SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-038

IN THE MATTER OF

NICHOLAS KHOUDARY

AN ATTORNEY AT LAW

Decision

Argued: March 16, 2000

Decided: December 20, 2000

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

Michael Gilberti 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 on a motion for final discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's guilty plea to structuring a monetary

transaction to avoid reporting requirements, in violation of 31 U.S.C.A. § 5322(b), 5324(3) and 5324(a)(3), 31 C.F.R. § 103.53 and 18 U.S.C.A. § 2.[1]

Respondent was admitted to the New Jersey bar in 1988. He was temporarily suspended by the Court on August 5, 1999 following his guilty plea. In re Khoudary, 160 N.J. 219 (1999). He has no other ethics history.

Respondent was involved in a scheme to cash stolen International Business Machine Corporation ("IBM") checks. Respondent was not aware that the checks had been stolen, but agreed to help cash four of six stolen checks in a manner that would allow a bank to avoid issuing the required notice to the Internal Revenue Service ("IRS"). The six checks were mailed between May and October 1992 from an IBM office in San Jose, California, to Schenkers International ("Schenkers"), a freight-forwarding firm in Freeport, New York.

The checks never arrived at Schenkers, but were stolen and eventually given to an individual by the name of Anthony Costa. Costa falsely told Peter Pietanza ("Pietanza"), a friend and client of respondent, that the checks belonged to two Schenkers' owners, who wanted to keep the money themselves and were willing to pay Costa a commission for cashing the checks. For a share of the commission, Pietanza cashed two of the checks in the Cayman Islands. Pietanza then enlisted respondent's help in negotiating the remaining four

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[1] 31 USCA § 5324(a)(3) states in relevant part:

No person shall for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section . . . .

* * *

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

checks by depositing them into his attorney trust account and then using the proceeds to buy cashier's checks.

The record details what transpired as follows:

IBM was in the business of, among other things, selling computer equipment overseas. IBM maintained its headquarters in Armonk, New York, with offices throughout the United States, including San Jose, California. Schenkers arranged for the shipment of IBM products overseas, for which services it received a monthly check from IBM.

From approximately May 29 through October 12, 1992, IBM sent six checks from its San Jose office to Schenkers to pay for freight-forwarding services. The six checks, totaling $333,415.30, never arrived at the Schenker's office. They were stolen by an unidentified person.

In June 1992, Pietanza told Anthony Costa that he could assist people in hiding money off shore, especially in the Caribbean. Costa had the first IBM check for $17,169.89. The check bore the endorsement "Schenkers International Forwarding." Costa informed Pietanza that the two Schenkers' owners to whom the check belonged wanted to convert the check proceeds to their personal use, without accounting for the money on the books of the corporation. Costa knew that the check had been stolen from Schenkers and that the endorsement on the check was forged. Pietanza and Costa entered into an agreement to cash the check "off shore" and share the commission.

In June 1992, Pietanza took the IBM check to the Cayman Islands and purchased several cashier's checks, each under $10,000. In Florida, the cashier's checks were converted to cash. Pietanza kept his percentage and sent the remainder to Costa. A second check was mailed by IBM to Schenkers on June 8, 1992, in the amount of $20, 022.44. A similar disposition was made with that check.

In late June 1992, Pietanza stopped cashing the checks in the Cayman Islands. He met with respondent to devise a scheme to cash the checks in the United States, without triggering the filing of a currency transaction report ("CTR"). During the meeting, Pietanza told respondent what he had learned from Costa, that is, that the checks belonged to two owners of Schenkers, who wanted to convert the proceeds of the checks to their own personal use, without accounting for the proceeds on the books of the corporation. Respondent agreed to help Pietanza cash the checks in return for one-half of Pietanza's commission. They devised a plan to convert the checks to cash without triggering the filing of a CTR.

On June 29, 1992, IBM mailed a check for $71,860.28 to Schenkers, which was never received. On July 7, 1992, Costa gave the check to Pietanza. On July 9, 1992, Pietanza gave the check to respondent, who deposited it in his attorney trust account. On July 16, 1992, respondent wrote a check to himself in the amount of the stolen check. On July 20, 1992, respondent used the check to purchase six cashier's checks (five of them in the name of Vito Pietanza) each in an amount less than $10,000. Between July 20 and 22,

1992, Vito Pietanza cashed the checks at various banks in New York and returned the cash to Pietanza. After deducting a fee for himself and respondent, Pietanza returned the remainder of the cash to Costa.

