

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-254
District Docket No. XIV-05-115E

IN THE MATTER OF
FRANCIS R. MONAHAN
AN ATTORNEY AT LAW

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Decision

Argued: October 20, 2005

Decided:

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

Respondent did not appear, despite proper service.

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") following respondent's guilty plea to third-degree theft by deception, in

violation of N.J.S.A. 2C:20-4 and third-degree theft, in violation of N.J.S.A. 2C:20-3.

Respondent was admitted to the New Jersey bar in 1990. On March 2, 2004, he was temporarily suspended in connection with the above charges. In re Monahan, 178 N.J. 499 (2004). In 2003, he received an admonition for failure to communicate with clients in two matters. We also required respondent to complete a course in proper office procedure after determining that he routinely failed to answer clients' telephone calls or to send them copies of relevant documents. In the Matter of Francis R. Monahan, Docket No. 03-124 (DRB 2003). Respondent formerly maintained a law practice in Jersey City.

On July 12, 2004, a Hudson County grand jury indicted respondent on charges of conspiracy to commit theft, conspiracy to commit theft by deception, theft (two counts), theft by failure to make required disposition of property (two counts), and conspiracy to neglect an elderly or disabled person. In an unrelated matter, on March 8, 2005, the Hudson County Prosecutor's Office filed an accusation charging respondent with theft by deception. On March 8, 2005, respondent entered guilty pleas to one count of theft and one count of theft by deception.

The Honorable Kevin G. Callahan, J.S.C., sentenced respondent, on July 7, 2005, to a 364-day jail term, which was suspended for one year, and probation for a five-year term. He also ordered respondent to pay restitution of \$237,690.82.

The facts about the underlying matter are set forth in the OAE's affidavit in support of its motion for temporary suspension:

On or about February 9, 2004, the Office of Attorney Ethics received a copy of an Order to Show Cause captioned, In the Matter of Antoinette Sluckis, Alleged Vulnerable Adult, prepared by Frank R. Gioia, Esq., attorney for the Hudson County Board of Social Services, Adult Protective Services. Attached was a verified Complaint alleging that Francis R. Monahan, Jr., Esq. (respondent), acting in concert with other individuals, obtained cash, real estate and other property from Sluckis by criminal and fraudulent means.

The complaint alleged that Sluckis was an elderly woman. She owned and occupied a residence known as 114 Carlton Avenue, Jersey City, New Jersey and owned other substantial liquid assets.

In or about mid-June 2003, an individual named Mark Martino moved into the Sluckis home, began acting as her primary caregiver and identified himself to third parties as Sluckis' godson or grandson.

The Complaint alleged that as part of the scheme to defraud Sluckis, Martino and others used undue influence to convince Sluckis to

sell her home for substantially less than fair market value and to liquidate her assets.

Respondent participated in that scheme by acting as attorney for Sluckis in the December 2003 sale of her home, in the contemporaneous liquidation of her bank and stock assets, and the subsequent misappropriation of those funds.

Shortly after the December 2003 sale of her home, Sluckis was reported missing to the Jersey City Police Department, which commenced a missing persons investigation.

In January 2004, police located Sluckis in the home of one Jessica McGill in Union City New Jersey. At that time, Sluckis was dehydrated, malnourished and she was wearing dirty, urine and feces stained clothing and in need of immediate medical assistance.

Sluckis was hospitalized at Christ's Hospital in Jersey City and survived.

Martino was subsequently arrested by [the] Jersey City Police Department. Martino gave a written statement in which he stated that respondent gave him \$50,000 in cash from the proceeds of [the] sale of Sluckis' home.

Martino stated that respondent kept the balance of the proceeds of the sale, estimated at \$166,000, and the proceeds of the liquidation of Sluckis' bank account, estimated at \$71,000.

Investigation disclosed that Sluckis maintained a bank account at Trustcompany Bank which was closed in mid or late November 2003. Respondent deposited the proceeds of that account in the amount of \$71,000 into

his attorney trust account no. 606250674 at Provident Bank.

Respondent's attorney trust account records show that respondent then issued an unnumbered check to himself in the amount of \$71,000. That check bears the notation "Sluckis" in the lower left hand corner. Respondent cashed this check on December 5, 2003.

