SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-057

IN THE MATTER OF

RONALD J. NELSON

AN ATTORNEY AT LAW

Decision

Argued: April 15, 2004

Decided: May 19, 2004

Janice L. Richter appeared on behalf of the Office of Attorney Ethics.

Justin P. Walder 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 on a recommendation for a three-month suspension filed by Special Master Jean Ramatowski. The

complaint charged respondent with violations of RPC 8.4(b) and (c) (theft of law firm funds).

Respondent was admitted to the New Jersey bar in 1969. He has no disciplinary history.

The special master originally recommended respondent's disbarment. Afterward, respondent filed a motion for reconsideration based on our decision in In the Matter of Brian Spector, Docket No. DRB 03-041 (2003), in which we determined that a reprimand was the appropriate level of discipline for an attorney who, after leaving one law firm for another, used deceptive means to obtain and withhold fees owed to the first law firm.[1] The special master then issued a second report recommending a three-month suspension.

This case requires us to determine the line between theft of law firm funds and an internal firm dispute. The central issue is whether respondent misappropriated funds from his law firm, or whether he reasonably believed that he was entitled to the funds. The facts are not contested. Indeed, respondent's answer admitted the allegations of the complaint. For the reasons expressed below, we agree with the special master's

---

[1] The Court subsequently issued an order imposing a reprimand. In re Spector, 178 N.J. 161 (2004).

second report that respondent did not knowingly misappropriate funds from his law firm. We further determine that respondent's conduct does not warrant a suspension. We also have reevaluated our view of the appropriate discipline for this type of misconduct, as discussed below.

Respondent was a partner with the law firm of Craner, Nelson, Satkin, & Scheer, P.A. ("CNSS"). CNSS sued a client, Don-Jon Builders, Inc. ("Don-Jon") and its principal, Don DeSanti, to recover a fee and obtained a judgment. Respondent's partner, M. Richard Scheer, received $10,083 from a constable who enforced the judgment. Scheer maintained a separate trust account exclusively for collection matters.

On April 27, 2000, Scheer issued a check for $10,083 from his trust account payable to CNSS. In turn, on April 27, 2000, respondent deposited the check in the CNSS trust account and immediately issued a check for only $5,083 to CNSS that he gave to Scheer to be deposited in the business account as earned fees. Respondent, thus, left a balance of $5,000 in the trust account. This balance should have been obvious to Scheer.

On May 18, 2000, about three weeks later, respondent dictated two letters enclosing checks for $4,000 and $1,000 to Clem's Ornamental Iron Works and James Iler, respectively. He,

thus, depleted the remaining $5,000 in the trust account. The letters referenced the caption of a litigation matter that respondent had handled for Don-Jon and indicated that the funds were disbursed in settlement of that matter. Respondent sent the checks to the payees, an iron worker and a tree surgeon, who had performed services at respondent's home. Respondent, thus, used law firm funds to pay personal expenses.

Although, in May 2000, the other CNSS partners learned of respondent's use of the funds, they took no action until October 10, 2000, when they summarily dismissed him from the firm. Respondent had requested the meeting to discuss some of his concerns about the firm. At that meeting, one of the partners, John Craner, accused respondent of taking $5,000 from the firm in May 2000. Respondent admitted taking the funds, apologized, went home, returned with his checkbook, and repaid the $5,000 to CNSS. When he returned, however, a locksmith was changing the locks and respondent's partners insisted that he leave the firm immediately.

Respondent was informed that he would be permitted access to the firm's office until noon the next day, when Craner would prepare notices to be telefaxed to respondent's clients, informing them of his departure. Several days later, Craner

still had not prepared the notice and respondent continued to work at the firm. Finally, Scheer told respondent that, if he did not leave by five o'clock, the police would be called. Respondent prepared the notice of his departure, which was then sent to his clients. About two weeks later, respondent opened a solo practice, which he continues to maintain. All of respondent's clients selected him, rather than the firm, as their attorney.

At some point, respondent sued his former partners for (1) compensation earned up to his dismissal on October 10, 2000; (2) the value of his twenty-five percent equity interest in the firm; and (3) profit-sharing up to October 10, 2000. According to respondent, he was owed $105,000 as compensation and CNSS paid only $30,000; he was owed $600,000 for his equity interest and CNSS paid only $7,200; he was owed $20,000 under the firm's profit-sharing plan and CNSS paid nothing.[2]

The litigation between respondent and the firm was settled in 2002. Although respondent's partners never filed an ethics grievance, the judge hearing the litigation referred the matter to disciplinary authorities.

