SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-440

IN THE MATTER OF

MOSES V. RAMBARRAN

AN ATTORNEY AT LAW

Decision

Argued: February 13, 2004

Decided: April 13, 2004

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

Respondent appeared pro se.

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 reciprocal discipline, filed by the Office of Attorney Ethics ("OAE") pursuant to Rule 1:20-14(a), following respondent's resignation from the New York bar and consequent New York disbarment, on June 23, 2003.[1]

Respondent was admitted to the New Jersey bar in 1992 and to the New York bar in 1993. Although he has no history of final discipline in New Jersey, he was temporarily suspended on September 12, 2002. In re Rambarran, 174 N.J. 339 (2002).

[1]Pursuant to 22 NYCRR 691.9, upon receipt of an affidavit of resignation from the New York bar, the Court may enter an order disbarring the attorney.

The Criminal Conviction

In 1995, respondent represented Michelle Cantatore in her criminal trial for bank robbery.

Cantatore was convicted and sentenced to a one-year prison term. Subsequently, a warrant was issued for her arrest on federal felony charges of credit card fraud. The credit card(s) belonged to respondent's ex-wife. In 2001, with financial assistance provided by respondent, Cantatore violated her bail and fled to Miami, Florida. While Cantatore was a federal fugitive, respondent made numerous telephone calls to her, visited her in the Miami apartment, and, through his then-attorney, informed the United States Marshals' Service that he had no knowledge of her whereabouts.

On March 13, 2002, respondent pleaded guilty to the federal felony of harboring and concealing a federal fugitive, in violation of 18 U.S.C.A. 1071. On June 14, 2002, he was placed on probation for one year and ordered to pay a $5,000 fine.

Trust Account Improprieties

On October 19, 2001, the Supreme Court of the State of New York, Appellate Division, Second Department, suspended respondent from the practice of law in New York and authorized disciplinary proceedings against him, based on a petition by the Grievance Committee for the Ninth Judicial District ("the Grievance Committee"), dated June 19, 2001. The sixty-count petition charged that respondent breached his fiduciary duty on numerous occasions, misappropriated escrow funds, disbursed escrow checks without corresponding funds on deposit, allowed a nonlawyer to sign escrow account checks, failed to deposit and/or maintain escrow funds in a special bank account titled in respondent's name or the name of his firm in a qualified

The respondent testified that he maintained his records through a Quick Books computer program. He generally attempted to enter transactions within a few days of their actual occurrence. The respondent admitted that he did not review his bank statements on a monthly basis or in great depth.

The respondent opened his escrow account at the Bank of New York with the intent of closing his Citibank account at the urging of an acquaintance, John Perazzo. Perazzo presented himself as a person schooled in international finance. The plan was for Perazzo to function as the respondent's bookkeeper/financial office manager. However, the respondent never checked into Perazzo's background. Perazzo referred many of the people whose finances he managed to the respondent as clients.

Perazzo was to open an operating account in the respondent's name at the Bank of New York and pay the respondent's expenses from there. He never did so. Rather, Perazzo paid the respondent's expenses from his own account for TSC Financial Corporation. Perazzo was not an employee of the respondent and was not to be reimbursed for this service. The respondent did no follow-up check.

When the respondent began undergoing marital difficulties, he gave Perazzo some of his legal fees to be kept separate and apart from the marital funds in a Bank of New York account.

The respondent also trusted Perazzo to deposit client down payment checks into an escrow account at the Bank of New York, which Perazzo was supposed to have opened previously. When asked how Perazzo, a non-attorney, could have opened an escrow account without the respondent's signature, the respondent admitted that he made some bad judgments.

The respondent and Perazzo did not have an exact agreement as to the caption of the account. The respondent was never shown a bank statement of any document containing the account title. The respondent first began to distrust Perazzo in January 2000 when clients reported that a number of checks drawn on the Bank of New York master escrow account were dishonored. The respondent testified that he never made any greater disbursements than he had funds for. He therefore concluded that the funds were not where they were supposed to be and that Perazzo had the money in another account. The respondent did not report this incident to the District Attorney because Perazzo returned all of the funds.