After the closing on [Sluckis'] home, respondent issued a second attorney trust account check to himself in the amount of \$55,000 by check #133 dated December 26, 2003. That check also bears the notation "Sluckis" in the lower left hand corner. Respondent cashed check #133 on December 26, 2003. He endorsed the back and provided a driver's license and photo id for purposes of verification of identity. Again, payment was made in cash.

Respondent issued a third attorney trust account check to himself, in the amount of \$55,000 by check #126 dated December 31, 2003. That check also bears the notation "Sluckis" in the lower left hand corner. Respondent cashed check #126 on December 31, 2003. He endorsed the back and provided a driver's license for the purpose of verification of identity. Again, payment was made in cash.

Respondent issued a fourth attorney trust account check to himself, in the amount of \$54,630.44, by check #[128] dated January 6, 2004. That check also bears the notation "Sluckis" in the lower left hand corner.

Respondent negotiated his attorney trust account check #[128] at a branch of Provident Bank located in East Brunswick, New Jersey.

There, on January 6, 2004, respondent purchased a cashier's check drawn on the East Brunswick Branch of Provident Bank in the sum of \$54,630.44 payable to Francis Monahan, Jr., Esq., LLC.

. . . .

On or about January 17, 2004, respondent told Jersey City Police Department detectives that the subject property was sold for \$240,000, which he gave in cash to Sluckis and Martino, who then exited his office and left in a taxicab. Respondent further stated he had no new address for Sluckis.

On Tuesday, February 17, 2004, respondent was arrested after being charged with theft by a Hudson County grand jury.

On Wednesday, February 18, 2004, respondent appeared at the OAE offices, accompanied by his attorney, Kevin M. Bosworth, Esq.

Respondent answered general questions pertaining to his general trust and business accounting procedures, but citing his 5th Amendment privilege, refused to answer questions regarding Sluckis.

In addition, despite the OAE's request for respondent's trust and business account records, respondent failed to turn over any financial records or other records, pertaining to this matter except a file folder containing miscellaneous documents regarding Sluckis.

Respondent provided photocopies of two settlement statements indicating that Sluckis received \$70,984.27 in cash on December 5, 2003 and \$164,630.44 in cash on an unspecified date.

There is no indication that Sluckis received any of the funds. Sluckis stated to investigators that she did not receive any of the proceeds of the sale and that respondent retained all the money.

In a second related matter, additional information obtained by the Jersey City Police department indicated that Sluckis also maintained a stock portfolio and her recent records reflected a substantial sales [sic] of stock in late 2003. The proceeds of sale are presently unaccounted for.

In a third matter, on February 18, 2004, the District VI Ethics Committee forwarded to the OAE information developed by the Chase Manhattan Bank Fraud Department indicating that respondent deposited credit card transactions totaling approximately \$36,000 on fraudulent credit cards. The same information was also provided to the Federal Bureau of Investigation, Newark Office.

[OAEaEx.B,Ex.1.]¹

At the plea proceeding, respondent's counsel elicited the factual basis for the guilty pleas:

Q. Mr. Monahan, first I'm going to ask you several questions concerning accusation 261 of the 2005 term. This charges you with theft by deception here in Jersey City during the dates between November 18, 2003 . . . and November 25, 2003. During that period of time do you remember being here in Jersey City?

¹ OAEa refers to the appendix of the OAE's August 22, 2005 brief.

A. Yes I was.

Q. And do you remember acquiring a credit card?

A. Yes.

Q. Okay and did you know that that credit card was in fact false?

A. Yes.

Q. Okay. And with that false credit card, what if anything did you do with it?

A. I personally obtained through the use of it (indiscernible) from Chase Manhattan Bank.

Q. Okay. And that was not with of course the permission or authority of either the Chase Manhattan Bank or Land Merchant Solutions, is that correct?

A. That's correct.

Q. And you knew that the card that was used was not authorized for use, is that correct?

A. That's correct.

. . . .