---

[2] Respondent testified that, before he left CNSS, his annual earnings were approximately $225,000.

Some background information is necessary to an understanding of respondent's actions. For several years leading to the events of May 18, 2000, respondent became increasingly frustrated with his partners' expending firm funds without his knowledge or consent. He began to feel that his partners were constantly and inappropriately spending money, thus reducing the firm's profits, and that they were doing so secretly. These expenditures, discussed below, included payment of malpractice deductibles, sanctions imposed by judges, legal fees paid to defend a malpractice action not covered by insurance, and fees paid to an accountant to reconcile one partner's separate trust account. Respondent also learned that his partners were attempting to "steal" his clients to improve their distribution of profits, as discussed below. In addition, respondent became concerned about what he viewed as a lack of professionalism at CNSS, which was the only law firm where he had ever practiced.

In 1970, after serving a judicial clerkship upon graduation from law school, respondent began an association with John Craner. Several years later, they formed a partnership. Respondent primarily represented small, family-owned, closely held businesses. In 1979, Stephen Satkin joined the firm.

In 1987, respondent invited Richard Scheer to join the firm. Respondent and Scheer had known each other since high school, and, although respondent's partners were opposed to it, respondent persuaded them to permit Scheer to join the firm. At that time, Scheer had been a solo practitioner, specializing in consumer collections. Scheer's wife had asked respondent to talk to Scheer because he was "troubled" about practicing law on his own.

When these events took place, respondent had been practicing with Craner for thirty years and with Satkin and Scheer for a substantial period of time. In the early 1990s, respondent became concerned about various aspects of the partnership:

> I had thought that the firm needed some structure to it. It seemed to go fairly well for four, five years as independent practices, but I didn't think there was any real future because all we were were four separate practices under the same roof, and I thought we ought to be departmentalizing and identifying where we wanted to go in terms of the type of practice and how to develop it. And in that regard there was a certain amount of difficulty experienced by me with Mr. Craner initially.
>
> [1T22-19 to 1T23-4.][3]

---

[3] References to the transcripts are as follows: 1T – March 24, 2003; 2T – April 24, 2003; 3T – May 21, 2003; and 4T – June 23, 2003.

Respondent became increasingly frustrated by the lack of professionalism at CNSS, by the absence of accountability and standards, and by the poor relationships among his partners. In 1993 or 1994, respondent discovered that his own partners were "stealing" his clients. Although the partners received equal salaries, the firm paid bonuses at the end of the year, based on the following formula: the partner responsible for bringing the case to the firm received forty percent of the fee paid by that client, while the partner who performed the work received sixty percent; if an associate or the originating partner performed the work, the originating partner received one hundred percent of the fee.

One of respondent's clients, Joel Botwick of Prestige Window Fashions, referred Essex Shade Company ("Essex") to respondent. In respondent's absence, and without respondent's knowledge, Craner represented Essex, filing twelve collection matters on its behalf. Botwick later informed respondent that Essex was complaining about the quality of Craner's services, and that most of the cases had been dismissed for lack of prosecution. Craner claimed that, because he attended the same college as Essex's president, he treated Essex as his own client. Because the partners were compensated, in part, for

originating cases, respondent felt that Craner was stealing clients for his own financial gain. At a partnership meeting called by respondent, Satkin and Scheer minimized the significance of the event, stating that the firm's records would be adjusted to indicate that Essex was respondent's client.

Botwick testified that, in addition to Craner's accepting the Essex referral meant for respondent, Craner had solicited his business as well. In July 1999, at the wedding of respondent's son, which was attended by all of respondent's partners, Craner urged Botwick to "switch" his business from respondent to Craner. According to Botwick, "I thought, 'What is this? It's your law firm. Are you competing against each other?' I could not believe where it was coming from." Respondent stated that, when he approached Craner about "stealing" clients, Craner did not deny the accusation. After respondent called another meeting, he urged Satkin and Scheer to instruct Craner to discontinue the practice of taking his clients. His partners refused to do so, stating that no harm had been done.

In 1995, respondent learned that the firm had been sued the prior year for malpractice, following a real estate closing handled by the firm's non-equity partner, Brian Schwartz. A client, one of two co-executors of an estate, had persuaded

Schwartz to issue the sales proceeds to him individually, instead of in his capacity as co-executor. The client then absconded with the money. Respondent was particularly upset about this matter because the decedent had been his client, respondent had learned that the co-executor desperately needed money and that he was being investigated for financial improprieties, and respondent had warned others in the firm, including Schwartz, to be wary of the co-executor.

