B

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-368

IN THE MATTER OF	:
ROBERT S. BURRICK	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 13, 2003

Decided: May 16, 2003

John M. McGill III 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 based on a recommendation for discipline filed by special master Theodore J. Romankow.

Respondent was admitted to the New Jersey bar in 1993. On January 14, 2003, he was temporarily suspended, following his guilty plea to one count of mail fraud and one count of interstate transportation of securities and money obtained by fraud. In re Burrick, 175 N.J. 99 (2003).

On January 31, 1999, Lynda Salinger, the Club's president, and Jeff Hagmann, a board member, who had previously served as the Club's president and treasurer, questioned respondent about three checks on the list: two to Pitney ($1,500 and $1,641.50) and one to Candlewood Holdings ($10,000). Respondent told Salinger and Hagmann that the $1,500 check was a payment to Pitney for its work in converting the Club to a non-profit corporation in 1996 and that the $1,641.60 check was an overpayment because Pitney had billed the Club twice for the same work.

As to the $10,000 check, respondent told Salinger and Hagmann that he had invested the funds with Candlewood, an investment company, to earn a high rate of interest. He added that it was a "safe place to put the money" and that he had personally invested in Candlewood.

On February 1, 1999, the day after his meeting with Salinger and Hagmann, respondent deposited two checks in the Club's BNY account, in the amounts of $1,641.60 and $1,000. On February 2, 1999, respondent deposited three checks, in the amounts of $6,500, $601.18 and $3,000, in the Club's Merrill Lynch account. The checks corresponded to amounts that respondent had previously taken from the Club's accounts, although Salinger and Hagmann had not questioned respondent about most of those checks.[3]

---

[3] As seen below, four of the checks (for $1,641, $6,500, $601.18 and $3,000) were improperly issued from Pitney's trust account against trust funds belonging to another client. The $1,000 check was a fee paid by another Pitney client. Respondent should have remitted that check to Pitney.

On February 8, 1999, respondent deposited in the BNY account a $10,400 check issued by Candlewood. This was prompted by Salinger's request that the $10,400 be returned to the Club. Respondent later admitted to the OAE that he had issued a personal check to Candlewood to fund Candlewood's check to the Club.[4]

On February 11, 1999, respondent resigned as the Club's treasurer, at Salinger's request. He turned over to her and to Hagmann the Club's financial records.

In March 1999, a Millburn resident told a Pitney partner that funds from Pitney's trust account had been deposited in the Club's account. After Pitney reviewed its trust account records, it referred the matter to the OAE. Further investigation revealed other irregularities involving respondent's use of Pitney's trust funds and of the Club's funds.

The ethics complaint charged that respondent, in his capacity as treasurer, misused funds of the Club, a nonprofit corporation, by issuing the following checks from the Club's BNY or Merrill Lynch accounts:

(a) BNY check number 1470 for $3,233.75, dated August 11, 1998, to American Express. The check was used to pay respondent's American Express credit card bill. In the Club's check register, respondent wrote that the check had been paid to "NJYSSA," the New Jersey Youth Soccer Association.[5] In the list of checks that he gave to the Club board, he identified the payee as "NJYSA" and the category as "registration."

(b) BNY check number 1471 for $6,500, dated August 17, 1998, to respondent. The check was deposited in respondent's personal checking account. The cancelled check in the Club's records contained several notations: "Merrill Lynch Account-MSC"

---

[4] For reasons that are not clear, although the check that respondent deposited was a check issued by Candlewood, as proof of his deposit he gave Salinger a copy of another check for $10,400, issued by Cutlass Enterprises, Inc., an entity owned by Candlewood.

[5] Respondent stipulated that he intended to write NJYSA, not NJYSSA.

in the memo section and "for deposit only" and "82504E2" under respondent's endorsement.[6] None of those notations were on the copy of the cancelled check that the OAE obtained from BNY, indicating that the notations were made after the cancelled check was returned to the Club. Furthermore, the copy of the cancelled check received from BNY showed that "for deposit only" was written over respondent's personal Summit Bank account number, concealing that number. Prior to the deposit of the $6,500 check on August 17, 1998, respondent's account balance was $500. On August 25, 1998, respondent issued a $5,000 check, leaving $1,317.88 in the account. On August 31, 1998, the account balance was $375.27.

(c) BNY check number 1524 for $10,000, dated September 24, 1998, to Candlewood. Although the company was owned by Rosalie Moore, Rosalie's husband, Alan Moore, a long-time friend of respondent, was the president of Candlewood. In the check register, respondent noted that the check was for "savings Board of Ed contribution." On the list given to the board, he indicated that the check was for "Deposit Board of Ed Fund."

(d) BNY check number 1532 for $3,672.37, dated October 1, 1998, to American Express. The check was used to pay respondent's American Express credit card bill. In the Club's register and in the computer list of checks, respondent showed that the check was to "Merrill Lynch" for "deposit."

(e) BNY check number 1545 for $1,020, dated October 13, 1998, to "cash." The check was deposited in respondent's personal account. In the list of checks, respondent showed the payee as "cash," the category as "Reimburs Exp" and the memo as "Ref Fees."

(f) BNY check number 1563 for $3,000, dated November 1, 1998, to "cash." The check was deposited in respondent's personal account. In the Club's register and in the list of checks, respondent showed that the check was to "Ricardo Levitt" for "training." Prior to the deposit, respondent's account balance was $71.55. On November 2, 1998, respondent's mortgage payment of $2,924.99 was automatically deducted from his account. If respondent had not deposited the $3,000 BNY check, there would not have been sufficient funds in his account to cover his mortgage payment. Respondent stipulated that his mortgage payments were deducted from that account between the first and fourth of each month.

