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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. 02-380

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IN THE MATTER OF  
JOEL D. CANEY  
AN ATTORNEY AT LAW

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Decision

Argued: December 19, 2002

Decided: March 31, 2003

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, following respondent's disbarment by consent in Pennsylvania.

Respondent was admitted to the New Jersey bar in 1980. On November 1, 2002, the Court temporarily suspended him, pending the final resolution of this matter. In re Caney, 174 N.J. 406 (2002).

Respondent was disbarred by consent in Pennsylvania after admitting that the material facts in two ethics complaints were true. In the more serious matter, the Winegrad matter, respondent was charged with converting clients' funds to his own use.

Estelle Winegrad, a Philadelphia resident, died on June 24, 2000. In her will, she had named Malcolm and Norman Brenner, her nephews, as executors. Winegrad made specific requests to Malcolm, Norman, Daniel and Lucas Brenner and left her residuary estate to Malcolm and Norman. Norman Brenner was unable to serve as executor. Malcolm Brenner, a Virginia resident, retained respondent to represent him in the administration of Winegrad's estate.

Winegrad had approximately \$46,000 in accounts in her own name, \$392,000 in joint accounts with Malcolm and \$80,000 in joint accounts with her sister, Lillian Lazar. Winegrad had requested, apparently in her will, that Malcolm divide the proceeds of their joint accounts with Norman and his wife. Malcolm advised respondent that he intended to implement Winegrad's request by making non-taxable gifts of \$80,000 in 2000 and \$80,000 in 2001.

In August 2000, respondent opened an estate checking account, for which Malcolm had signatory authority.

In September 2000, respondent sent a letter to Firsttrust Bank, where Winegrad had an individual account, as well as a joint account with Malcolm. In the letter, respondent falsely stated that he represented Malcolm individually and directed Firsttrust to close out both

accounts. Respondent did not have Malcolm's consent to close the joint account. On September 26, 2000, Firsttrust issued two checks to Winegrad's estate, for \$40,230.72 and \$3,943.85, representing the proceeds of Winegrad's individual account and the joint account, respectively.

Respondent forged Malcolm's signature on both checks and deposited them in his attorney escrow account. He never remitted the proceeds to Malcolm or the estate. The complaint charged that he converted the funds of Malcolm and the estate.

On September 29, 2000, respondent sent a letter to Lazar, in which he stated that he was filing the state inheritance tax return and the federal estate tax return, requested that she send him a check for \$19,414.71 payable to the Winegrad estate and told her that he would pay the inheritance tax with one estate check. On October 18, 2000, Lazar forwarded the check to respondent. Respondent forged Malcolm's signature on the check and deposited it in his attorney trust account.<sup>1</sup> When Lazar later questioned respondent about Malcolm's signature on the check, respondent told her that Malcolm had endorsed it when he was in Philadelphia. In reply to Malcolm's December 10, 2000 letter questioning respondent about the endorsement, respondent replied that Lazar's check "was endorsed and deposited in the account pending payment of Inheritance Tax."

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<sup>1</sup> The complaint identifies respondent's account as an "escrow" and as a "trust" account, although the account number is the same.

In addition to the misappropriation charges, the complaint contained numerous facts showing that respondent was also guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to explain the matter to the client, failure to provide the client with a writing setting forth the basis or rate of the fee, misrepresentation of material fact or law to a third person, failure to notify a client or third person of the receipt of funds and failure to promptly deliver funds to a client or a third person, commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer and conduct involving dishonesty, fraud, deceit or misrepresentation.

In the second matter, Snow, it was charged that, sometime prior to March 1997, respondent drafted a will for Margaret W. Snow, in which he was named executor. In her will, Snow made specific bequests to various individuals and charities and left the remainder of her estate to Rosalie Spera. Snow died on March 17, 1997.

The complaint in the Snow matter contained numerous facts showing that respondent was guilty of gross neglect, lack of diligence, misrepresentation of material fact or law to a third person, failure to notify a client or third person of the receipt of funds and failure to promptly deliver funds to a client or a third person and conduct prejudicial to the administration of justice.

\* \* \*

Upon a de novo review of the full record, we determined to 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 a disciplinary proceeding), we adopted the findings of the Supreme Court of Pennsylvania.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a), 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 upon 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 subsection (E) is applicable here, namely, that respondent's misconduct warrants substantially different discipline in New Jersey. The Pennsylvania court disbarred respondent. In Pennsylvania, disbarment is not permanent. An


attorney can apply for reinstatement five years after being disbarred. As correctly pointed out by the OAE, respondent's actions warrant permanent disbarment in New Jersey.

Respondent knowingly misappropriated funds from the executor of the Winegrad estate and the Winegrad estate and Lazar. It is well-settled law in New Jersey that the knowing misappropriation of client funds or escrow funds will result in permanent disbarment. In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985).

Therefore, we unanimously determined to recommend that respondent be disbarred from the practice of law. One member did not participate.

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

By: \_\_\_\_\_

  
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

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

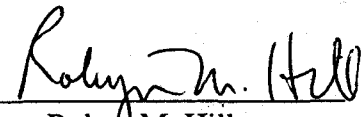
In the Matter of Joel D. Caney  
Docket No. DRB 02-380

Argued: December 19, 2002

Decided: March 31, 2003

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>Peterson</i>	X						
<i>Maudsley</i>	X						
<i>Boylan</i>	X						
<i>Brody</i>	X						
<i>Lolla</i>	X						
<i>O'Shaughnessy</i>	X						
<i>Pashman</i>	X						
<i>Schwartz</i>							X
<i>Wissinger</i>	X						
<b>Total:</b>	8						1

 4/2/03  
 Robyn M. Hill  
 Chief Counsel