The second co-executor, who was also a beneficiary of the estate, sued the firm for malpractice. The firm's malpractice carrier denied liability because the firm had not provided notice of the claim. Although Schwartz and Craner contended that they had not received notice of the claim, the file contained a letter from the beneficiary's attorney sent within days of the real estate closing, putting CNSS on notice of the malpractice claim.

After the insurance carrier disclaimed coverage, CNSS retained a law firm to defend the malpractice claim. That firm later sought to withdraw, after learning of CNSS' receipt of the notice of the claim. The law firm then billed CNSS $18,000, which Craner, Satkin and respondent deemed too high. The partners asked Scheer to contact a friend of his at the law firm

to discuss the bill. Respondent then contacted another attorney he knew at the law firm and discovered that Scheer had paid the bill. The $18,000 fee was paid with law firm funds, not charged to the individual attorneys responsible for the claim. Respondent was angry, not only that CNSS funds had been expended on attorney fees, but also because he had not been informed of the malpractice claim.

Also in 1999, respondent learned of another claim filed against CNSS. Although he had asked Schwartz to cover a matter for him, Schwartz declined, stating that he was defending a "vendetta lawsuit" for Scheer. Schwartz told respondent that Scheer had arranged for the arrest of a debtor for failure to provide discovery, when it turned out that the discovery had previously been submitted to CNSS. The debtor sued CNSS, which paid the $5,000 malpractice deductible with law firm funds. No one at CNSS disclosed this malpractice claim to respondent, who learned of it only because Schwartz was not available to cover another matter for him.

In April 2000, respondent learned of a third malpractice claim against the firm, also filed in connection with Scheer's collection practices against debtors. Respondent confronted Scheer, asking him "whether he was going to put his hand in my

pocket again". According to respondent, Scheer paid the $5,000 insurance deductible with CNSS funds.

About two to three weeks later, just before respondent received the $10,053 check in the Don-Jon matter, he discovered that a fourth malpractice claim had been brought against CNSS. Respondent learned from Satkin that one of the associates had missed a statute of limitations. Respondent instructed Satkin to share this information with the firm's malpractice carrier and the client.

In late 1999, respondent learned from associates in the firm[4] that, in two matrimonial cases, the judge had ordered monetary sanctions against Craner and that those sanctions had been paid with CNSS funds. Respondent took the position that the attorney responsible for the sanctions should bear the financial burden solely.

In late 1998 or early 1999, Scheer reported to the three partners that he was unable to reconcile the separate collections trust account that he maintained. According to respondent, it was not unusual for Scheer to have this difficulty and he would close the trust account and open another to isolate the problem. Indeed, the check that Scheer issued to

---

[4] CNSS had one non-equity partner and three associates.

respondent in the Don-Jon matter was drawn on a checking account bearing the name "Craner, Nelson, Satkin & Scheer Attorney Trust Account VI". Scheer, thus, had opened six different trust accounts from 1987, when he joined the firm, until 2000, averaging one trust account every two years.

Because Scheer was unable to identify the owners of the $22,000 in his trust account, respondent suggested assigning the firm's bookkeepers, one full-time and one part-time, to identify the amounts due to each client. In October 1999, respondent learned from Edward Liebman, CNSS' accountant, that the firm had paid him $18,000 to resolve the trust account discrepancy and that another $10,000 fee was projected.

The firm did not make any adjustments for the payment of these sanctions, malpractice insurance deductibles, legal fees paid to defend the malpractice claim in which the insurer had disclaimed coverage, or accountant's fees. Respondent, thus, felt that he was paying for the mistakes and misconduct of others. Although CNSS had a stockholder's agreement containing provisions for the sale and purchase of a partner's share of the practice, the firm did not have a partnership agreement addressing the financial issues with which respondent was concerned.