There was only one checkbook for the respondent's Bank of New York escrow account, which remained in the respondent's control. He admitted that he verbally authorized Perazzo to sign for him on three escrow checks which were intended to replace bounced checks. When asked whether he was aware of the disciplinary rule precluding anyone besides an attorney from being a signatory on an escrow account, the respondent admitted that he so acted although "that's not good practice."

The respondent was aware of his obligation to deposit funds to cover bank fees but relied on Perazzo to deposit sufficient funds to cover any fees.

The respondent testified regarding numerous irregularities in his handling of real estate down payments and other disbursements for which he ultimately blamed Perazzo. He essentially believed that Perazzo had opened his Bank of New York escrow account much sooner than he actually had. Other irregularities were attributable to failures to promptly transfer funds between sub-accounts and control accounts. On several occasions, the respondent deposited settlement checks into his escrow account, remitted to clients their share of the proceeds, and failed to disburse his fees therefrom.

With respect to the ATM withdrawals, the respondent testified that all of his Citibank accounts, including the escrow account, were linked to one ATM card. He maintains that he was unable to designate, at the ATM, the account to be charged from. When the respondent became aware of an ATM deduction from his escrow account, he replaced the money. He nevertheless continued to make ATM withdrawals and does not have a specific recollection of whether he ever asked the bank to disassociate the escrow account from the ATM card.

The accountings and the investigation precipitated by the Giffords complaint caused the Grievance Committee to find irregularities with respect to 24 separate matters.

II. Dishonored Checks Complaint

In December 2000, the Lawyers' Fund provided the Grievance Committee with copies of two dishonored check reports reflecting that three checks drawn on the respondent's Citibank IOLA account were returned unpaid on October 30 and October 31, 2000, due to insufficient funds. Said checks were in the amounts of $6,150, $146,327.90, and $113, 820.15, respectively. These notices led to a *sua sponte* complaint against the respondent.

In his answer to the complaint, the respondent maintained that the checks were dishonored because the funds to cover them from "Countrywide, America's Wholesale lender" were mistakenly wired to an incorrect account number at Citibank, which then returned the funds to Countrywide. When the error was discovered, the funds were rewired to the respondent's account. The Grievance Committee obtained various records from the respondent, including Citibank IOLA records for the period from July 1, 2000 through December 31, 2000, and prepared an accounting. This led to the Grievance Committee's discovery of irregularities in four separate matters.

In the first matter, the respondent, who represented the purchaser in a real estate transaction, disbursed a number of checks at the closing without first verifying that the wired funds had been received by Citibank and credited to his

account. At least one of the checks he disbursed was paid by Citibank with funds on deposit in the account for the benefit of others.

In the second matter, the respondent deposited a real estate down payment into a sub-account of his Citibank IOLA account. Without transferring funds to the IOLA control account, the respondent disbursed four checks in connection with the closing. At least two checks were paid against funds on deposit for the benefit of others. Another check was returned unpaid.

The third matter involved another real estate matter in which the respondent failed to timely transfer funds from a sub-account to the IOLA control account for disbursal. Some checks disbursed were paid by Citibank with funds on deposit in the IOLA control account for the benefit of others.

As of December 31, 2000, the last date for which the Grievance committee has the respondent's bank records, the respondent failed to disburse the sum of six dollars, which he was holding in connection with a closing which had occurred on August 30, 2000, and $59.13 which he was holding in connection with another closing which occurred on October 18, 2000.

III. The Tino Complaint

The complaint alleges that Louis Mauro retained the respondent to represent him in a matrimonial action and gave him $55,000 in cash to hold in escrow. The attorney for Mauro's wife served the respondent with an order to show cause demanding that he immediately freeze and enjoin transfer or dissipation of the escrow funds. The respondent allegedly failed to respond to the order to show cause.

According to the petitioner's [motion], two documents in the respondent's file suggest that his representation to the Grievance Committee that he was unaware of Mr. Mauro's involvement in a matrimonial action until after he returned the money on September 15, 1999, is false.

[Exhibit J to the OAE's brief.]