Q. Mr. Monahan, I need to ask you questions about a separate criminal offense. This is encompassed in indictment 1268-08 of the 2004 term. This charges you that during a period of time between November 2003 and January 2004 again here in Jersey City as well as other locations, that you were involved in a conspiracy with others to

commit a theft. Now at that time were you a lawyer?

A. Yes, I was.

Q. Okay. And during that period of time did you come to do a real estate transaction for a lady who lived in Jersey City?

A. Yes I did.

Q. What was her name?

A. Her name was Antoinette Slukas (phonetic).

Q. Okay. Now with regard to the transaction that you - and you took that work upon - in your role as a lawyer, is that correct?

A. That's correct.

Q. And who did that - who did that include?

A. That included Jessie McGill (phonetic) - oh no, I'm sorry. Jessie McGill, I'm confusing it with - I don't know the names.

Q. Mark Martino?

A. Mark Martino.

Q. Okay. And as a result of your contact with Martino, Mr. Martino, did you and Mr. Martino make an agreement to commit a crime?

A. Yes.

Q. What was that?

A. To take this - commit theft to take this woman's money.

Q. Okay. The money would be obtained through what means?

A. The real estate transaction.

Q. Okay and she owned a piece of property in Jersey City?

A. Yes she did.

Q. Okay. It was a house closing, is that right?

A. Yes.

Q. Okay. And as a result of the house closing that you would do, that you and Mr. Martino agreed that you would - that you and he would take the proceeds of that closing without her permission, is that correct?

A. That's correct.

THE COURT: You knew that was illegal to do that, a violation of your trust?

A. Yes, Your Honor.

THE COURT: Stipulate that you were an attorney at the time.

A. Yes.

[OAEaEx.G13 to G17.]

At the sentencing hearing, the assistant prosecutor emphasized the venality of respondent's wrongdoing:

Judge, that any thief or any defendant would take a woman who is almost ninety years old, an elderly woman, and sell her house out from under her, pocket the money and then basically throw her out on the street with nowhere to live and nowhere to go and no one to turn to, is bad enough.

In this case though, Judge, it was the lawyer that this poor woman paid to represent her and to take care of her affairs that was the thief.

[OAEaEx.K29 to K30.]

Moreover, William Thomas, senior counsel for the New Jersey Lawyer's Fund for Client Protection ("the Fund"), appeared at the sentencing hearing to request that the judge order respondent to pay restitution of \$237,690.82 that the Fund had paid Sluckis.² Thomas addressed respondent's apparent lack of eagerness to reimburse the Fund:

If the defendant is truly penitent and has been rehabilitated or seeks rehabilitation, I would think that such a defendant would embrace the opportunity to undo the harm that he has done.

In this instance today, we see a defendant who seeks to avoid that responsibility and seeks to avoid undoing what he has done. Instead, what he proposes is that all of the other lawyers in this state and all of the judges in this state pay the cost of his

² The Fund also paid a total of \$44,500 to four other claimants in unrelated matters.

theft and we pay that cost each year by paying into this client protection fund so that there will be money available to compensate victims of dishonest attorneys.

I submit, Your Honor, we are already paying a significant penalty for the misconduct of Mr. Monahan. By stealing from his client, he has not only harmed specifically Mrs. [Sluckis], but he has harmed the reputation of all lawyers who practice in the courts of New Jersey. We are all victims and we are all paying a price now because he has harmed the reputation of our court system and of all the lawyers who practice here.

[OAEaEx.K8 to K9.]

As noted above, the judge ordered respondent to pay restitution of \$237,690.82, the amount that the Fund requested.

In its brief, the OAE asserted that respondent violated RPC 1.15(a) (knowing misappropriation of client funds), RPC 1.15(b) (failure to promptly deliver funds that the client is entitled to receive), RPC 8.4(b) (criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The OAE urged us to recommend disbarment based on both the knowing misappropriation of client funds and respondent's conviction of theft by deception.