On May 18, 2000, while $5,000 of the $10,083 check received from Don-Jon remained in the firm's trust account, respondent learned from an associate that some of his partners were improperly paying referral fees to other attorneys. The associate had mentioned a proposition whereby another firm would refer a large volume of cases in exchange for a one-third referral fee, although none of the attorneys at CNSS were certified civil trial attorneys. Respondent testified about that conversation and how it led to his expenditure of the $5,000 for his own use:

> And then [I] said to him that I didn't understand why he felt it was even necessary to [pay a referral fee]. No one in the firm had done it. We all had fairly successful practices and his reaction was very disturbing because he had said to me, "You must be kidding."
>
> "Kidding about what?" And he said about splitting fees. And he said Satkin splits fees and Scheer splits fees.
>
> I said, "No, they don't." They get referrals from doctors, from chiropractors. I have never seen a payment made to any attorney. It does not exist."
>
> He left. I went upstairs to Stephen Satkin and I told him the conversation, and took a long time telling him about it, what the implications were, and frankly Stephen Satkin left me with the impression, yes, they do do that. And that he just knew how apoplectic I was at the time about the secrecy of handling matters, that as a courtesy to me he wanted to know what apparently was a done deal.

I lost it at that point. I went into my office. It was early afternoon. I dictated letters to my secretary disbursing the $5,000 and I left the firm. I mean I just walked out.

[1T88-4 to 1T89-4.]

According to respondent, the $5,000 amount was symbolic of the malpractice deductible that the firm had secretly paid several times. On that issue, the following exchanges took place at the ethics hearing between the presenter and respondent:

Q. And you felt that by asking you to pay your piece of that [malpractice insurance deductible] they were taking money [out] of your pocket?

A. I certainly did, and I said it.

Q. . . . You said you didn't care about money; is that correct?

A. Money is not the ultimate standard that I use to determine my success personally or as an attorney or vis-a-vis any other measure of existence. It was the only measure, the only measure by which my partners determined their success and their worth. And it was only in their eyes that I took the $5,000. I couldn't care less about the $5,000. The sum meant nothing to me. I don't want to be cavalier about it, but it is the truth. I certainly didn't need it. I was doing very well and had accumulated a certain significant wealth at the time. I used their measure. I didn't use my measure. My measure failed. My measure was to professionalize the firm and it was sliding very quickly backwards and it continued to do so until the day I left.

Q. So in reaction you did an unprofessional unethical act.

A. Well I guess that's the issue is whether it constitutes a violation of ethics. It was an improper act. I shouldn't have done it. I regret every waking moment of my life that I did it.

[1T119-14 to 1T120-19.]

. . . .

Q. We talked a lot about the 5,000 deductible. Is it your position in this litigation, and I have not seen it in your answer, that you were owed the $5,000 you took?

A. I frankly thought I was owed a lot more than $5,000. $5,000 was just emblematic of the recurrent theme that I was hammering away at and ultimately recognized my inability to effectuate at the firm. I was owed a great deal more than $5,000. . . . The $5,000 was emblematic of a very deep problem there and that was a complete lack of accountability.

[1T138-25 to 1T139-22.]

According to respondent, he would have been entitled to one-half of the $10,083 fee from Don-Jon. Respondent testified that he never entertained the notion that he was stealing from CNSS.

When asked at the ethics hearing why he did not leave the firm before the events of May 18, 2000, respondent replied that it was not in his nature to quit and that, although his relationship with his partners was growing more difficult, he considered them his friends.

Respondent submitted letters from six clients, a certified public accountant, and respondent's son attesting to respondent's honesty and integrity.

Respondent also presented the testimony of eight clients, one attorney, two accountants, including Edward Liebman, CNSS' accountant, respondent's wife, and respondent's secretary. The clients generally testified that respondent had represented them and their businesses for substantial periods of time, that they trust respondent and continue to permit him to handle their funds, that he is an indispensable resource for their businesses, and that, although they were aware of the conduct that resulted in the ethics complaint, they continue to maintain a high opinion of respondent.

Liebman testified that respondent is the only attorney to whom he refers clients. According to Liebman, respondent's practice was the most profitable in the firm because he had only one secretary, while Scheer had eight employees, Satkin had three secretaries and large out-of-pocket expenses, and Craner had stopped generating significant income years before. Liebman stated that, as an accountant, he did not understand the method that CNSS used to allocate profits and that somehow respondent's

profitability was not taken into account when the firm divided the profits at the end of the year.

Liebman also testified about incidents in which Craner took two clients, ADS Sales Company and Sell Rite Millwork, from respondent:

> Well, I know situations with two of my clients, where Ron was on vacation; and my clients didn't know he was on vacation and called the firm and needed some immediate legal advice; and John Craner took the phone calls and gave them advice; and in giving them advice which was not proper, he basically told them that the information that Ron was telling them, the advice that Ron was giving them, was incorrect and that Ron had – had given them very bad advice and that he was giving them the right advice; and they should really deal with him instead of Ron. . . .
>
> And again, within the firm – I mean if it happened in my accounting firm, that someone called up and that situation kind of happened, it wouldn't affect my income because we don't share income the way this formula was. But if these clients that were Ron Nelson's went to John Craner, then the income factor allocated at the end of the year would have gone to John Craner.
>
> [3T47-13 to 3T48-15.]

