SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-432
District Docket No. XIV-03-725

IN THE MATTER OF	:
	:
JEFFREY P. LICHTENSTEIN	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 20, 2005

Decided: February 2, 2005

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

Respondent did not appear despite proper notice.

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") based on respondent's conviction for theft by deception.

Respondent was admitted to the practice of law in New Jersey in 1980. He was temporarily suspended in March 2004, after the indictment in this matter was filed. In re Lichtenstein, 178 N.J. 498 (2004).

In October 2004, we determined that respondent should be reprimanded for gross neglect, lack of diligence, failure to communicate with client, failure to cooperate with disciplinary authorities, and violation of the Rules of Professional Conduct for his actions in one matter. In the Matter of Jeffrey P. Lichtenstein, Docket No. DRB 04-226. The case proceeded before us as a default, and is currently pending before the Court.

On January 27, 2004, respondent was charged in a fifty-one count indictment with twenty-five counts of forgery (N.J.S.A. 2C:21-1a(2)), twenty-five counts of uttering a forged instrument (N.J.S.A. 2C:21-1a(3)), and one aggregate count of theft by deception (N.J.S.A. 2C:20-4).

The charges were based on respondent's alleged conversion of checks drawn on the trust account of the law firm of A. Kenneth Weiner, where respondent had worked as an attorney for approximately eight years, prior to his departure in November 2003. Following a complaint by the Weiner law firm, the Middlesex County Prosecutor's Office began an investigation that uncovered twenty-five instances where checks ranging from $142.30 to $1,200, intended for law firm clients, had been intercepted in the office mail by respondent, who forged the clients' signatures on the checks and deposited the funds into his personal bank account. These events occurred on various

dates between December 2002 and July 2003. The aggregate amount stolen was $26,980.90.

On May 28, 2004, respondent appeared before the Honorable Frederick P. DeVesa, J.S.C. and, pursuant to a plea agreement, pleaded guilty to third degree theft by deception. The factual basis for the plea was elicited by respondent's counsel, William M. Fetky:

> MR. FETKY: . . . . Jeff, during the time period between December 16, 2002, and August 1st, 2003, you were an associate at the law firm of A. Kenneth Weiner. Is that correct?
>
> THE DEFENDANT: That's correct.
>
> MR. FETKY: During that time period did you write certain checks on Mr. Weiner's trust account?
>
> THE DEFENDANT: I did not write the checks. The checks were written, and I then negotiated the checks without knowledge or consent of the clients or Mr. Weiner.
>
> MR. FETKY: And you took the proceeds for your personal use. Correct?
>
> THE DEFENDANT: I did.
>
> MR. FETKY: And you knew that was illegal. Is that correct?
>
> THE DEFENDANT: Yes.
>
> MR. FETKY: Was the amount in excess of $500?

THE DEFENDANT: Yes, it was.

[OAEbEx.C at 5-6.][1]

On September 24, 2004, Judge DeVesa sentenced respondent, in accordance with the plea agreement, to a three-year term of probation. Judge DeVesa noted that respondent was entitled to the presumption against imprisonment for a first conviction. Judge DeVesa also ordered respondent to perform thirty days of community service and assessed penalties and fines totaling $155.[2]

Prior to imposing sentence, Judge DeVesa stated:

> I have reviewed the aggravating and mitigating factors that the law requires me to review. I did find one aggravating factor. That, of course, is that the defendant did take advantage of a position of trust and confidence in committing this offense. He did misappropriate money from his employer, and his employer's clients. And, therefore, clearly that aggravating factor applies.
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> [OAEbEx.E at 7.]

The OAE argued that respondent's conviction for theft by deception mandates his disbarment.

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[1] OAEb refers to the brief filed by the OAE.

[2] Respondent made restitution prior to sentencing.

Upon a de novo review of the record, we determine to grant the OAE's motion for final discipline.

Respondent pleaded guilty to theft by deception, a violation of N.J.S.A. 2C:20-4, admitting that he knowingly misappropriated client funds. His criminal conviction clearly and convincingly demonstrates that he has committed a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer, and that he has engaged in conduct involving, dishonesty, fraud, deceit or misrepresentation. RPC 8.4(b) and (c).

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). 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 based on the commission of a crime depends on a number of 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 though an attorney's

offense is not related to the practice of law. In re Kinnear, 105 N.J. 391 (1987).

The OAE argued that the law and facts of this case require that respondent be disbarred. We agree. Twenty-five years ago, the Court announced the bright-line rule that knowing misappropriation of client funds will, almost invariably, result in disbarment. In re Wilson, 81 N.J. 451 (1979). Wilson placed the highest priority on the maintenance of public confidence in the Court and in the bar, ruling that "mitigating factors will rarely override the requirement of disbarment." Id. at 461. Although the use of such terms as "almost invariably" and "rarely override" might raise the possibility of a departure from the automatic disbarment rule, since 1979 the Wilson rule has been applied without exception. Every attorney who has been found to have knowingly misappropriated client funds has been disbarred. In In re Noonan, 102 N.J. 157, 159-60 (1986), the Court detailed the requirements for a finding of knowing misappropriation:

> The misappropriation that will trigger automatic disbarment under In re Wilson, 81 N.J. 451 (1979), disbarment that is 'almost invariable,' id. at 453, 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. It makes no difference whether the money was used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer

> intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment.

Respondent took checks payable to law firm clients, forged the endorsements, and utilized the funds for his own purposes. There are no circumstances in this case that warrant a departure from the Wilson rule. We unanimously recommend that respondent be disbarred.

Member Ruth Jean Lolla did not participate.

We further determine to 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 Jeffrey P. Lichtenstein
Docket No. DRB 04-432

Argued: January 20, 2005

Decided: February 2, 2005

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	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:	8					1

Julianne K. DeCore
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Chief Counsel