SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-158
District Docket No. XIV-04-546E

IN THE MATTER OF	
JAY RONALD KOLMAR	
AN ATTORNEY AT LAW	

Decision

Argued: July 21, 2005

Decided: September 1, 2005

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

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE")

following respondent's affidavit of resignation and subsequent disbarment in New York.[1]

Respondent was admitted to the New Jersey bar in 1990. He has no disciplinary history in New Jersey.

On February 15, 2005, the Supreme Court of New York, Appellate Division, First Judicial Department, entered an order of disbarment based on respondent's November 30, 2004 resignation from the practice of law. In the resignation, respondent acknowledged that he could not successfully defend against charges that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, a violation of DR 1-102(A)(4) [22 N.Y.C.R.R. §1200.3].

Respondent disclosed in the affidavit of resignation that, for about ten years, he misappropriated a total of $161,383 from his law firm's petty cash account. He repeatedly requested small amounts of money, typically $250, misrepresenting that the funds would be used for real estate transactions. Instead, respondent used the funds for his own purposes. Although $110,000 of the funds were not billed to clients, neither respondent nor the

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[1] Pursuant to 22 N.Y.C.R.R. 691.9, upon receipt of an attorney's affidavit of resignation from the New York bar, the court in New York may enter an order disbarring the attorney.

firm could determine whether the clients were billed the $50,000 balance. The firm, therefore, either returned the funds to, or applied a credit to the invoices of those clients and, in turn, respondent reimbursed the firm.

After the law firm learned of respondent's misconduct, he took a voluntary leave of absence and then resigned from the firm. On October 26, 2004, the law firm reported respondent's misconduct to the OAE.

The OAE urged us to recommend respondent's disbarment.

Reciprocal discipline proceedings in New Jersey are governed by Rule 1:20-14(a)(4), which provides:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With respect to subparagraph (E), attorneys in New Jersey who knowingly misappropriate funds from law firms have been disbarred. Although respondent was disbarred in New York, a disbarred New York attorney may seek reinstatement seven years after the effective date of disbarment, pursuant to 22 N.Y.C.R.R. 603.14. In effect, thus, disbarment in New York is equivalent to a seven-year suspension.

In New Jersey, attorneys who knowingly misappropriate funds from their law firms, in violation of RPC 8.4(c)(conduct involving dishonesty), are permanently disbarred. In In re Siegel, 133 N.J. 162 (1993), a partner in a large law firm converted more than $25,000 of the law firm's funds by submitting false disbursement requests. Id. at 165. Between 1986 and 1989, Siegel engaged in thirty-four acts of misconduct. Ibid. 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, for the following reasons, he should not be disbarred: (1) his conduct

was aberrational; (2) he lacked notice that theft of firm funds could lead to disbarment; (3) he suffered personal hardships at the time of the misappropriation; (4) his record of service to his clients, the profession, and the community was excellent; and (5) his misconduct was the result of disillusionment with the "firm culture." Id. at 167, 168, 171, 172.

The attorney in In re Greenberg, 155 N.J. 138 (1998) was also a partner in a law firm. In June 1991, he settled a case for $42,500. Id. at 141. The insurance company issued two checks for $21,250, payable to both Greenberg and his clients. Ibid. Greenberg endorsed both checks and sent them to his clients, with the request that they return a $7,500 check payable to him. Ibid. After the clients complied, Greenberg kept the $7,500. Ibid. 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. Ibid. In addition, between August 1992 and August 1993, Greenberg obtained $27,025 in law firm funds for his personal use by submitting false disbursement requests. Ibid. The Court disbarred Greenberg. Id. at 162.

In In re Le Bon, 177 N.J. 515 (2003), the attorney diverted $5,895.23 from his law firm. In the Matter of Raymond T. Le Bon,

Docket No. 02-432 (DRB May 2, 2003) (slip op. at 3). He instructed a client to make a check for legal fees payable to him. Ibid. When the client asked the attorney's secretary to verify these instructions, Le Bon told his secretary to confirm them. Ibid. Le Bon deposited the fee check in his personal bank account and used the funds to make his mortgage payment and political contributions. Ibid. The law firm discovered Le Bon's actions when it contacted the client about the outstanding fee. Ibid.

Although Le Bon acknowledged that he had knowingly misappropriated funds, he urged us to impose an indeterminate suspension. Id. at 5. Le Bon offered no explanation for his conduct, characterizing his actions as "incredibly stupid." He admitted that he had other sources of funds that could have been used for his expenses. Id. at 4. He also showed no remorse. Id. at 7. Le Bon was disbarred. In re Le Bon, 177 N.J. 515 (2003).

In In re Epstein, 181 N.J. 305 (2004), an associate received and retained fees from six clients. In the Matter of Charles S. Epstein, Docket No. 04-061 (DRB May 19, 2004) (slip op. at 13). In four cases, after the attorney instructed clients to make checks for fees payable to him, he cashed the checks and retained the funds. Ibid. In two other cases, the attorney admitted that the clients may have paid him fees in cash. Ibid. Although the

attorney had no entitlement to the fees, he retained the cash for several months. Ibid. In one case, the attorney claimed that he cashed the check and placed the funds in his briefcase, intending to turn them over to the firm, and that the cash fell out of his briefcase. Id. at 5. We found that the attorney misappropriated the firm's funds in a manner similar to that of Le Bon. Id. at 14-15. Epstein was disbarred.

Here, respondent's misappropriation was extensive and extended, amounting to more than $160,000 taken over a ten-year period. If, as he claims, respondent received an average of $250 when he wrongfully took funds from the petty cash account, he misappropriated funds on approximately 640 occasions (640 times $250 equals $160,000). Each time, he misrepresented that the funds would be used in connection with a real estate closing. In our view, such a pattern of misrepresentation and misappropriation would mandate disbarment, even in the absence of the automatic disbarment rule under Wilson.

Moreover, disbarment is required under the Wilson rule. In Greenberg, the Court interpreted Siegel as requiring disbarment for misappropriation of law firm funds. "The *Wilson* rule, as described in *Siegel, supra*, applies in this case: 'In the absence of compelling mitigating factors justifying a lesser sanction,

which will occur quite rarely, misappropriation of firm funds will warrant disbarment.'" In re Greenberg, supra, 155 N.J. at 153.

We thus determine that for respondent's knowing misappropriation of law firm funds, the only discipline warranted is disbarment. Members Robert Holmes, Esq., Louis Pashman, Esq., and Reginald Stanton, Esq. 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 Jay R. Kolmar
Docket No. DRB 05-158

Argued: July 21, 2005

Decided: September 1, 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:	6					3

Julianne K. DeCore
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Chief Counsel