Respondent's secretary confirmed that, although at first the atmosphere at CNSS had been cordial, it became unpleasant. Respondent's wife testified that respondent complained that his partners had their hands in his pockets all the time and cited two examples in which CNSS had bought life insurance policies

from a friend of one of the partners and season tickets for sporting events, all without respondent's knowledge or consent.

Respondent also submitted a report dated January 8, 2003, from a psychiatrist, Daniel Greenfield. In the report, Dr. Greenfield opined that respondent did not suffer from any disorders and that respondent was unlikely to engage in any similar conduct in the future. He noted that respondent's motive was anger, not greed.

Respondent's reply to the OAE dated May 6, 2002, stated, in part, that:

> [d]uring the entire five-month period from the discovery of my defalcation in May 2000 by my partners to their abrupt and stoic dismissal of me in October 2000, there was no indication or suggestion by any of my partners that something was amiss. Business, in effect, continued as usual.
>
> At no time did I think or was I advised that my theft of firm moneys was a matter of attorney ethics as distinguished from an internal matter. The act did not in any way impact adversely, directly or indirectly, on any client or on any client's property, rights, or interests. The event was neither reported by the firm or any of its partners in May 2000, when they discovered it, nor in October 2000, five months after the fact, when they determined to act upon it. Moreover, soon after my departure, when counsel for both sides engaged in their initial consideration of and communications concerning the financial aspects attendant to my discharge, neither counsel believed that the act required reporting. . . . My conduct was asserted by the firm and the other partners solely to support their denial of my earned but unpaid salary, their denial of a contractual severance benefit due to

> me, and their denial of a contractual or fair valuation of my 25% equity interest in the firm.

As mentioned at the outset, in his answer, respondent admitted the allegations of the complaint. The OAE has relied on respondent's answer to the complaint, as well as his use of the terms "defalcation" and "theft" in his reply to the grievance, for the proposition that respondent admitted that he knowingly misappropriated funds from CNSS.

The special master issued an initial report finding that respondent's misconduct amounted to knowing misappropriation of law firm funds and recommending his disbarment. Despite this determination, in the same report, the special master found that respondent never "intended to steal from his partners" and that he "did not intend to take from his partners something to which he was not entitled." The special master also noted numerous mitigating factors - respondent was forthright, candid, and remorseful; respondent made immediate restitution and apologized; respondent committed a single aberrant act; respondent had an otherwise unblemished career of thirty-three years; respondent performed years of good service for many clients who still trust and depend on him; and respondent's action resulted from "years of conflict, mounting frustration and failed communication" with his partners.

On February 3, 2004, following respondent's motion for reconsideration, the special master issued another report, finding similarities between this matter and Spector:

> Both Brian Spector and Ronald Nelson acted in reaction to internal law firm disputes and their own personal dissatisfactions with other members of their firm. Both men took funds clearly belonging to the firm, but to which each had their own reasonable expectation of ultimate entitlement. . . .
>
> Both men involved themselves in misleading or deceptive practices. . . .
>
> I have determined that Ronald Nelson's motive for his action was to communicate a point regarding his aggravation to his partners about what he perceived to be their inappropriate behavior; part of which was the use of firm funds for their personal expenses (from Mr. Nelson's perspective).
>
> When determining that the appropriate discipline for Brian Spector should be a reprimand, the Disciplinary Review Board also looked to Mr. Spector's motive. The Disciplinary Review Board found that Mr. Spector could not possibly have expected his behavior not to come to light, particularly after he initiated a lawsuit against the firm and that therefore, he could not possibly have had intentions to keep or steal funds that he was not entitled to from the firm. It was determined that Mr. Spector did not have the *Mens Rea* to steal.
>
> Ronald Nelson also could not possibly believe that he would be able to conceal his actions from his firm. . . . I do not believe that Mr. Nelson ever considered what he was doing to be really stealing, because I do not see that he intended to keep the money. He simply wanted to make a point to the other members of his firm. . . .

