

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-421

IN THE MATTER OF :
TERRENCE PAUL HIGGINSON :
AN ATTORNEY AT LAW :

Decision

Argued: January 29, 2004

Decided: March 16, 2004

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

Respondent did not appear for oral argument, 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 reciprocal discipline filed by the Office of Attorney Ethics (“OAE”) pursuant to R. 1:20-14(a), following respondent’s disbarment by consent in New York for, among other things, misuse of client funds.

Respondent was admitted to the New Jersey and New York bars in 1987. He has no history of discipline.

On August 12, 2002, the Supreme Court of New York, Appellate Division, Second Department, issued an opinion accepting respondent’s consent to disbarment. In the Matter of

Terence P. Higginson, 298 A.D. 2d 8 (2002). The opinion set forth the basis for respondent's decision to consent to disbarment:

In the course of his resignation, Mr. Higginson acknowledges that the evidence of professional misconduct has been adduced by the Grievance Committee's ongoing investigation and that the authorization of a disciplinary proceeding based on those charges would be recommended to the Court by the Grievance Committee. These charges include failing to properly maintain and preserve at least \$19,105 in escrow funds with which Mr. Higginson was entrusted with respect to two real estate transactions, by converting and misappropriating them for his personal use. Mr. Higginson subsequently returned the funds prior to the required disbursement. The Grievance Committee discovered the conversion and other misconduct while investigating a sua sponte complaint initiated after its receipt of a dishonored check notice from the Lawyers' Fund for Client Protection. Additionally, Mr. Higginson commingled personal funds with client funds, issued checks for personal debts, and failed to properly maintain bookkeeping records. He maintains that he has returned all converted funds.

Mr. Higginson acknowledges his inability to defend himself on the merits of any disciplinary charges which would be initiated by the Grievance Committee based upon the facts and circumstances of the professional misconduct described in his affidavit of resignation.

In addition to respondent's misconduct described above, he failed to notify the OAE of his New York disbarment, as required by R.1:20-14(a). Since October 26, 1989, respondent has been on the ineligible list of the New Jersey Lawyers' Fund for Client Protection, 173 N.J.L.J. 985, 1018 (September 15, 2003).

The OAE urged us to disbar respondent.

Upon a review of the full record, we grant the OAE's motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of disciplinary proceedings), we adopt the findings of the Supreme Court of New York, Appellate Division.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which directs that

[t]he 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; or

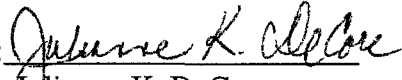
(E) the misconduct established warrants substantially different discipline.

We agree with the OAE that a review of the record does not reveal any conditions that would fall within the scope of subparagraphs (A) through (D). Although respondent was disbarred in New York, under 22 N.Y.C.R.R. 603.14, a disbarred attorney may seek reinstatement seven years after the effective date of the disbarment. However, in New Jersey, cases involving the knowing misappropriation of client funds, the Court has consistently held that an attorney must be disbarred. In re Wilson, 81 N.J. 451 (1979) (attorney disbarred for knowing misappropriation of client's funds) and In re Ryle, 105 N.J. 10 (1987) (attorney's alcoholism not a mitigating factor sufficient to overcome presumption of disbarment for misappropriation of client funds). See also In re Noonan, 102 N.J. 157 (1986) (finding that the misappropriation that triggers automatic disbarment is "almost invariable" and consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and that the client did not authorize the taking). Unlike in New York, attorneys who have been disbarred in New Jersey cannot apply for reinstatement after a term of suspension. Therefore, R. 1:20-14(a)(4)(E) applies here, because respondent's conduct warrants substantially different discipline, permanent disbarment, rather than a lengthy suspension.

Because respondent knowingly misused client funds, under Wilson and its progeny we unanimously determine that he must be disbarred.

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


Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

Because respondent knowingly misused client funds, under Wilson and its progeny, he must be disbarred. We unanimously so recommend to the Court. Two members 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
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

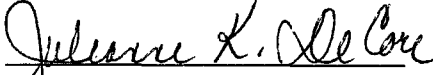
In the Matter of Terrence Paul Higginson
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Disposition: Disbar

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>	X						
<i>O'Shaughnessy</i>							X
<i>Boylan</i>	X						
<i>Holmes</i>	X						
<i>Lolla</i>							X
<i>Pashman</i>	X						
<i>Schwartz</i>	X						
<i>Stanton</i>	X						
<i>Wissinger</i>	X						
Total:	7						2


Julianne K. DeCore
Chief Counsel