The Court also summarized respondent's reply to the Grievance Committee's motion:

In opposition to the petitioner's motion, the respondent submits that he does not pose an immediate threat to the public interest although he acknowledges that certain of his actions violate the applicable rules governing the conduct of attorneys in New York State. While he admits to a course of conduct, which constitutes improper management of his trust account, he denies allegations that he intentionally converted or misappropriated trust funds, offered false statements or testimony, or failed to cooperate with the Grievance Committee. In support of his contention that he poses no immediate threat to the public interest, the respondent offers the following: 1) he carries a one million dollar policy which is

in full force and effect; 2) there was no financial loss to any client and no financial claims are pending against him as a result of the Grievance Committee's allegations; 3) he has ceased the activity which created the trust account violations with which he is now charged; 4) he has retained a CPA to audit his trust account and filed a statement of accounting showing that he currently maintains sufficient money in the trust account for all client funds he currently holds, as well as a surplus representing his own funds which he intends to disburse to himself upon confirmation that the account is accurate; and 5) he has no prior disciplinary history.

[Exhibit J to the OAE's brief.]

On October 18, 2001, the Grievance Committee filed a supplemental petition against respondent, adding three more charges against him. The charges alleged that respondent issued trust account checks before the deposit of corresponding funds in the account, thereby invading other clients' funds.

On August 22, 2002, the Grievance Committee filed a second supplemental petition, this time adding three charges in connection with the criminal conduct that led to respondent's guilty plea.

As noted earlier, on June 23, 2003, respondent was disbarred for the totality of his conduct, after he submitted an affidavit of resignation from the New York bar. In the affidavit, respondent acknowledged his inability to successfully defend himself on the merits against the majority of the charges set forth in the petitions.

Respondent was charged in New York with the counterparts of New Jersey RPC 1.15(a) (commingling of personal and trust funds), RPC 1.15(b) (failure to promptly deliver to client or third person funds or property that they are entitled to receive), RPC 1.15(d) (failure to comply with Rule 1:21-6 (recordkeeping)); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

According to the OAE, a lengthy suspension would be the appropriate sanction for respondent's criminal conviction alone. As to the trust account improprieties, the OAE's position is that "it does not appear the respondent possessed the wherewithal or sophistication to 'design' any type of financial recordkeeping. Thus, it does not appear that this is an automatic disbarment case." According to the OAE, a three-year suspension does not adequately address the seriousness of respondent's overall conduct. In its view, "[a]lthough disbarment is a viable option, respondent's youth and inexperience may call for some measure of leniency. We, therefore, submit that an indefinite suspension, with the provision that respondent not be considered for reinstatement in New Jersey until reinstated in New York would constitute the appropriate discipline in this matter."

Respondent's criminal conviction clearly and convincingly demonstrates that he has violated RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d) by committing a criminal act that adversely reflects on his honesty, trustworthiness or fitness as a lawyer, and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, as well as conduct prejudicial to the administration of justice.

The existence of a criminal conviction constitutes conclusive proof of respondent's guilt. Rule 1:20-13(c)(1). In re Gipson 103 N.J. 75, 77 (1986). The only remaining issue is the extent of discipline to be imposed. Rule 1:20-13(c); In re Infinito, 94 N.J. 50, 56 (1983).

Moreover, respondent admitted numerous and serious financial irregularities in the maintenance of his attorney accounts. Among other improprieties, respondent authorized a nonlawyer to sign trust account checks, made cash withdrawals from his trust account via automatic teller machines, delegated his recordkeeping and fiduciary responsibilities to a nonlawyer, allowed a number of his trust account checks to be dishonored for insufficient funds, withdrew trust account funds without corresponding funds on deposit, and allowed other clients'

funds to be invaded. On this record, however, we cannot find by clear and convincing evidence that respondent's misappropriation of trust and/or escrow funds was knowing. Therefore, respondent's disbarment is not mandatory. In re Hollendoner, 102 N.J. 21 (1985) (knowing misappropriation of escrow funds requires disbarment) and In re Wilson, 81 N.J. (1979) (knowing misappropriation of trust funds warrants disbarment). We now must decide whether disbarment is still appropriate, based on respondent's serious ethics and criminal offenses.