> [T]o recommend that Ronald Nelson be disbarred when Brian Spector received a reprimand, would be completely unfair and to inappropriately consider form more important than substance. I cannot consider the one time aberrant act on the part of Ronald Nelson to be more egregious than the actions taken by Mr. Spector over a period of months. Rightfully or wrongfully, Mr. Nelson committed his infraction on principle; Mr. Spector for personal gain.
>
> . . . I have also determined that Mr. Nelson did not have the *Mens Rea* to steal.

Finding respondent's conduct to be inappropriate and in violation of RPC 8.4(b), the special master recommended a three-month suspension.

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

Respondent's frustration and dissatisfaction with CNSS, a firm with which he had been affiliated for thirty years, was not disputed. Despite his pleas to his partners, they failed to enter into a partnership agreement addressing issues such as accountability for malpractice and other expenditures. As a result, according to respondent, CNSS continued to use law firm funds to pay for such items as malpractice deductibles, sanctions imposed on individual attorneys, fees for an accountant to reconcile one partner's separate trust account, and legal fees for a malpractice matter not covered by

insurance. Because respondent's partners refused to make adjustments for these items at the end of the year, respondent paid for part of these expenses, contrary to his wishes. All of these matters converged in April and May 2000, when respondent learned that two malpractice claims had been filed against CNSS within several weeks of each other and that two of his partners had a practice of paying improper referral fees to other attorneys. These incidents, coupled with respondent's recent knowledge that Craner had been trying to take his clients, increased respondent's frustrations.

Immediately after respondent received the $10,083 check from Scheer in the Don-Jon matter, respondent issued a check for only $5,083 that he gave to Scheer to be deposited in CNSS' business account. $5,000 remained in the trust account. About three weeks later, on May 18, 2000, respondent used the $5,000 for personal expenses. His explanation was that he became angry and "lost it." According to respondent, he believed that he was entitled to the money he took and to more.

Based on the unrebutted testimony concerning the formula used by CNSS, we find that respondent's belief was reasonable. Respondent stated that CNSS compensated attorneys who brought in clients and attorneys who worked on the cases. He asserted that

he would have been entitled to one-half of the Don-Jon fee of $10,083, which is more than $5,000. In addition, respondent believed that he was entitled to additional compensation because each partner should have been accountable for certain expenses attributable solely to that partner, such as malpractice deductibles, accountant's fees, and legal fees. Although respondent's partners apparently disagreed with respondent's accounting and accountability beliefs, respondent felt that his partners were constantly "putting their hands in his pocket."

The OAE maintains that respondent knowingly misappropriated law firm funds, while respondent contends that he was involved in an internal partnership dispute. Two lines of cases have developed in matters in which attorneys have taken law firm funds. In one line, primarily In re Siegel, 133 N.J. 162 (1993), In re Greenberg, 155 N.J. 138 (1998), and In re LeBon, 177 N.J. 515 (2003), the attorneys knowingly misappropriated funds from their law firms and were disbarred, pursuant to In re Wilson, 81 N.J. 451 (1979). In the second line, including In re Bromberg, 152 N.J. 382 (1998), In re Paragano, 157 N.J. 628 (1999), In re Glick, 172 N.J. 319 (2002), and In re Spector, 178 N.J. 161 (2004), the attorneys held a reasonable belief of entitlement to

the funds that they took. This reasonable belief saved them from disbarment.

In Siegel, supra, 133 N.J. 162, a partner in a large law firm converted more than $25,000 of the law firm's funds by submitting false disbursement requests. Between 1986 and 1989, Siegel engaged in thirty-four 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 arguments that (1) his conduct was aberrational; (2) his misconduct was the result of disillusionment with the "firm culture;" and (3) 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, supra, 155 N.J. 138, 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. The insurance company 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. After 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).

In In re LeBon, supra, 177 N.J. 515, the attorney diverted $5,895.23 from his law firm. He instructed a client to make a check for legal fees payable to him. When the client asked the attorney's secretary to verify these instructions, LeBon told his secretary to confirm them. LeBon deposited the fee check in his personal bank account and used the funds to pay his mortgage payment and to make political contributions. The law firm

discovered LeBon's actions when it contacted the client about the outstanding fee.

Although LeBon acknowledged that he had knowingly misappropriated funds, he urged us to impose an indeterminate suspension. LeBon offered no explanation for his conduct, characterizing his actions as "incredibly stupid," and admitted that he had other sources of funds that could have been used for his expenses. He also showed no remorse. LeBon was disbarred.