(g) Merrill Lynch check number 108 for $3,000, dated December 2, 1998, to respondent. The memo on the check indicated it was for "repay of advance."

---

[6] The number of the Club's Merrill Lynch account was, in fact, 825042E42.

(h) two BNY checks to Pitney: one dated September 16, 1998 ($1,641.60) and the other December 2, 1998 ($601.18).

Respondent contended that he gave the list of the Club's BNY checks to the board members to furnish them with "an overall view as to where dollars went with respect to finances or funds of [the Club]," and that he put "draft" on the document because he had not reconciled the account. According to respondent, he knew that the list was inaccurate and informed the board of its inaccuracy.

With respect to his use of $3,233.75, $3,672.37, $1,020 and $3,000 of the Club's funds, respondent asserted that the Club owed him those amounts as reimbursements for advances on behalf of the Club.[7] He testified that, at the time of the disbursements, he had receipts or memos to the file for all of these advances, but that those documents had been turned over to the Club. That testimony is at variance with his November 20, 2000 reply to the grievance, in which he stated that "[m]any of these expenses were paid by cash without any records being kept" and that his personal checks evidencing some of the expenses had been destroyed when his basement was flooded during a hurricane.

As to his notation "NJYSA" on the Club's check register for the $3,233.75 check to American Express, respondent contended that its purpose was not to identify the payee, but to remind himself that he had to pay that amount to NJYSA. Similarly, as to his notation "Merrill Lynch" on the check register and on the list of checks for the

---

[7] Respondent took an additional $2,960.95 from the Club's funds for reimbursement of expenses. This reimbursement was not in dispute.

$3,672.37 check to American Express, respondent testified that it was a reminder to him to deposit funds in the Club's Merrill Lynch account. He did not explain why he had not listed the actual payee in the check register or on the list of checks.

With respect to the $6,500 check, respondent testified that it was payable to himself because he "was going to sign off on it and deposit it with Merrill Lynch," transferring funds from the Club's BNY account to its Merrill Lynch account. He could not explain how the check came to be deposited into his personal account at Summit Bank. During his February 16, 2000 interview with the OAE, respondent told the OAE that the handwriting on the front and back of the check was his. When presented with the copy of the check that the OAE had obtained from the bank, showing that "Merrill Lynch Account – MSC" on the front and "for deposit only" and "82504E2" on the back were not on the check when it was presented to BNY and that the words on the back of the check concealed his personal bank account number, respondent replied "I'm sticking to my prior testimony." At the ethics hearing, however, respondent denied having written the words added to the check. He attributed his earlier testimony to the fact that, during the OAE interview, he had looked at many checks and had just assumed that it was his handwriting, but that, when he had looked more closely at the check, he had concluded that it was not. Respondent admitted that, in his August 30, 1999 reply to the grievance, he specifically stated that he had written the relevant information and that he had reviewed the check prior to submitting his reply. At the hearing, respondent also denied having written his personal account number on the back of the check. He speculated that

the additional writing was put on the check after he returned the records to the Club, in an attempt to incriminate him.

As to the $5,000 check issued from his personal checking account one week after he deposited $6,500 in the account, respondent could not recall the payee or the reason for that check.

With regard to BNY check number 1563 for $3,000 payable to "cash," respondent testified that he believed, on November 11, 1998, that he would have to pay approximately that amount to Ricardo Levitt, a trainer for one of the soccer teams, but had not yet received an invoice from Levitt. Respondent testified that he deposited the funds in his own account "because ultimately I wanted to for purposes of getting the year end budget done and I wasn't sure whether or not we would get the invoice paid by the end of the year. I wanted to move the money out of the account" and "have a full picture having all of the – all of the costs for training fees and coaching fees done and paid for by the end of – by the middle of November before Thanksgiving." Respondent contended that, when he took the funds, he did not know that the team manager, Maria Dahlman, had already paid Levitt. As to his notations, on the check register and on the list of checks, that the payee was Ricardo Levitt, rather than "cash," and that the payment was for "training," respondent testified that the notations were merely to remind him that he had to pay Levitt. He admitted that, although he learned, in December 1998, that Dahlman had paid Levitt and had issued a Club check to Dahlman on January 25, 1999, he did not repay the $3,000 to the Club until the Club questioned his expenditures.

As to the Candlewood investment, respondent stated that he had determined that the investment was safe, based on his twelve-year friendship with Alan Moore. He testified that Candlewood invested in "distressed situations" or was involved in "purchasing entities or making investments or purchasing distressed debt at a discount and then turning it around." According to respondent, Candlewood "was Alan [Moore's] business," although it was in his wife's name.

Respondent testified that he began investing his own funds with Alan Moore and/or Candlewood in 1995. In 1998, he made investments, along with Candlewood, in a Paterson food business and in an auto parts business. According to respondent, he never invested more than $5,000 or $10,000 during any given period and received no specific rate of return; rather, he shared in investment profits.