On July 29, 1992, IBM mailed a $71,726.51 check to Schenkers which was not received. On August 3, 1992, Costa gave the check to Pietanza, who turned it over to respondent. Respondent deposited the check into his attorney trust account, wrote a check from the account to himself in the same amount and used the check to purchase ten cashier's checks. At Pietanza's direction, respondent purchased checks in the names of Pietanza's wife, daughter, son and the Regent Group. Each check was for less than $10,000 to avoid the filing of a CTR.

The same scenario occurred with an IBM check mailed on August 28, 1992 to Schenkers, in the amount of $57,959.54. The check was funneled to respondent and deposited into his attorney trust account. Respondent wrote a check to himself in the same amount as the stolen check and then bought six cashier's checks made payable to various individuals, in amounts less than $10,000.

IBM mailed its sixth check to Schenkers on October 12, 1992 for $94,686.64. Again, the check was given to respondent, who deposited it into his trust account, wrote a check out to himself for the same amount and then purchased ten cashier's checks, nine of which were in amounts less than $10,000.

Eventually, Schenkers discovered that it had not received the six checks. Through a representative from IBM, Schenkers learned that the checks had, in fact, been mailed out and had been paid out of respondent's attorney trust account.

The OAE urged us to suspend respondent for a period of two years, retroactive to August 5, 1999, the date of his temporary suspension.

* * *

Following a review of the full record, we have determined 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). Only the extent of discipline to be imposed remains at issue. R.1:20-13(c)(2); In re Lunetta, 118 N.J. 443, 445 (1989).

The purpose of discipline is to protect the public from attorneys who do not meet the standards of responsibility of their profession. In re Barbour, 109 N.J. 143, 161 (1988). Whenever an attorney commits a crime, he or she violates his or her professional duty to uphold and honor the law. In re Bricker, 90 N.J. 6, 11 (1982).

Although there is no evidence that respondent knew that the IBM checks were stolen, his role in the transaction was a serious criminal offense that directly involved his law practice and the use of his attorney trust account.

Suspensions have been imposed on attorneys who have committed crimes in the course of assisting friends or clients. See, e.g., In re Konigsberg, 132 N.J. 263 (1993) (thirty-three month time-served suspension where attorney pleaded guilty to making a false statement to an agency of the United States, in that he backdated a contract to obtain insurance proceeds for a client); In re Bateman, 132 N.J. 297 (1993) (two-year suspension where attorney was convicted of mail fraud conspiracy, by making a false statement on a loan application, thereby assisting client in obtaining an inflated appraisal value on the property); In re Gassaro, 124 N.J. 395 (1991) (two-year suspension for attorney's participation in a conspiracy to defraud the IRS on behalf of client/father-in-law); In re Silverman, 80 N.J. 489 (1979) (eighteen-month suspension where attorney pleaded guilty to a federal indictment charging obstruction of justice; attorney filed an answer in a bankruptcy action, falsely stating that his client had a lawful right to maintain custody of approximately twenty-six tractors and trailers, knowing the falseness of his answer and that an addendum to a lease covering the vehicles had been backdated to support the client's claim; attorney had been admitted to the bar for almost fifty years). But see In re Lunetta, 118 N.J. 443 (1989) (attorney disbarred for conspiracy to receive and dispose of stolen securities in excess of $5,000). In disbarring Lunetta, the Court considered that he had become involved in a protracted criminal conspiracy to receive and sell stolen securities. Lunetta, an experienced attorney, laundered and shielded funds from known criminal activities. While the Court believed that Lunetta would not repeat the misconduct, it

nonetheless found that his conduct "in furthering a complex criminal scheme so impugned 'the integrity of the legal system that disbarment [was] the only appropriate means to restore public confidence.'" Id. at 450, citing In re Hughes, 90 N.J. 32, 36 (1982).

Here we have considered that there is no evidence that respondent either conspired to steal or knew that the IBM checks had been stolen. Respondent's conduct involved the knowing and willful assistance of structuring transactions to evade IRS reporting requirements. We have also considered respondent's acknowledgment of wrongdoing and his expressed remorse for his conduct. We, therefore, unanimously determined that a two-year suspension, retroactive to the date of respondent's temporary suspension, August 5, 1999, is sufficient discipline for respondent's criminal offense.

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

Dated: 12/20/00

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Nicholas Khoudary
Docket No. DRB 00-038

Argued: March 16, 2000

Decided: December 20, 2000

Disposition: Two-year suspension

Members	Disbar	Two-year 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					

Robyn M. Hill 1/24/01
Robyn M. Hill
Chief Counsel