The attorneys in the above cases did not contend that they believed that they were entitled to the funds that they took. In Siegel, the Court rejected the contention that the attorney was not on notice that stealing from a law firm could result in disbarment and rejected the mitigating factors of good reputation, prior trustworthy professional conduct and general good character. In Greenberg, the attorney unsuccessfully argued that his acts predated Siegel and that he satisfied the Jacob standard of mental illness. The attorney in LeBon asserted that mitigating factors warranted an indeterminate suspension, rather than disbarment. In other words, they each acknowledged that they had knowingly misappropriated funds and argued that, for various reasons, they should not be disbarred. They did not advance a reasonable belief of entitlement to the funds.

In the second line of cases, the attorneys were found not to have knowingly misappropriated law firm funds. 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.

In the Matter of Arthur D. Bromberg, Docket No. DRB 97-129, DRB decision at 19-20 (December 16, 1997).

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's expenses in the business account checkbook. When Paragano formed the partnership, he had an agreement with the junior partner that he could continue to pay personal expenses with law firm funds. The OAE did not contend that Paragano had knowingly misappropriated law firm funds, relying on Bromberg, supra. Paragano received a six-month suspension for extensive deception over a long period of time.

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 responsible for supervising 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.

The most recent case on this issue is In re Spector, supra, 178 N.J. 161. This is the case that resulted in respondent's motion for reconsideration and the special master's change of position in this matter. Spector, who had been "of counsel," gave notice to his firm, in July 1993, that he would be leaving to form a new firm with another attorney. The firm permitted Spector to remain until he established his new office, as long as he maintained his billable hours. Spector stayed with the firm until November 30, 1993.

During November 1993, Spector separately recorded about 110 hours of his time for clients that he anticipated would be clients of his new firm. He did so without his firm's knowledge or consent. Although he had previously billed at least 150 hours per month, in November 1993, he billed only 42.1 hours for his firm. Spector admitted that he intended to temporarily conceal his billings until he and his firm were able to resolve differences that had developed about the distribution of fees received after his departure from the firm.

In December 1993, Spector submitted invoices and advised the clients to pay the fees to his prior firm. He later requested that the clients forward all payments to him, represented that he would forward to the firm its share of the payment, and indicated that copies of the letters were sent to the firm. Spector did not send the copies to the firm, did not inform the firm of his actions and did not forward the payments to the firm. Spector deposited some of the fees from these clients in his new firm's trust account and some in the business account. He testified that he intended to hold all of the fees in escrow, but, through a miscommunication with his new partner, some of the fees were deposited in the business account and were expended.

In January 1994, Spector complained to his prior firm that he had not received any fees collected in December 1993. The firm replied that Spector had breached their agreement by billing only forty hours in November 1993. After the firm indicated that it intended to subpoena clients to gather information about payment of fees, Spector admitted that he had billed some of his November 1993 time to his new firm. He then remitted to the law firm fees that he had received from the firm's clients, as well as fees received from his November 1993 billings.

In February 1994, Spector sued his prior firm. The matter was referred to arbitration conducted by retired Justice Robert Clifford, who found that Spector reacted to the mistaken notion that his prior firm had failed to comply with an employment agreement with him and that Spector was convinced that the firm intended to cheat him. Justice Clifford determined that Spector did not act out of malice or evil.

The OAE did not seek Spector's disbarment because his motive was to retain the fees until the dispute with his firm was resolved and because he had an entitlement to the funds.

We found that Spector did not have the mens rea to steal and that his lawsuit against the prior firm evidenced his belief

that his actions were defensible, because he had to have known that his actions would be revealed during the litigation. Taking into account the short period of time during which the misconduct occurred, that the misconduct had taken place almost ten years before we considered the matter, that the misconduct was aberrational, and that respondent had an otherwise exemplary career, we determined that a reprimand was the appropriate level of discipline.

In this matter, we must decide whether respondent's actions are more akin to those of the attorneys in Siegel, Greenberg, and LeBon or in Bromberg, Paragano, Glick, and Spector. The primary question, then, is whether respondent had an entitlement to the funds that he took, or, more precisely, whether he reasonably believed that he had such an entitlement.

The record provides ample evidence that respondent reasonably believed that he was entitled to the funds that he took. Under the formula used by CNSS to divide profits, respondent was entitled to a portion of the fees paid by Don-Jon. In addition, because respondent felt that his partners' hands were constantly "in his pocket" when they spent the firm's funds on such items as malpractice deductibles, legal fees, and

accountant's fees, respondent believed that he was entitled to retain the $5,000 balance in the trust account.

