SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-432

IN THE MATTER OF	
RAYMOND T. LEBON	
AN ATTORNEY AT LAW	

Decision

Argued: February 6, 2003

Decided: May 2, 2003

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Stephen B. Sacharow 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 based on a recommendation for discipline filed by special master Ronald L. Glick.

Respondent was admitted to the New Jersey bar in 1979. He was temporarily suspended, effective July 1, 2000, pending the conclusion of these proceedings. In re LeBon, 164 N.J. 37 (2000).

The ethics complaint alleged violations of RPC 1.15, presumably (b), (failure to promptly deliver funds that a client or third person is entitled to receive), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and the law of In re Siegel, 133 N.J. 162 (1993) (knowing misappropriation of law firm funds).

After the ethics pleadings had been filed and a special master appointed, the Court granted respondent's motion to stay the New Jersey proceedings, pending the conclusion of disciplinary proceedings in Pennsylvania. In March 2002, the Pennsylvania court suspended respondent for one year.

Thereafter, the Office of Attorney Ethics ("OAE") filed a motion with the Court for an order permitting the resumption of the New Jersey proceedings. Respondent opposed the motion and filed a cross-motion to have the case proceed by way of reciprocal discipline. The Court granted the OAE's motion and denied respondent's motion as moot.

The material facts are not in dispute. Respondent admitted all of the factual allegations of the complaint. The ethics hearing was limited to the issues of aggravating and mitigating factors.

In 1999, respondent was of counsel with the law firm of White and Williams, which had offices in New Jersey and Pennsylvania. Respondent's principal office and the majority of his work were in Pennsylvania. As part of his work for White and Williams, respondent performed legal services for Black Clawson Company, Inc. As of October 1999, Black Clawson owed $5,895.23 in fees to White and Williams.

Respondent instructed Black Clawson to make its check for legal fees payable to him, rather than to White and Williams. When Black Clawson asked respondent's secretary to verify that the check should be made payable to respondent, respondent told his secretary to confirm that advice.

Respondent received the $5,895.23 check on or about October 15, 1999 and deposited it in his personal account. In March 2000, when an accounting department employee contacted Black Clawson about the outstanding fee, White and Williams discovered respondent's wrongdoing.

Respondent resigned from White and Williams on March 24, 2000. On March 31, 2000, he repaid the $5,895.23 to the firm.

Respondent reported the incident to the OAE, stating that he had used the funds "for political contributions and other personal expenses." Respondent denied that any psychological or other problem had caused him to take the funds.

Alan Starr, White and Williams' managing partner, testified that he and two other members of the firm confronted respondent about the check on March 24, 2000. According to Starr, respondent told them that (1) he needed the funds to make an overdue mortgage payment, (2) his secretary did not know of the theft and (3) he had told his secretary that Black Clawson's check should be made payable to him because he had advanced the funds to pay the invoice. Starr testified that respondent did not apologize for the theft or indicate that he had intended to repay the firm, even though he had been

given a "substantial" bonus shortly after the theft. Starr added that, prior to this incident, respondent had been an honest and faithful employee.

Respondent testified that he had used $3,500 of the funds for political contributions: $500 each to three candidates for the Florence Township committee and $2,000 to "Edgewater Park democrats." He admitted that he had sufficient personal funds available for the political contributions and that it "was incredibly stupid" to take the law firm's funds. He did not recall when he decided to take the $5,895.23, but stated "it was very convenient timing wise for me to use that money for political donations."

Respondent further testified that he used the remaining funds to make a past-due mortgage payment. As to whether he needed the funds for the mortgage payment, he testified as follows:

> Special Master: but the point is is [sic] that when you told – I'm just trying to find out when you told Mr. Starr and the other associates of White and Williams that you needed money to make this mortgage payment, that really wasn't true?
>
> Respondent: I used the money to make the mortgage payment.
>
> Special Master: I know, but let's stop playing –
>
> Respondent: Sure.
>
> Special Master: -- this semantic game. Excuse me, Mr. Sacharow [sic]. I'm just trying to understand was that or was that not true. I know what you used it for but the question is not whether [sic] you used it for it's what you needed it for whether there were some requirement that you had this money available because you needed it to make a mortgage payment and the answer to me sounds like that is not true. That was not a truthful statement?

Respondent: I used it for the mortgage payment. The mortgage payment at that time was probably 15 days overdue and that's what I used it for.

Special Master: Okay. And you had no other sources of money to make that mortgage payment?

Respondent: I didn't have any ready cash at that time, correct.

Special Master: That wasn't my question. Again, you had no other sources?

Respondent: No. I cannot tell you that there were no other sources.

Respondent admitted that he had sufficient funds to repay the firm as soon as he received his next paycheck, but did not do so. He attributed his misconduct to a "lapse in judgment," a "terrible mistake," which "ruined" his life. According to respondent, the incident was reported in his county newspaper and caused great embarrassment for him and his family.

After respondent resigned from White and Williams, he started a solo practice in Philadelphia, until he was suspended in March 2002. At the time of the ethics hearing, October 2002, respondent was not employed.

Respondent recognized that knowing misappropriation of law firm funds generally results in disbarment, but "hoped" that he would be given an indeterminate suspension, pursuant to R. 1:20-15A(2).