There were also numerous loans between respondent and Moore: (a) on May 31, 1995, respondent loaned $10,000 to Moore; (b) on June 6, 1995, Moore forwarded $20,000 to respondent, of which $10,000 was the repayment of the May 31, 1995 loan and $10,000 was a loan to respondent; (c) on June 20, 1995, respondent forwarded $10,000 to Moore to repay the June 6, 1995 loan; (d) on November 4, 1995, respondent loaned $5,000 to Moore; (e) on July 24, 1997, Moore loaned $25,000 to respondent; and (f) on September 24, 1997, Moore loaned $9,750 to respondent. According to respondent, he made the following payments on the 1997 loans: June 9, 1998, $5,000;

February 9, 1999, $10,400; and May 7, 1999, $5,000.[8]

Furthermore, in May 1995, Moore paid $20,000 to respondent, apparently in connection with a company by the name of Shofar Kosher Foods ("Shofar"). There was no testimony on the reason for the payment.[9] In May 1998, the bankruptcy trustee for Shofar's successor company claimed that the $20,000 was "an avoidable transfer." According to respondent, rather "than contest the issue, and to avoid the cost of litigation, [he] resolved any issue with the trustee." Respondent issued a $20,000 check to the trustee on June 2, 1998. Respondent stated that Moore repaid him $15,000 of the $20,000 by two checks (for $10,000 and for $5,000), dated June 1, 1998.

On March 3, 1999, Moore issued a $15,000 check to respondent, who used those funds to repay $10,101.18 to Pitney, as seen below. Respondent did not recall whether the $15,000 was a loan from Moore or "if it's in relation to an investment that I had been involved in with him through Candlewood."

With respect to the copy of the Cutlass Enterprises check that respondent gave Salinger, he stated that he had inadvertently made a copy of the wrong check. He testified that Moore had given him two checks, one from Candlewood and one from Cutlass, because Moore did not recall whether the Club's $10,000 had been invested in

---

[8] In his August 30, 1999 reply to the grievance, respondent did not reveal his investments and loans with Candlewood and/or Moore, despite the fact that he was requested to describe his business relationship with Candlewood.

[9] According to respondent, Alan Moore was Shofar's president. Respondent testified that he had represented Shofar in a Chapter 11 bankruptcy, which had concluded in January 1995, and that he continued to "do outside general counsel type work for Shofar" after January 1995.

Candlewood or Cutlass. Respondent testified that he knew that the funds had been invested in Candlewood, but that he took both checks because Moore

> gave me an envelope, and he told me that both checks were in the envelope, and he told me to rip up the one check that I didn't need with respect to Cutlass, and what happened was I – as I believe I testified, when I got back to Millburn, I went to the library to copy the check to go with the deposit slip, and I copied the wrong check, and that's why the Cutlass Enterprises check was given to Lynda Salinger with the deposit slip.

According to respondent, he gave Moore a personal check for $10,400 because Moore told him that it would take three days to get the funds from Candlewood. Respondent testified that, because he was being pressured to return the funds to the Club, he gave Moore his check for $10,400 so that Moore could immediately issue the Candlewood check.[10] According to respondent, he then deducted that amount from the monies that he had borrowed from Moore in 1997, reflected above as the February 9, 1999 repayment.

Salinger and Hagmann testified that respondent was not authorized to make discretionary investments on behalf of the Club and that, when they met with respondent on January 31, 1999, Salinger requested that respondent provide her with a prospectus from Candlewood, return the $10,000 to the Club and return the financial records so that they could be given to the Club's accountant.

Hagmann and Salinger also testified that, when respondent returned the Club's

---

[10] Respondent's testimony about his check to Candlewood appears inconsistent with his testimony as to why Moore issued checks from both Candlewood and Cutlass, since Moore had to know whether respondent's check should be deposited in the Candlewood or Cutlass account.

financial records, they were in disarray and were given to Hagmann's bookkeeper to organize, before being given to the Club's accountant. Instead of a prospectus, respondent gave Salinger a one-page statement on Candlewood's letterhead addressed to the Club, signed by Alan Moore, showing a $10,00 deposit to "General Account," with "Interest Income to be paid no later than 12/31/98. Investment returnable on demand."[11]

Salinger disputed the $1,641.60 and $601.18 paid to Pitney because the Pitney invoices showed that respondent had billed the Club for his time while acting as Club treasurer. According to Salinger, board members and officers were volunteers and, therefore, not authorized to charge the Club for their time.

On March 4, 1999, Salinger and Janie Buckley, who succeeded respondent as treasurer, met with respondent to discuss the accountant's reconciliation of the Club's financial records. Salinger testified that, when they reviewed the "irregularities" found by the accountant, respondent "would either tell me he did not dispute it, or it was sloppy bookkeeping, or he doesn't know what happened."

With respect to the $3,233.75 and $3,672.37 BNY checks to American Express and the $3,000 Merrill Lynch check to respondent, according to Salinger, respondent told her that his secretary had made mistakes in issuing those checks from the Club's account. As to respondent's claim that his notation of "NJYSA" in the Club's register next to the $3,233.75 check amount was a reminder that he had to pay that amount to the NJYSA, Salinger testified that the Club had already paid the NJYSA more than a month before

---

[11] Respondent denied that he had promised to give a Candlewood prospectus to Salinger.

respondent issued the $3,233.75 check, in August 1998, and that it would not have to pay NJYSA again until January 1999. Salinger also testified that none of the items on respondent's American Express bills related to the Club.

As to the $1,020 check to "cash" and the $601.18 check to Pitney, according to Salinger, respondent did not dispute that he should not have taken the funds; he attributed the payments to his own "sloppiness."

