SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-176

IN THE MATTER OF

EUGENE M. LaVERGNE

AN ATTORNEY AT LAW

Decision

Argued: July 20, 2000

Decided: January 31, 2001

Brian D. Gillett appeared on behalf of the Office of Attorney Ethics.

Robert A. Weir appeared on behalf of respondent, who was also present.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us based on a motion for final discipline filed by the Office of Attorney Ethics (OAE) based upon a finding in Oceanport municipal court that respondent was guilty of theft by failure to make required disposition of property received, a disorderly persons offense, in violation of N.J.S.A. 2C:20-9. The statute provides, in relevant part, as follows:

> [A] person who purposely obtains or retains property upon agreement or subject to a known legal obligation to make specified payment or other disposition, whether from such property or its proceeds or from his own

property to be reserved in equivalent amount, is guilty of theft if he deals with the property obtained as his own and fails to make the required payment or disposition.

In essence, respondent entered into an agreement to purchase an automobile from Lauren Raczek for $700. Her father, James Apostolacus, gave respondent an unsigned title to the vehicle in anticipation of payment. Respondent never made payment, however. Instead, he took possession of the vehicle and allowed it to be registered to a new owner, Ms. Ahrens, whose own vehicle, he claimed, was to be sold to fund the purchase of Raczek's vehicle. Therefore, according to respondent, payment of the $700 was contingent upon the sale of the second vehicle.

On January 7, 1998, the municipal court found as follows:

> And, again, going to the violation, as to the 2C:20-9, going back to the elements and reviewing those with respect to these facts, it's clear that the defendant purposely obtained property from Laura Raczek. That there was an agreement that the property was subject to a known legal obligation of $700.00. That was clear between the parties that the defendant dealt with the property as his own and failed to make the required disposition in this case, transferring it to a third party. But nonetheless, accepting the title, transferring it illegally to Ms. Ahrens without any consideration.
>
> And that subsequently after several attempts to collect, told Mr. Apostolacus that he never made this agreement at all. That he doesn't owe him any money. And that, and he doesn't have the car anymore either, since he transferred it to a third party. The third party, again for the record, having not paid a dime for the car neither to this date, and happily driving the car around after forging the woman's signature, Ms. Raczek's signature, and filing it with DMV, without Ms. Raczek's consent or knowledge, or any other member of the Apostolacus family.
>
> So based on all that, [] I find the testimony of Rolly and Helmers [the

> investigating officers], especially, to be credible. That in their conversations that defendant acknowledged that he had an agreement. That he would make the payments. That in fact the car was transferred and that he did not.
>
> And I find Mr. Apostolacus to be clear, credible and concise also. It's clear that he and Mr. LaVergne don't like each other. That at one time they were very good friends. They had a falling out and they obviously don't like each other. And each might have a disposition or predisposition to testify falsely against the other. But, I believe Mr. Apostolacuses [sic] version after hearing him testify and after hearing the defendant testify. So I'm going to make a guilty finding base on that.
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> [OAE brief, exhibit D]

the court imposed a fine of $250, court costs of $30, restitution of $750, a Violent Crimes Compensation Board penalty of $50 and a Safe Neighborhoods and Streets fee of $75. Respondent appealed the conviction to the Superior Court, Law Division, and again to the Appellate Division. On December 23, 1999, the Appellate Division affirmed the conviction and ordered the same fine, court costs, penalties and restitution as the trial court.

The OAE urged us to impose a three-month suspension for respondent's misconduct.

* * *

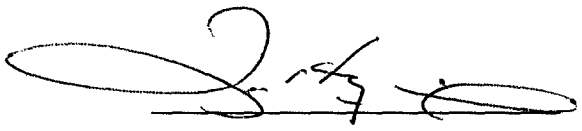
Upon a de novo review of the record, we determined to grant the OAE's motion for final discipline. The existence of a criminal record is conclusive evidence of respondent's guilt. R. 1:20-13(c) (1), In re Gipson, 103 N.J. 75, 77 (1986). Respondent's conviction for t heft by failure to make required disposition of property received is clear and convincing evidence that he violated RPC 8.4(b) (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving

dishonesty, fraud, deceit or misrepresentation). Only the quantum of discipline remains at issue. R. 1:20-13 (c) (2) (ii); In re Goldberg, 105 N.J. 278, 280 (1987).

The OAE, urged the imposition of a three-month suspension for this respondent, citing two cases involving attorneys who were found guilty of disorderly persons offenses. However, the conduct in those cases was more severe than respondent's. In the first case cited, In re Viggiano, 153 N.J. 40 (1998) the attorney was suspended for three months for his guilty plea to two counts of simple assault. After the attorney was involved in a minor automobile accident, he reached into the other vehicle and repeatedly struck the female driver with his closed fist. He then assaulted the police officers who were called to the scene. In the second case, In re Addonizio, 95 N.J. 121 (1984), a three-month suspension was imposed on an attorney who pleaded guilty to the aggravated sexual assault of an eight year-old boy. Here, respondent failed to pay $700 for the purchase of an automobile and treated the vehicle as if it had been purchased, claiming that payment was contingent upon the sale of another vehicle. Without minimizing the nature of respondent's misconduct, we believe that this case more closely resembles In re Butler, 152 N.J. 445 (1998). There, a reprimand was imposed upon an attorney who sold a computer belonging to his law firm, without the authority to do so, and kept the proceeds for himself. We, therefore, unanimously determined to impose a reprimand for respondent's misconduct.

We also required respondent to reimburse the Disciplinary Oversight Committee for all administrative expenses.

Dated: 1/31/01



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Eugene M. LaVergne
Docket No. DRB 00-176

Argued: July 20, 2000

Decided: January 31, 2001

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan			X				
Brody			X				
Lolla			X				
Maudsley			X				
O'Shaughnessy			X				
Schwartz			X				
Wissinger			X				
Total:			9				

By Robyn M. Hill 5/18/01
Robyn M. Hill
Chief Counsel