SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-285
District Docket No. XIV-2014-0493E

IN THE MATTER OF	:
BRIAN HOWARD REIS	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 19, 2017

Decided: April 24, 2017

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear 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 final discipline filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-13(c), following respondent's guilty plea to one count of scheme to defraud in the first degree, New York Penal Law §190.65(1)(b), and one count of grand larceny in the second degree, New York Penal Law §155.40(1).

The OAE recommended respondent's disbarment. We agree with the OAE's recommendation.

Respondent was admitted to the New Jersey bar in 1991 and the New York bar in 1992.

Respondent was temporarily suspended in New Jersey, effective August 11, 2015, based on his guilty plea to the above crimes. In re Reis, 222 N.J. 524 (2015). In 2013, respondent was disbarred in New York. The court's per curiam opinion found that he had not replied to New York's allegations that, among other things, he had converted client funds, and that there was "uncontested evidence of the threat to the public interest" posed by the misuse of his attorney trust account. Matter of Reis, 105 A.D.3d 62 (2013).

The facts contained in the plea and sentencing transcripts are sparse. On September 10, 2013, respondent appeared before the Honorable Renee White, J.S.C., New York Supreme Court, and entered a guilty plea to counts one and two of a four-count indictment. The indictment charged one count of scheme to defraud in the first degree and three counts of grand larceny in the second degree. Count one charged that respondent engaged in a first-degree scheme to defraud more than one person by false and fraudulent pretenses, representations, and promises, and so obtained property with a value of $1,000 from one or more persons. Counts two through four charged second-degree grand

larceny, counts two and three for property worth more than $50,000, and count four for property worth more than $3,000.

Respondent admitted that, from April 16, 2007 through May 1, 2012, he engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person and to obtain property from more than one person by false and fraudulent pretenses, representations, and promises and, in doing so, obtained property in excess of $1,000 from one or more persons (count one). He further admitted that, from approximately April 13, 2007 to May 29, 2007, he stole property in excess of $50,000 from Anthony Gordon.[1]

In this respect, at the October 29, 2013 sentencing, respondent's attorney explained that initially, respondent began

> taking money to cover others that he needed to pay back, and it became an ever increasing snowball effect of not having enough to pay back the last person, until the amount that people charged was accrued and was improperly used from his client funds. He did not intend that to be the case.
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> [OAEb.Ex.C10-24 to 11-4.][2]

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[1] The transcript refers to the victim as Borden rather than Gordon.

[2] OAEb refers to the OAE's August 9, 2016 brief in support of its motion for final discipline.

Respondent's attorney pointed out that respondent has four children, two with his present wife; that their house is in foreclosure; that his family had to move in with his wife's mother; and that "unfortunately he wouldn't be able to make money to pay back the people he has harmed."

The judge observed that, during the eight-year period that respondent was stealing money from his clients and other individuals, he was using the funds to gamble and to support a very good lifestyle. The judge remarked that respondent supported both his current family and a prior family, "while the people that [he was] supposedly representing wound up without any income or fund, and their lives were significantly damaged by [his] theft from them." The judge added that respondent stole approximately $213,000 and possibly more from his clients in order to support his lifestyle. The judge, thus, sentenced respondent to imprisonment of one to three years on count one, and two to six years on count two, as well as applicable surcharges.

* * *

Following a review of the record, we determine to grant the OAE's motion.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c); In re Magid, 139 N.J.

449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1996). Respondent's guilty plea to two counts of the indictment constitutes conclusive evidence of a violation of RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer). Moreover, the nature of respondent's conduct involved dishonesty, fraud, deceit or misrepresentation, a violation of RPC 8.4(c). Hence, the sole issue remaining is the extent of discipline to impose. R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and respondent must be considered. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Ibid. (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation . . . prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The OAE cited numerous cases involving attorneys who were convicted in New York of second-degree grand larceny and later were disbarred in New Jersey: In re Boyd, 126 N.J. 223 (1991)

(theft of funds from a client's estate in excess of $77,000); In re Lurie, 163 N.J. 83 (2000) (conviction for multiple counts of fraud and grand larceny; the theft did not involve the practice of law; the attorney was involved in a protracted scheme to defraud); In re McCoole, 165 N.J. 482 (2000) (attorney knowingly misappropriated client funds totaling more than $225,000 on at least three occasions); In re Magnotti, 181 N.J. 389 (2004) (guilty plea to felony grand larceny and scheming to defraud in the first degree); In re Lee, 188 N.J. 279 (2006) (guilty plea to second degree grand larceny, stealing more than $50,000 of client funds); and In re Szeqda, 193 N.J. 594 (2008) (attorney pleaded guilty to theft of his client's "escrowed real estate downpayment funds").

In In re Hsu, 163 N.J. 559 (2000), the attorney also was disbarred based on his guilty plea to fourth-degree grand larceny, for stealing property valued in excess of $1,000. The attorney's cocaine addiction, attempts at rehabilitation, and payment of restitution to his client did not save him from disbarment.

Here, respondent admitted that he stole client funds worth more than $50,000. The theft of client funds constitutes knowing misappropriation, a disbarrable offense. In re Wilson, 81 N.J. 451, 455 n.1, 461 (1979) (misappropriation "means any

unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom"). Here, respondent used the funds for his own purposes. As the judge pointed out, he used the money to gamble and to support his family's "very good lifestyle."

Thus, we determine that, as the above attorneys, respondent must be disbarred and so recommend to the Court.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Brian H. Reis
Docket No. DRB 16-285

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Disposition: Disbar

Members	Disbar	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9		

Ellen A. Brodsky
Chief Counsel