Salinger testified that she, Buckley and respondent agreed, on March 4, 1999, that respondent could have legitimately advanced approximately $1,000 on behalf of the Club and that he would repay $9,062 to the Club. Respondent gave her a certified check for $9,062 on March 5, 1999.

According to Salinger, it was not until several weeks after March 4, 1999 that she and respondent discussed the $3,000 check (number 1563) to Levitt for alleged training fees. The check was actually made out to "cash" and deposited in respondent's personal account. According to Salinger, respondent did not claim that he was entitled to those funds, but simply stated that he "wanted to settle everything."

According to Salinger, the Club retained an attorney in connection with its investigation of respondent's handling of the Club's funds. Thereafter, the Club and respondent entered into a settlement agreement. Respondent did not admit any guilt and paid an additional $18,000 or $19,000 to the Club, as well as the Club's legal and accounting fees. Salinger disputed respondent's contention that the disbursements to himself were legitimate reimbursements for funds advanced on behalf of the Club.

Hagmann testified that he was the Club's treasurer before respondent and that, when he turned the Club's accounts over to respondent, he told respondent to keep most of the Club's funds in the Merrill Lynch account and as little as possible in the BNY account. According to Hagmann, the Club's records were "in good shape," when he turned them over to respondent. He stated that respondent later told him that he had to deposit $2,500 of his own funds in the BNY account because some checks had been returned for insufficient funds due to Hagmann's double entry of the same deposit. According to Hagmann, he told respondent that he should have transferred funds from the Merrill Lynch account to BNY, instead of depositing his own funds and that he should reimburse himself from the Merrill Lynch account. The Merrill Lynch records show that respondent issued a $2,500 check to himself on February 27, 1998.

Hagmann admitted that, when he was the Club's treasurer, he transferred approximately $20,000 of the Club's funds from its BNY account to his company's account at BNY because his company's account earned interest. He testified that, after BNY's bank manager told him that he should not have made the transfer, he returned the funds to the Club's BNY account and opened the Merrill Lynch account. According to Hagmann, the funds were in his company's account for no more than three weeks.

Hagmann testified that, sometime between February 12 and 21, 1999, when he and respondent discussed the Candlewood investment, respondent gave him a blank check, with the instruction that, "when you go through the checking account, if you find any other shortfalls, just make out, fill it out, make out the check." Hagmann said that he

tore up the check and returned it to respondent. According to Hagmann, he believed at the time that, because Candlewood had returned the $10,000, the matter was closed.

II. The Syntrex/Millburn Soccer Club Matter (Count Two)

In 1992, Pitney represented the unsecured creditors' committee in the Syntrex, Inc. bankruptcy matter. On December 31, 1992, the court confirmed Syntrex's plan of liquidation and appointed Pitney to administer the distribution of payments to Syntrex's creditors. Pitney established a separate trust sub-account for the Syntrex funds.

By 1993, respondent was the partner in charge of the matter, although other attorneys also worked on it. In late 1997, respondent asked an associate to review the Syntrex files and prepare a report on Syntrex's funds in Pitney's trust account. Apparently, the associate requested a paralegal's assistance. The paralegal's December 17, 1997 report to respondent showed an estimated balance of $33,993.41 in Syntrex's trust sub-account, although Pitney's accounting department could not provide a list of all uncashed checks.

On February 1, 1999, respondent requisitioned a $1,641.60 check payable to the Club from Syntrex's funds in Pitney's trust account. The Club had no relationship to the Syntrex bankruptcy. The requisition identifies the payee as "MSC" and the description as "fees rebate." After respondent signed the check, it was deposited in the Club's BNY account. Also on February 1, 1999, respondent requisitioned a $6,500 check from Syntrex's funds, payable to "Merrill Lynch" for "distribution." On February 2, 1999, respondent requisitioned two additional checks to Merrill Lynch, for $601.18 and $3,000,

from Syntrex's funds. The $601.18 was purportedly for "refund" and the $3,000 check for "distribution." The three checks to Merrill Lynch were listed on one deposit slip and were deposited in the Club's Merrill Lynch account on February 2, 1999.

To have a trust account check issued by Pitney's accounting department, respondent had to submit a "trust check requisition," identifying the payee, client name and number, matter name and number, description and amount. Respondent admitted that most of the handwriting on the requisitions was his. Some was that of his secretary, Marcia Jacobs, and some was unidentified.[12] Respondent also admitted that he signed all of the trust check requisitions and all of the trust checks.

Respondent testified that he had little involvement in the Syntrex bankruptcy until late 1997, when he found envelopes containing checks in the Syntrex files. The checks, which had been mailed to creditors of Syntrex, had been returned to Pitney, but never given to Pitney's accounting department. Hence, respondent claimed, his request that an associate review all of the Syntrex files.

Respondent further testified that, when he reviewed Syntrex's plan of liquidation in late 1997, he discovered that the plan had inconsistent provisions. The plan provided that, upon the initial distribution, Syntrex would cease to exist as a corporation. However, another plan paragraph stated that, if the estate's cash was not distributed for two years or the creditors had not cashed their checks, the funds would become the property of the debtor. Therefore, according to respondent, his "mindset" was that "we

---

[12] Jacobs testified that her writing would have been based on information received from respondent.

now had free funds available in the account that didn't belong to the debtor or were forfeited by the creditors." He contended that, after reviewing Syntrex's plan of liquidation, he concluded that the Syntrex funds in Pitney's trust account were no longer trust funds. According to him, he intended to seek the bankruptcy court's approval for Pitney to take its unpaid fees from Syntrex's funds.