Following a review of the full record, we determine 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 pleas to theft and theft by deception constituted a violation of RPC 8.4(b) and (c). Only the quantum of discipline to be imposed remains at issue. R. 1:20-13(c)(2); In re Lunetta, 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. Discipline is imposed even when the attorney's offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

Here, respondent knowingly misappropriated the funds of Antoinette Sluckis, an elderly and vulnerable client. He conspired with others to facilitate the sale of Sluckis' house. Although respondent led Sluckis to believe that, as her attorney, he was representing her and protecting her interests, all the while he was scheming to defraud her of the proceeds of the house sale. After being tricked into selling her property,

Sluckis was left unattended in an apartment, dehydrated, malnourished, and in soiled clothing. After the closing, respondent withdrew a series of checks totaling more than \$235,000 from his trust account, each check bearing the notation "Sluckis." Respondent was ordered to pay restitution in the amount of \$237,690.82 for his theft of funds from Sluckis. He was guilty of a callous and egregious act of knowing misappropriation, a violation of RPC 1.15 and the principles established in In re Wilson, 81 N.J. (1979) 431. In addition, although the record is sparse, respondent also pleaded guilty to theft of approximately \$36,000 by the unauthorized use of a credit card.

Attorneys in the following cases either pleaded guilty or were found guilty of similar crimes and were disbarred. In In re Scola, 175 N.J. 58 (2002), the attorney pleaded guilty to one count of third-degree theft by deception and one count of third-degree witness tampering. In the Matter of Mark M. Scola, Docket No. 02-121 (DRB 2002) (slip op. at 1). Scola became involved in a check-kiting scheme that his law partner had planned and acknowledged that he had received \$4,000 from that scheme. Id. at 2.

The attorney in In re Villoresi, 163 N.J. 85 (2000), was convicted of one count of second-degree misapplication of entrusted property, and two counts of second-degree theft by failure to make required disposition of property received. In the Matter of Alfred J. Villoresi, Docket No. 99-087 (DRB 1999) (slip op. at 1). In one matter, Villoresi retained the \$200,000 proceeds from the sale of his client's mortgage, disbursing most of the funds for his own purposes. Id. at 2. In a second matter, the attorney received more than \$563,000 from his clients with which to establish a trust fund for their children. Id. at 3. Although duty-bound to invest and maintain those monies to benefit the client, the attorney used those funds for his own benefit Id. at 3 to 4.

The attorney in In re Bzura, 142 N.J. 478 (1995), was found guilty of theft by deception, theft by failure to make required disposition of property, and misapplication of entrusted property. In the Matter of Leonard T. Bzura, Docket No. 94-157 (DRB 1995) (slip op. at 1). In one matter, although Bzura did not perform the necessary legal services, he billed a client and received more than \$9,000 for legal services, and improperly disposed of \$1,000 in trust funds belonging to that client. Id. at 3. In a second matter, after he had been suspended from the

practice of law, the attorney accepted legal fees of \$5,000. Id. at 4. We noted that disbarment is the only appropriate remedy for the knowing misuse of client funds. Id. at 5.

In In re Lunetta, supra, 118 N.J. at 445, 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. Id. at 447. 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. Id. at 447-48. Nevertheless, he was disbarred. Id. at 450.

Finally, in In re Iulo, 115 N.J. 498 (1989), the attorney failed to satisfy an outstanding mortgage in connection with a real estate transaction. Id. at 499. When the other attorney in the transaction brought the matter to Iulo's attention, Iulo issued a check, which was returned for insufficient funds. Ibid. After the county prosecutor's office investigated, other misconduct was discovered and the attorney was convicted of two counts of misapplication of entrusted funds, a violation of N.J.S.A. 2C:21-15. Ibid. Iulo was disbarred. Id. at 504.

Here, based on both the knowing misappropriation of client funds and respondent's guilty plea to theft charges, we voted to recommend respondent's disbarment. Members Boylan and Neuwirth 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

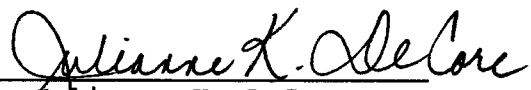
In the Matter of Francis R. Monahan, Jr.
Docket No. DRB 05-254

Argued: October 20, 2005

Decided: December 14, 2005

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X					
O'Shaughnessy	X					
Boylan						X
Holmes	X					
Lolla	X					
Neuwirth						X
Pashman	X					
Stanton	X					
Wissinger	X					
Total:	7					2


Julianne K. DeCore
Chief Counsel