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

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (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 D. The only question is whether, under subparagraph E, respondent should be permanently disbarred.[2] As we noted above, respondent's conduct does not carry with it automatic disbarment, as the record does not afford the conclusion that he knowingly

[2] An attorney who is disbarred in New York may seek reinstatement seven years after the effective date of disbarment, 22 NYCRR 603.14

misappropriated trust funds. Disbarment may still be imposed, however, when the totality of a respondent's conduct so warrants. See In re Spagnoli, 115 N.J. 504 (1989) (disbarment based on the severity of the multiple ethics violations committed, combined with the attorney's failure to appear before the Disciplinary Review Board and the Supreme Court; the attorney mishandled fifteen matters and acted with malice when he accepted retainers from clients without ever intending to safeguard their interests; it was "amply demonstrated that [the attorney's] professional good character and fitness [had] been permanently and irretrievably lost.' In re Templeton, 99 N.J. 365, 376 (1985))."

"Crimes of dishonesty touch upon a central trait of character that members of the bar must possess. [Citation omitted]. Such crimes are defined as a 'serious crime' pursuant to *Rule* 1:20-13(b)(2)." In re Riva, 157 N.J. 34, 39 (1999). "When a crime of dishonesty touches upon the administration of justice . . . the offense 'is deserving of severe sanctions and would ordinarily require disbarment.' [Citation omitted]." Ibid. "Even in proceedings involving 'serious crimes,' mitigating factors may justify imposition of sanctions less severe than disbarment or extended suspension." Id. at 40.

The OAE recommended an indefinite suspension, based on respondent's youth and inexperience. The OAE found a three-year suspension insufficient to address the severity of respondent's multiple ethics violations. We agree. Respondent's conduct was far more egregious than that of attorneys whose criminal offenses led to three-year suspensions. See, e.g., In re Tamboni, 176 N.J. 566 (2003) (three-year suspension for conviction of one count of witness tampering; the attorney helped a potential witness hide from government agents, who were attempting to serve her with a grand jury subpoena; although respondent knowingly participated

in a scheme to subvert the administration of justice, several mitigating circumstances tempered the imposition of disbarment); In re Van Dam, 140 N.J. 78 (1995) (three-year suspension for guilty plea to making a false statement to a savings and loan institution and obstruction of justice; the attorney concealed his partner's involvement as a shareholder of a company that had obtained a loan from a lender of which the partner was director and general counsel); In re Power, 114 N.J. 540 (1989) (three-year suspension for attorney who pleaded guilty to one count of obstruction of justice; the attorney advised a client not to disclose information to law enforcement authorities about a stock fraud investigation and assisted the client in filing a false insurance claim).

The OAE urged the imposition of an indefinite suspension, presumably referring to the form of discipline contemplated by Rule 1:20-15A(a)(2) (indeterminate suspension). That rule provides that, unless otherwise stated in the Court's order, an indeterminate suspension prohibits the attorney from seeking restoration to the practice of law for at least five years. The OAE's recommendation is for the imposition of an indefinite suspension and the requirement that respondent not be permitted to apply for reinstatement in New Jersey until he is reinstated in New York. As stated earlier, a disbarred attorney in New York may apply for restoration after seven years.

Our review of the record does not persuade us that this respondent's "professional good character and fitness have been permanently and irretrievably lost." In re Templeton, supra, 99 N.J. at 376. We, therefore, determine that disbarment is too severe a sanction for respondent's ethics offenses and that an indeterminate suspension, retroactive to June 23, 2003, the date of respondent's disbarment in New York, more adequately addresses his combined misconduct. We

further determine that respondent should not be reinstated in New Jersey until he is reinstated in New York. One member voted for disbarment. Two members did not participate.

We further 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Moses V. Rambarran
Docket No. DRB 03-440

Argued: February 13, 2004

Decided: April 13, 2004

Disposition: Indeterminate suspension

Members	*Disbar*	*Indeterminate 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:	1	6					2

Julianne K. DeCore
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Chief Counsel