Respondent admitted that he should not have issued the four checks to the Club from Syntrex's funds. He contended that his requisitioning and signing of the checks were the result of "carelessness," attributable to his hectic business schedule, his out-of-state traveling on business, his involvement in discussions with a New York law firm to join it as a partner and his Club work. Respondent also contended that he relied too heavily on his secretary, his staff and Pitney's accounting department to ascertain that his check requisitions were correct.

With respect to the checks for $1,641.60 and $601.80, respondent stated that they should have been requisitioned from Pitney's business account instead, because they were returns of legal fees.

As to the $6,500 check to Merrill Lynch, respondent testified that he had "no idea what I was thinking when I wrote that check," but that the $6,500 amount corresponded to a deposit he "intended to make with respect to Millburn Soccer that ended up not being deposited in the Millburn Soccer account." He also contended that he knew, at the time, that Merrill Lynch was a creditor of Syntrex, which, he claimed, might have led to his confusion in incorrectly completing the check requisitions for the $6,500 and $3,000

checks to Merrill Lynch. Respondent conceded that he should have issued both checks from his personal account.

Clyde Szuch, chair of Pitney's management committee from 1980 to 2000, testified that, in 1999, Pitney used preprinted purple forms for trust account check requisitions and preprinted green forms for business account check requisitions.[13] Only a partner could sign a check requisition. Szuch confirmed that respondent used the purple trust check requisitions for all four checks to the Club.

Szuch testified that, when he questioned respondent, in early March 1999, about the telephone call from the Millburn resident claiming that Pitney trust checks had been issued to the Club, respondent replied that there had been an "administrative error" and that the checks should have been deposited into a Merrill Lynch account because Merrill Lynch was a creditor of Syntrex. Szuch testified that he later ascertained that Merrill Lynch was owed less than $2,000 from the Syntrex funds.[14]

Szuch further testified that his review of Pitney's records shortly after March 4, 1999 revealed that a Pitney trust check for $1,641.60, drawn against Syntrex's funds, had been issued to the Club, and that the Club had previously paid that amount to Pitney. According to Szuch, on March 12, 1999, respondent told him that Club members believed that the Club had been billed twice for the same services and/or that respondent

---

[13] Prior to that, all of Pitney's check requisitions were green. A Pitney partner would have to print the word "trust" on the requisition to distinguish it from a business account requisition.

[14] Respondent stipulated that Merrill Lynch was owed $1,911.19 from Syntrex's funds.

should have provided the services pro bono. Szuch testified that he reminded respondent that, as management committee chair, Szuch had to approve such refunds, had not done so and that, in any event, the refund should not have been paid from Syntrex's trust funds. At that point, according to Szuch, respondent asked to speak privately with him because one or two other Pitney partners were in the room. Szuch testified that, when respondent and he spoke privately, respondent asked, "Can't we work this out?" When Szuch explained that he had an obligation to report the matter to the OAE, respondent "said okay and left."[15]

Szuch disputed respondent's claim that Pitney's accounting department required back-up documentation for a trust check requisition. According to Szuch, no such documentation was needed because the accounting department would not know whether the disbursement was proper. "The procedure at Pitney was to depend upon the partner and the integrity of the partner to draw on the trust account." With respect to the business account, however, he explained that an invoice had to be attached to the check requisition.

Angela Baron, Pitney's executive director, and Carolyn Coviello, the Pitney bookkeeper responsible for the firm's trust accounts, confirmed that Pitney did not require back-up documentation for trust checks. When Coviello received a trust check

---

[15] Respondent repaid $10,101.18 to Pitney on March 4, 1999 and $1,641.60 on March 15, 1999.

requisition, she simply confirmed that funds were available for disbursement from the specific trust sub-account. According to Baron, only the partner responsible for the client matter had the authority to request that a trust check be issued.

Coviello testified that, if a partner attached back-up documentation to a trust check requisition, she simply returned the documentation to the partner with the check. According to Coviello, respondent did not submit back-up documentation with his check requisitions. Coviello stated that Pitney began the color-coded check requisitions in 1997, although for some time after 1997 the accounting department still accepted the old green requisitions with the word "trust" written on it.[16]

III. The Pitney Law Firm Matter (Count Five)

Between January 21 and February 8, 1999, respondent received three checks from two companies, Supreme Solutions and Veritas Investments, LLC, for $3,250 in legal fees. He did not remit those fees to Pitney. Instead, on February 1, 1999, he deposited one of the checks, for $1,000, in the Club's BNY account. He deposited the other two checks in his personal account. It is undisputed that those checks should have been remitted to Pitney.

---

[16] Despite the testimony of Szuch, Baron and Coviello, respondent contended that Pitney's accounting department required appropriate back-up documentation, before issuing a trust check. Respondent's secretary, Marcia Jacobs, testified that she would have provided back-up information with requisitions, "if it was required." She stated that, although she could not "recall exactly," she believed that back-up documentation was required if the check request was over a certain amount.

Respondent could not explain why the checks were deposited in his and the Club's accounts. He claimed that, when checks were made payable to him, rather than Pitney, his practice was to endorse them and "my secretary would take it from there." He admitted, however, that it was his handwriting on the deposit slips.

According to respondent, he offered to repay the $3,250 to Pitney, but never received a reply from the firm.