Just as in Spector, respondent believed that his partners were "cheating" him. Just as in Spector, respondent sued his prior firm and partners. He would not have done so if he had thought that his actions, which he knew would come to light, were unethical. Just as in Spector, respondent did not have the mens rea to steal. Just as in Paragano, respondent was entitled to most, if not all, of the funds he took. Just as in Paragano, the records supports the existence of an internal law firm dispute, not theft. Just as in Paragano, respondent's only unethical conduct was the concealment of his actions. Just as in Bromberg, respondent resorted to "self-help." Just as in Bromberg, respondent advanced funds to himself to which he believed he was entitled. Just as in Bromberg, respondent acted out of self-righteousness, but the manner in which he chose to correct the matter was wrong.

Even in the first report recommending disbarment, the special master found that respondent did not intend to steal from his partners and that he did not intend to take something to which he was not entitled. In her second report, the special master found that respondent did not have the mens rea to steal

and that he committed his infraction on principle, without any intention of keeping the money.

The OAE contends that respondent admitted that he knowingly misappropriated firm funds. Respondent's use of the terms "defalcation" and "theft of funds" does not transform the misconduct. One of the essential elements of knowing misappropriation is the knowledge that there is no authority to take the funds. See In re Noonan, 102 N.J. 157, 159-60 (1986) where the Court held that "[t]he misappropriation that will trigger automatic disbarment under *In re Wilson*, 81 *N.J.* 451 (1979) . . . 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." No matter how respondent characterized his actions, they do not amount to knowing misappropriation if respondent had the reasonable belief that he was entitled to the funds.

In criminal law, it "is a widely accepted doctrine reflected in either American decisional or statutory law that an uncorroborated extrajudicial confession cannot provide the evidential basis to sustain a conviction for crime." State v. Lucas, 30 N.J. 37, 51 (1959). Even though disciplinary matters are not part of criminal jurisprudence, the label that

respondent placed on his conduct does not eliminate the presenter's burden to prove, by clear and convincing evidence, all of the elements of a charge of knowing misappropriation. Here, there was ample evidence that respondent believed that he had the authority to take the funds. He, therefore, was not guilty of knowing misappropriation.

Respondent, however, engaged in deceitful acts when he concealed his use of the funds by sending letters and using an inapplicable case caption to give the impression that the funds were being disbursed pursuant to a settlement. His actions violated RPC 8.4(c). Because his actions were not criminal, we dismiss the charge that respondent violated RPC 8.4(b).

As to the quantum of discipline, the attorneys in Bromberg, Glick, and Spector received reprimands, while the attorney in Paragano received a six-month suspension. Paragano engaged in fourteen acts of deception over a sixteen-month period. Glick's misconduct took place over a three-year period and Spector engaged in multiple acts of deceit. Both received reprimands, as did Bromberg. Here, respondent's misconduct was isolated to one incident. In addition, he presented substantial mitigating factors. He has practiced law for more than thirty years with no other ethics implications. Numerous witnesses testified to his

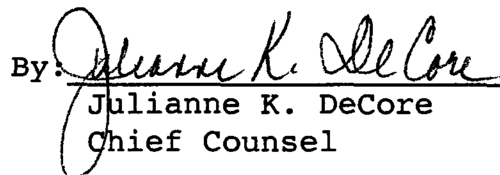
honesty and integrity. Neither respondent's partners, nor the attorneys representing each party in the partnership litigation, believed that respondent's conduct warranted a referral to disciplinary authorities.

As mentioned above, we have reexamined our position on the appropriate discipline to be imposed when attorneys resort to "self-help." Although, under the circumstances, such misconduct does not amount to theft, it is dishonest and reprehensible. The resolution of intra-firm controversies should never be accomplished by the secret diversion of funds from one's law firm. Attorneys should be aware that, in the future, similar deceitful misconduct may warrant the imposition of a suspension, rather than a reprimand.

We unanimously determine that a reprimand is the appropriate level of discipline in this matter. 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

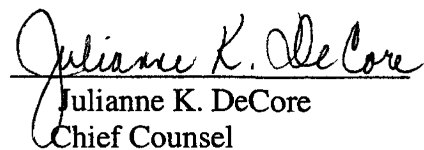
In the Matter of Ronald J. Nelson
Docket No. DRB 04-057

Argued: April 15, 2004

Decided: May 19, 2004

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				2



Julianne K. DeCore
Chief Counsel