* * *

In mitigation, respondent presented the testimony of friends, community members, former clients and other attorneys as to his reputation for honesty, integrity, generosity and dedication to community service. One of the witnesses had known respondent for twenty-five years, another for thirty years. Two of the witnesses were retired partners of White and Williams and one is a current partner. All testified that they believed that respondent's conduct was aberrational, the result of an isolated mistake.

Respondent also argued, in mitigation, that (1) a portion of the funds that he misappropriated would have gone to him in any event because, as part of his compensation arrangement, he received between fifteen and twenty-five percent of the fees that he generated and (2) the political contributions went to clients of White and Williams. As to the second argument, respondent testified that Florence Township was not a client when he made the contribution but became one "in January when the reorganization occurred." Respondent later explained that he, personally, was appointed Florence Township's solicitor at that time.

* * *

Respondent contended that the OAE should have proceeded by way of a motion for reciprocal discipline, based on his one–year suspension in Pennsylvania. As set forth above, the Court granted the OAE's motion for an order permitting it to resume the New Jersey proceedings, after the conclusion of the Pennsylvania proceedings. The Court denied, as moot, respondent's cross-motion to have the case proceed by way of reciprocal

discipline. The Court has, therefore, already ruled on this issue. In any event, the fact that Pennsylvania had issued a ruling did not preclude the OAE from proceeding with a hearing on this matter, rather than by way of a motion for reciprocal discipline. R. 1:20-14.

* * *

The special master found respondent guilty of knowing misappropriation of law firm funds. He rejected respondent's contention that an indeterminate suspension was the appropriate sanction, finding no mitigating factors other than respondent's "otherwise unblemished career and personal life and the loyalty of his friends and colleagues." On the other hand, the special master noted the presence of several aggravating factors:

> [T]he premeditated theft, the decision (after opportunity for reflection) to pursue the theft, the theft itself (without any compelling factors asserted as to otherwise 'justify' the need for the money), the failure to return the money before discovery (when Respondent had the economic wherewithal to do so), the failure to demonstrate remorse when confronted with the act by Mr. Starr and the ongoing effort to obfuscate the so called 'need' for the money during the course of the hearing.

As to respondent's expressed remorse during the hearing, the special master expressed his opinion that it was "calculated to avoid sanction and that he is more sorry to have been caught than he is sorry that he undertook to convert these funds."

The special master recommended that respondent be disbarred.

* * *

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

Respondent admitted – and there is clear and convincing evidence – that he knowingly misappropriated law firm funds. The only issue is the appropriate sanction for his conduct.

Both the OAE and respondent agreed that, unless R. 1:20-15A(2) applies, respondent is subject to disbarment under In re Siegel, 133 N.J. 162 (1993) (disbarment where, over a three-year period, the attorney converted $25,000 of his law firm's funds by submitting false disbursement requests) and In re Greenberg, 155 N.J. 138 (1998) (disbarment where the attorney converted $7,500 of his law firm's funds by requesting that his clients make their fee check payable to him personally; the attorney also obtained $27,025 of the firm's funds for his personal use by submitting false disbursement requests over a one-year period). 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).[1]

Respondent argued that he should be given an indeterminate suspension, pursuant to recently adopted R. 1:20-15A(2). The Court's Administrative Determination that

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[1] Respondent did not argue that he should be spared from disbarment on the basis that his conduct was confined to a single episode, unlike Siegel and Greenberg. While that issue has not previously been addressed in the Siegel line of cases, the distinction has not been recognized in the Wilson line of cases. See In re Picciano, 158 N.J. 470 (1999) and In re Russell, 131 N.J. 249 (1990).

accompanies the rule states that indeterminate suspension is intended "to accommodate disciplinary cases that lie on the cusp of disbarment....Serious ethical misconduct that might otherwise require disbarment may, in the light of mitigating circumstances, result in an indeterminate suspension." The only mitigating circumstances here are respondent's reputation, the aberrational nature of his act and his unblemished twenty-three year legal career. These factors are outweighed by numerous aggravating factors.

Respondent's actions were not the result of a momentary lapse in judgment. His theft was premeditated. He instructed the client to make the check payable to him, rather than to his law firm. Then, when the client telephoned his office questioning the appropriate payee, respondent directed his secretary to confirm the advice. He knowingly stole his law firm's funds for his own benefit. Furthermore, no compelling need for the funds motivated his actions. He used part of the funds to make political contributions, admitting that he had sufficient personal funds available for that purpose. He used the remainder of the stolen funds to make a mortgage payment, which was approximately fifteen days overdue. When pressed by the special master, he conceded that he had "other sources" available for the mortgage payment. Also, respondent admitted that he could have repaid the firm when he received his next paycheck, but did not do so. Shortly after his theft, respondent received a "substantial" bonus from the firm, but did not use those funds to repay the firm. It was not until his theft was discovered that he did so.

For the foregoing reasons, we were not convinced that R. 1:20-15A(2) is applicable in this matter. We, therefore, unanimously determined to recommend that respondent be disbarred for his knowing misappropriation of law firm funds. One member did not participate.

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

Disciplinary Review Board
Rocky L. Peterson, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Raymond T. LeBon
Docket No. DRB 02-432

Argued: February 6, 2003

Decided: May 2, 2003

Disposition: Disbar

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson	X						
Maudsley	X						
Boylan	X						
Brody	X						
Lolla							X
O'Shaughnessy	X						
Pashman	X						
Schwartz	X						
Wissinger	X						
Total:	8						1

Robyn M. Hill 5/8/03
Robyn M. Hill
Chief Counsel