IV. The Syntrex/Haight Law Firm Matter (Count Three)

In 1993 and 1994, Pitney represented Wilshire Credit Corp. ("Wilshire") in connection with a foreclosure of property in New York, as well as issues arising out of the bankruptcy of one of Wilshire's general partners. Respondent was the billing partner for the Wilshire matters and the partner in charge of the Wilshire bankruptcy issues. The New York law firm of Haight Gardner Holland & Knight ("Haight") was retained as local counsel in the New York foreclosure action. Respondent had been an associate attorney at Haight and had recommended that Haight be used for the foreclosure action.

In May 1995, a Haight attorney wrote to respondent complaining of unpaid invoices from 1993 and 1994. According to the letter, respondent had previously told the attorney that the payments had been delayed because the Resolution Trust Corporation ("RTC") had to approve them.

On December 11, 1997, respondent sent Haight a Pitney business account check for $2,420.18, with a cover letter apologizing for the delay in payments. When

respondent requisitioned the check, he identified the client as "Chitec," a Pitney client for whom Haight had not done any legal work.

Between December 24, 1997 and December 20, 1998, respondent requisitioned six Pitney trust checks, totaling $33,891.13, from Syntrex's trust funds. The amounts on the six checks corresponded to six Haight invoices. The purple trust check requisitions identified Haight as the payee and Syntrex as the matter. The descriptions on the requisitions included "fees owing," "invoice 19843," "legal fees" and "fees due." It is undisputed that Haight should not have been paid from Syntrex's funds.

On January 5, 2001, respondent reimbursed Pitney for the $33,891.13 paid to Haight from Syntrex's funds.

Respondent testified that another attorney brought the Wilshire matters to Pitney and that he rarely worked on them. However, at some point, the attorneys primarily responsible for the matters left Pitney. By that time, the foreclosure matter had been concluded and the only work remaining on the bankruptcy matter was the distributions to creditors.

Respondent stated that the requirement for the RTC's approval of the payments to Haight delayed the payments because Haight had not complied with some of the RTC's guidelines. Respondent contended that Wilshire, not Pitney, was responsible for the payment of Haight's invoices.

Respondent admitted that Haight had not done any work for Syntrex, but that he had thought otherwise at the time and that he "was asleep at the switch. I was not paying

attention." He recalled that an associate or a paralegal had told him that Haight's invoices had been found in the Syntrex file and that the invoices needed to be paid.

As to why he was disbursing legal fees from Syntrex's funds without a court order, respondent stated that it was his "understanding that those funds were due Haight, Gardner, and that is why there was a remaining or at least partial, partially those funds were due [Haight] at the time because there was a remaining account balance. There should not have been a remaining account balance."

According to respondent, he had no motive to pay Haight from Syntrex's funds because, had he paid Haight from fees paid to Pitney by Wilshire, it would not have adversely affected his compensation from Pitney. He denied that he received any pressure from anyone at Haight in 1997 or 1998 to pay the invoices. Respondent's testimony was not contradicted.

V. The Kentile Matter (Count One)

Respondent represented the creditors' committee in the Kentile Floors, Inc. ("Kentile") Chapter 11 bankruptcy case. In 1995, he requisitioned two checks from Kentile's funds contained in Pitney's trust account: one for $1,393.11 to Empire Kosher Poultry, Inc. ("Empire") and one for $17,800 to Sterling Vision. It is undisputed that those checks should not have been disbursed from Kentile's funds. Empire was not a client of Pitney, but a creditor of Shofar. As explained above, respondent had represented Shofar in a Chapter 11 bankruptcy case, while he was at Sills. Although Shofar continued as a client of respondent after he joined Pitney, the company was

already out of bankruptcy in 1995 and there was no reason for him to issue a check to Empire on behalf of Shofar.[17]

As to the $17,800 check to Sterling Vision, in 1992, Sterling Vision agreed to pay $112,500 to Pitney for representing the franchisees' committee in the Sterling Optical bankruptcy. The agreement provided that, if the bankruptcy court awarded fees to Pitney from the debtor estate, Pitney would remit half of the fee to Sterling Vision. The bankruptcy court awarded $35,615.75 to Pitney. The $17,800 check to Sterling Vision should have been paid from Pitney's business account, not from Kentile's funds in Pitney's trust account.

Respondent testified that the requisitions against Kentile's funds were "done in error." According to him, the Kentile funds were owed to United Capital Corporation, a secured lender and an unsecured creditor of Kentile. Respondent also represented United Capital in several matters.

Respondent argued that he had no motive to pay Sterling Vision from Kentile's funds because, had he made the payment from Pitney's business account, it would not have adversely affected his compensation from Pitney.

* * *

Respondent admitted that he misused trust funds, the Club's funds and Pitney's funds, but denied that he knowingly misappropriated them. He claimed that the misuse

---

[17] According to respondent's August 1999 reply to the grievance, Alan Moore had run Shofar during the bankruptcy reorganization. There was no evidence that Moore was still in charge of Shofar when respondent issued the check to Empire.

was the result of "sloppiness, mistakes, carelessness and reliance on others to do the work that Respondent should have given more time and oversight." He contended that he did not need to misappropriate funds because he had "ample" personal funds in his various accounts. He did not provide any documentation to support that contention.

