SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-301

IN THE MATTER OF

DANIEL D. RICHARDS

AN ATTORNEY AT LAW

Decision

Argued: October 18, 2001

Decided: February 11, 2002

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

Respondent did not appear for oral argument, despite proper notice.

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 upon respondent's November 12, 1998 guilty plea in the United States District Court for the District of New Jersey to the first six counts of an eighteen-count federal superseding indictment charging him with embezzlement from an organization receiving federal benefits, in violation of 18 *U.S.C.A.* §666(a)(1)(A).

Respondent was admitted to the New Jersey bar in 1963. He was temporarily suspended by the Court on January 11, 1999 based on the above criminal conduct. *In re Richards,* 156 *N.J.* 555 (1999).

In 1990 respondent was the general partner of five of six real estate limited partnerships and was president of the corporate general partner of the sixth partnership. The partnerships built and operated federally subsidized low-income rural housing projects under the Rural Renting Housing Program of the Farmers Home Administration ("FmHA") , an agency within the Department of Agriculture. In his capacity as general partner, respondent signed various loan agreements and mortgages on behalf of the partnerships. Pursuant to these loan agreements and mortgages, as well as federal regulations, each limited partnership was required to establish and maintain a reserve account. Respondent agreed with the FmHA that no funds could be withdrawn from the projects' reserve accounts without the FmHA's prior approval. Despite this restriction, respondent made the following $64,000 withdrawals, from the partnership reserve accounts, without the FmHA's approval:

- $10,000 from Penway on February 22, 1990;
- $7,000 from Penway on March 29, 1990;
- $10,000 from Oxford on February 22, 1990;
- $9,000 from Oxford on March 19, 1990;
- $10,000 from Washington on February 22, 1990;
- $5,000 from Forgold on February 22, 1990;
- $3,000 from Forgold on March 29, 1990;
- $5,000 from Briarwood on March 29, 1990;
- $5,000 from Highland on March 29, 1990.

Although the federal judge found that respondent had withdrawn more than $280,000 over a period of more than one year and that the loss was $340,000, apparently because of the expiration of the statute of limitations the government accepted guilty pleas to the six counts of embezzlement totaling $64,000.

Respondent withdrew the above funds without the consent of the partnerships and despite his knowledge that he had no entitlement or authority to do so. When he took the funds, respondent intended to convert them to his own use and to knowingly and wilfully deprive the partnerships of the use and benefit of the monies for at least some period of time.

On September 22, 2000 respondent was sentenced to imprisonment for a term of twenty-six months, to be followed by a three-year term of supervised release. Also, he was ordered to pay restitution in the amount of $64,000. On March 19, 2001 his conviction and sentence were affirmed by the United States Court of Appeals for the Third Circuit. He did not file a petition for *certiorari* with the United States Supreme Court.

The OAE urged us to recommend disbarment. Respondent maintained that we should postpone consideration of this matter until the resolution of his motion for *habeas corpus* relief, pursuant to 28 *U.S.C.A.* §2255, or until April 2002, when he will be released from prison and able to attend oral argument before us on this motion for final discipline.

* * *

Respondent's request for a postponement of this matter until the resolution of his motion for *habeas corpus* relief is not supported by law. *R.*1:20-13(c)(2) provides that the OAE director may file a motion for final discipline at the conclusion of all direct appeals of criminal matters. Here, respondent's direct appeal was denied by the Third Circuit Court of Appeals and he failed to file a petition for *certiorari* with the United States Supreme Court. Accordingly, the direct appeals have been concluded and the motion for final discipline may proceed.

* * *

Following 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 to six counts of embezzlement from an organization receiving federal funds violated *RPC* 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer) and of *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); *In re Lunetta, supra*, 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." *In re Lunetta, supra,* 118 *N.J.* at 445-46.

Although respondent's criminal conduct did not involve the practice of law, attorneys involved in serious criminal activity have been disbarred, even when that activity has not involved their law practice. *See, e.g., In re Lurie*, 163 *N.J.* 83 (2000) (attorney disbarred after conviction of eight counts of scheming to commit fraud, nine counts of intentional real estate securities fraud, six counts of grand larceny and one count of offering a false statement for filing); *In re Goldberg*, 142 *N.J.* 557 (1995) (attorney disbarred following two separate convictions for mail fraud and conspiracy to defraud the United States). Ordinarily, repeated criminal conduct, as opposed to one or two isolated instances, results in disbarment. *See, e.g., In re Chucas*, 156 *N.J.* 542 (1999) (attorney disbarred after a criminal conviction for wire fraud, unlawful monetary transactions and conspiracy to commit wire fraud where attorney and co-defendant collected $238,000 from numerous victims by telling them that the funds would be used to buy stock when respondent and his co-defendant never intended to buy stock and used the money for their own purposes); *In re Messinger*, 133 *N.J.* 173 (1993) (disbarment imposed where attorney was convicted of conspiracy to defraud the United States by engaging in fraudulent securities transactions to generate tax losses, aiding in the filing of false tax returns for various partnerships and filing a false personal tax return; the attorney was involved in the conspiracy for three years, directly benefitted from the false

tax deductions and was motivated by personal gain); *In re Mallon*, 118 *N.J.* 663 (1990) (attorney disbarred following conviction of conspiracy to defraud the United States and aiding and abetting the submission of false tax returns where the attorney directly participated in laundering of funds to fabricate two transactions totaling $541,000 in capital gains reported on his clients' tax returns).

Attorneys who have stolen funds, apart from the mandatory disbarment rule of *In re Wilson*, 81 *N.J.* 451 (1979), have suffered the ultimate sanction of disbarment. *See, e.g., In re Imbriani*, 149 *N.J.* 421 (1997) (disbarment of an attorney – a Superior Court judge – who embezzled approximately $127,000 from a corporation of which he was a shareholder); *In re Siegel*, 133 *N.J.* 162 (1993) (disbarment for misappropriation of $25,000 from a law partnership over a three-year period); *In re Spina*, 121 *N.J.* 378 (1990) (disbarment for theft from an employer).

Here, over the course of more than one year, respondent took substantial sums of money from partnerships receiving federal funding and converted those funds to his own use. Respondent's criminal activity, thus, constituted a pattern of misconduct, not an isolated incidence. In addition, he profited from his illegal conduct.

In light of the foregoing, we unanimously determined that disbarment is mandated in order to address the seriousness of respondent's misconduct and to preserve the public's confidence in the disciplinary system. Three members did not participate.

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

By: ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Daniel D. Richards
Docket No. DRB 01-301

Decided: February 11, 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:	**6**						**3**

Robyn M. Hill 2/27/02
Robyn M. Hill
Chief Counsel