Walterschied's matter has been indicted. He is now facing those charges as well as new charges.

I recognize that he was the main actor here, however, at one point in time or during the course of all this check cashing he persuaded you to join him. You did join him. And then you got involved in the cash – the checking scheme yourself as well as involved in the witness tampering in an attempt to blame a third party with respect to this scheme.

> Needless to say there's no excuse for your conduct and you paid a very high price for your conduct. Your license has been suspended and will be continued and I'm sure as a result of this conviction that you will be disbarred and loss – have loss of your attorney's license and breach of trust in that regard with respect to being an officer of the court involved in these theft by deception and tampering schemes.
>
> [Exhibit E at 7-8]

Respondent was placed on probation for two years and ordered to make restitution of $19,800 to First Union National Bank.[1] As a result of his guilty plea, on July 23, 2001 the Supreme Court placed respondent on temporary suspension. In re Scola, 168 N.J. 636 (2001). His suspension remains in effect.

The OAE recommended that respondent be disbarred.

* * *

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

The existence of a criminal conviction is conclusive evidence of respondent's guilt. R.1:20-13(c)(1); In re Gipson, 103 N.J. 75, 77 (1986). Respondent's guilty plea 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) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Only the quantum of discipline to be imposed remains at issue. R.1:20-13(c)(2)(ii); In re Goldberg, 105 N.J. 278, 280 (1987).

[1] Respondent had made restitution prior to sentencing.

Respondent was convicted of one count of theft by deception and one count of witness tampering. In the past, similar misconduct has resulted in disbarment. In In re Spina, 121 N.J. 378 (1990), the Court disbarred an attorney who had pleaded guilty in another jurisdiction to the misdemeanor of taking property without right, the equivalent of a disorderly persons offense in New Jersey. Over a period of two and one-half years, Spina took more than $40,000 from his employer, Georgetown University, by depositing checks intended as contributions to Georgetown into his personal checking account. Spina attempted to cover up his actions by various means – including the submission of false expense vouchers – and by concocting a series of lies, when confronted by his employer.

In In re Denker, 147 N.J. 570 (1997), an attorney was disbarred after he pleaded guilty to one count of money laundering. The activity took place on two occasions, three months apart. In the first instance, the attorney agreed to launder a client's purported drug proceeds. He received $50,000 and then issued numerous negotiable instruments, each less than $10,000, to avoid reporting requirements for currency transaction. The attorney received a total of $3,500 as a fee. In the second instance, the attorney received another $50,000 to issue instruments to avoid the same requirements. He was paid a $3,000 fee.

In In re Lunetta, 118 N.J. 443 (1989), the attorney pleaded guilty to a charge of conspiracy to receive, sell and dispose of stolen securities. The attorney agreed to deposit checks from the sale of stolen bonds into his trust account. The attorney "laundered and shielded funds from known criminal activities." In re Lunetta, supra, 118 N.J. at 450.

Lunetta did not participate in the theft of the securities or in structuring the scheme, readily admitted his participation in the crime and testified against his co-conspirators. Nevertheless, he was disbarred.

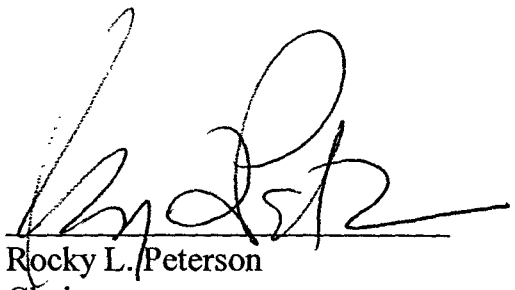
"A calculus for discipline, even in cases of criminal conviction, must include the nature and severity of the crime, whether the crime was related to the practice of law and any mitigating factors, such as evidence of the attorney's good reputation and character." In re Chester, 117 N.J. 360, 363 (1990), citing In re Kushner, 101 N.J. 397, 400 (1986).

A number of respondent's family members and friends sent letters to the OAE asking leniency for respondent. They portrayed respondent as an honest attorney, who was led astray by his unscrupulous former partner, Walterschied. We agree, however, with the OAE's assessment that respondent is not a "babe in the woods." We read the transcript of the taped October 19, 1999 conversation between respondent and Walterschied, exhibit N, and concluded, as did the OAE, that the image that emerges is that "of an individual who knowingly committed a crime and would do anything possible to avoid being held responsible for that crime."

Attorneys "must possess a certain set of traits – honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the judicial process and the administration of justice. These personal characteristics are required to ensure that lawyers will serve both their clients and the administration of justice honorably and responsibly." In re Application of Matthews, 94 N.J. 59, 77 (1983). Respondent demonstrated that he lacks these qualities. We, therefore, unanimously determined to recommend his disbarment.

One member did not participate.

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



Rocky L. Peterson
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marc M. Scola
Docket No. DRB 02-121

Argued: May 16, 2002

Decided: September 3, 2002

Disposition: Disbar

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson	X						
Maudsley	X						
Boylan							X
Brody	X						
Lolla	X						
O'Shaughnessy	X						
Pashman	X						
Schwartz	X						
Wissinger	X						
Total:	8						1

Robyn M. Hill 9/6/02
Robyn M. Hill
Chief Counsel