Respondent also contended that the Syntrex funds in Pitney's trust account were no longer trust funds, because the debtor no longer existed and the time for the creditors to make claims had expired. Respondent cited In re TLI, Inc., 213 B.R. 946 (N.D.Tex. 1997), aff'd 159 F.3d 1355 (5th Cir. 1998), where the trustee of a creditors' committee had deposited into court the sum of $108,000 from final distribution checks that had not been cashed, after notifying the court that there remained unpaid administrative expenses and requesting that those expenses be paid from the $108,000. The court held that the administrative expenses could be paid from those funds and that the remainder of the funds became the property of the debtor or the entity acquiring the assets of the debtor under the plan of reorganization.

Respondent also submitted letters from fourteen attorneys and two clients attesting to his honesty, integrity and professionalism.

* * *

The special master found respondent guilty of the knowing misappropriation charges contained in counts two, four and five (the Syntrex/Millburn Soccer Club, the Millburn Soccer Club and the Pitney Law Firm matters). Although "clearly troubled" by the transactions in counts one and three (the Kentile and the Syntrex/Haight matters), the

special master found no clear and convincing evidence of knowing misappropriation, although he found unethical conduct (apparently, negligent misappropriation).

With respect to the Millburn Soccer Club matter, the special master found that, except for the $1,641.60 and $601.18 checks to Pitney, respondent "dishonestly misused" the Club's funds, "with the possible exception of the $10,000.00 'Candlewood' money, which was at least reckless." It was "apparent" to the special master that respondent had treated the Club's funds as "a cash source he could dip into whenever he saw the need." He found that respondent "had presented no credible evidence" that the funds taken from the Club were actually owed to him.

The special master rejected as "inherently incredible" respondent's testimony that he did not realize that he had deposited the $6,500 check to Merrill Lynch in his own account, instead of the Club's account, and then did not realize, for almost six months, that such a large sum was in his account. The special master noted that "it was clear that respondent knew he had improperly taken this money" because he deposited a $6,500 Pitney trust check (taken from Syntrex's funds) in the Club's account on February 1, 1999, even though he had not yet been questioned about his earlier check.

As to the Syntrex/Millburn Soccer Club matter, the special master rejected as "entirely incredible" respondent's testimony that he had been careless. The special master again remarked that respondent had requisitioned the four checks from Syntrex's funds immediately after his meeting with Salinger and Hagmann, "for the exact amounts of payments he knew the Club would question."

With regard to the Pitney matter, the special master discounted respondent's testimony that the deposit of the two checks into his account and of the third check into the Club's account was the result of mistakes or carelessness.

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.

While acting as treasurer of the Millburn Soccer Club, a non-profit organization, respondent embezzled the Club's funds. When he learned that he would have to account for his handling of the Club's funds, he misappropriated Syntrex's trust funds and Pitney's fees, in order to reimburse the Club. The extent and timing of the misappropriations and/or attempts at concealment negate respondent's contention that they were the result of "mistakes" or that he was entitled to the monies.

Between August and December 1998, respondent took more than $20,000 (not including the $10,000 check to Candlewood) from the Club's funds, in addition to the $2,960.95 that was not in dispute. Respondent did not offer any credible evidence that he was entitled to the funds. Indeed, he offered inconsistent testimony about his failure to produce documentation of his expenditures on behalf of the Club. For instance, in his November 20, 2000 reply to the grievance, he stated that he did not have receipts for many of the expenditures and that checks evidencing some of the expenses had been

destroyed when his basement was flooded during a hurricane. At the hearing, however, respondent testified that he had receipts or memos to the file for all of his advances on behalf of the Club and that he had turned over those documents to the Club in 1999.

Respondent's efforts to cover up his use of the Club's funds belie his claim that he was entitled to the funds. His most glaring attempt at concealment was the $6,500 BNY check that he deposited in his personal Summit checking account. In the Club's records, he indicated that the check had been deposited in the Club's Merrill Lynch account. After BNY returned the cancelled check, he hid his personal account number by writing "for deposit only" over that number and then added the Club's Merrill Lynch account number. Respondent's contention that a Club member made the changes to incriminate him is neither supported by the evidence nor credible. In his August 30, 1999 reply to the grievance and during his February 16, 2000 interview with the OAE, respondent stated that he had made the notations on the checks. When the OAE showed him the copy of the cancelled check obtained from BNY, he replied, "I'm sticking to my prior testimony." It was not until the hearing that he contended that he had not made the additions to the check. We, therefore, find incredible his testimony that he mistakenly deposited the $6,500 check in his own account, rather than in the Club's Merrill Lynch account, and did not discover, for almost six months, that the funds were in his account, even though he wrote checks against them.

Respondent also attempted to conceal his embezzlement of $3,000 from the Club to cover his mortgage payment, by indicating that the check was paid to a Club trainer, and attempted to conceal his use of more than $6,800 of the Club's funds to pay his

American Express bills, by indicating that one of the checks was paid to the NJYSA and that the other was deposited in the Club's Merrill Lynch account. However, his testimony that the two checks to American Express were to reimburse him for expenditures on behalf of the Club was inconsistent with his earlier statement to Salinger and Buckley that his secretary had made mistakes in issuing those checks from the Club's account.

For the foregoing reasons, we found incredible respondent's testimony that his use of the Club's funds was the result of mistake or that he was entitled to the funds.[18]

With respect to the Syntrex trust funds, on January 31, 1999, Hagmann and Salinger questioned respondent about some of the checks that he wrote from the BNY account and requested that he turn over the Club's records for review by an accountant. During the next two days, February 1 and 2, 1999, respondent requisitioned four checks from Syntrex's trust funds, for $1,641.60, $6,500, $601.18 and $3,000, which he then deposited in the Club's account. On February 1, 1999, he also deposited in the Club's account a client's $1,000 fee check, which should have been remitted to Pitney. At that time, the Club had *only questioned* respondent's issuance of Club checks to Pitney for $1,500 and $1,641.50 and to Candlewood for $10,000. The number of the Syntrex checks, the timing of the checks and the fact that the checks were for amounts that

---

[18] On January 13, 2003, respondent pleaded guilty to one count of mail fraud and one count of interstate transportation of securities and money obtained by fraud. The mail fraud charge related to his use of the Club's funds to pay his American Express bill. The other count, concerning Advanced Photovoltaic Systems, Inc. ("APS"), did not relate to any of the charges in the ethics complaint. However, as noted by the OAE, respondent had made misrepresentations about APS during an interview with the OAE.

respondent had previously taken from the Club contradict his testimony that his misappropriations of trust and law firm funds were the result of mistakes.[19]

According to respondent, he concluded, in February 1999, that the Syntrex funds were not trust funds because, pursuant to Syntrex's plan of liquidation, they had been forfeited by the creditors and, while the plan provided that the funds would revert to the debtor, the debtor ceased to exist upon the initial distribution to creditors. Respondent did not explain why, if the funds could not be claimed by Syntrex or by Syntrex's creditors, they had ceased to become trust funds. The case he cited, In re TLI, Inc., supra, 213 B.R. 946, does not address the issue of whether funds from uncashed final distribution checks continue to be trust funds. There, the court held that those funds, which had been deposited into court, could be used to pay administrative expenses and that the remainder of the funds became the property of the debtor or the successor entity. Respondent admitted that Pitney had to seek the bankruptcy court's approval to pay itself unpaid fees from Syntrex's funds. Therefore, there is no merit in his argument that the Syntrex funds were not trust funds. Furthermore, even if the Syntrex funds were not trust funds, respondent had no authority to use them for himself or for the Club.

Respondent also contended that he did not need to misappropriate funds because he had sufficient funds in his various accounts to meet his expenses. He offered no evidence to support this contention. Furthermore, his bank statements that are in

---

[19] On February 8, 1999, respondent deposited in his account two additional checks from Pitney's clients.

evidence show otherwise. Finally, in March 1999, he had to obtain $15,000 from Alan Moore to repay $10,101.18 to Pitney.

In any event, respondent's motive for taking the funds and his restitution are immaterial to a finding of knowing misappropriation. An attorney's subjective intent – whether to borrow or to steal – is of no consequence; knowing misappropriation consists of the simple act of taking money entrusted to the attorney, knowing that the client has not authorized the taking. In re Noonan, 102 N.J. 157, 160 (1986).

For his knowing misappropriation of Syntrex trust funds alone, respondent must be disbarred. In re Wilson, 81 N.J. 451 (1979).

Respondent also misappropriated law firm funds by depositing two clients' fee checks in his personal account and depositing another fee check in the Club's account. Attorneys who knowingly misappropriate law firm funds also face disbarment. In re Siegel, 133 N.J. 162 (1993); In re Greenberg, 155 N.J. 138 (1998).

Finally, respondent embezzled funds of a non-profit organization while acting as the treasurer of the organization. That misconduct also warrants disbarment. See In re Imbriani, 149 N.J. 521 (1997) (disbarment where the attorney, who was a shareholder of a small corporation, embezzled approximately $127,000 from the corporation by depositing rent checks in his personal account and by issuing checks to non-existent creditors of the corporation, endorsing the checks in the creditors' names and using the funds for his own purposes) and In re Spina, 121 N.J. 378 (1990) (disbarment for theft from an employer).

On the other hand, we found no clear and convincing evidence that respondent's $10,000 "investment" of the Club's funds in Candlewood constituted misappropriation or embezzlement. Doubtless, the "investment" was extremely risky. Furthermore, respondent's relationship with Moore and Candlewood and the circumstances surrounding the repayment of the "investment" to the Club cast doubt on the legitimacy of the "investment." There is no clear and convincing evidence, however, that respondent did not invest the Club's funds in Candlewood.

Whether respondent is guilty of knowing misappropriation for using Syntrex's funds to pay the Haight law firm and for using Kentile's funds to pay Empire and Sterling Vision is not so clear. To be sure, his testimony that the six checks to Haight, issued over a one-year period, were the result of mistake strains credulity. Furthermore, there is merit to the OAE's arguments that (1) respondent viewed the unclaimed Syntrex monies as a "slush fund" to use as he wished, given his use of the monies to pay the Club and (2) respondent did not want Haight's fees deducted from the fees that Pitney had received from Wilshire. When respondent requisitioned a Pitney business account check to Haight in 1997, he identified the client as Chitec, rather than Wilshire. The evidence that respondent knowingly misappropriated Kentile's funds to pay Empire and Sterling Vision is less compelling. However, in light of our finding of knowing misappropriation in the matters discussed above, we need not determine whether respondent's conduct in the Syntrex/Haight Law Firm and in the Kentile matters constituted knowing misappropriation.

In view of the foregoing, we determined to recommend that respondent be disbarred for his knowing misappropriation of client trust funds and law firm funds and his embezzlement of funds from a non-profit organization. Two members 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 Robert S. Burrick
Docket No. DRB 02-368

Argued: March 13, 2003

Decided: May 16, 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:	7						2

Robyn M. Hill 5/22/03
Robyn M. Hill
Chief Counsel