SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-337
District Docket No. XIV-2014-0296E

IN THE MATTER OF	:
JOEL A. GROSSBARTH	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 16, 2017

Decided: May 12, 2017

HoeChin Kim 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 on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c), following respondent's conviction in the County Court, County of Rockland, State of New York (RCC) of two counts of second-degree grand larceny (New York Penal Law §155.40(1)) and one count of second-degree forgery (New York Penal Law §170.10(1)), based on respondent's theft of more than

$1,100,000 of client funds, in violation of RPC 1.15(a) (knowing misappropriation), RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). We recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1993 and the New York bar in 1994. He was disbarred in New York, effective March 19, 2013. On March 3, 2016, the Supreme Court of New Jersey temporarily suspended respondent, based on the conduct underlying this matter. In re Grossbarth, 224 N.J. 262 (2016).

In 2012, the Grand Jury of Rockland County issued an indictment (No. 2012-516) charging respondent with three counts of second-degree grand larceny, nine counts of second-degree forgery, seven counts of second-degree possession of a forged instrument, and one count of first-degree offering of a forged instrument for filing. Under a second indictment (No. 2012-517), the Grand Jury charged respondent with four additional counts of second-degree grand larceny, ten counts of third-degree grand larceny, one count of fourth-degree larceny, one count of petit larceny, three counts of second-degree criminal

possession of a forged instrument, two counts of second-degree forgery, and one count of first-degree offering of a false instrument for filing.

On March 19, 2013, before the Honorable Barry E. Warhit, County Court Judge, respondent pleaded guilty to three counts from among all the charges contained in the two indictments. Count one of indictment 2012-516 charged him with second-degree grand larceny for the February 2, 2010 theft of funds in excess of $50,000 from client Sonia Schwartz.[1]

Respondent admitted having received $210,000, representing the settlement funds for damages that Schwartz' house had sustained in a "blast." He deposited the settlement funds in his attorney escrow account and, while Schwartz believed that her lawsuit was still pending, and without her permission or authority, converted the funds to his own personal use.

Count two of indictment No. 2012-517 charged respondent with second-degree grand larceny for the theft of funds in excess of $50,000 from client Edmond Gabriel.

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[1] New York Penal Law §155.40(1) provides, in relevant part, that a "person is guilty of grand larceny in the second degree when he steals property and when . . . the value of the property exceeds fifty thousand dollars."

Respondent admitted that he represented Gabriel in a real estate matter. During the course of the representation, a sum of $250,000, belonging to Gabriel, was sent to respondent for safekeeping. After placing it in his escrow account, and without Gabriel's permission or authority, respondent converted those funds to his own personal use.

Count twelve of indictment No. 2012-516 charged respondent with the forgery of a "hold-harmless" agreement.[2] Respondent admitted that he represented Richard Hogan in respect of a medical malpractice lawsuit. On July 16, 2010, without his client's permission or authority, respondent settled the lawsuit, collected $70,000, and converted those client funds to his own personal use. Unbeknownst to his client and in aid of that theft, respondent used the forged hold-harmless agreement in order to facilitate a settlement.

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[2] New York Penal Law §170.10(1) states, in relevant part, that a "person is guilty of forgery in the second degree when, with the intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument which is . . . a deed, will, codicil, contract, assignment, commercial instrument, credit card . . . or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status."

The District Attorney, Gary Lee Heavner, raised the issue of restitution. At that juncture, the extent of respondent's thefts became clear:

> MR. HEAVNER: And, Judge, just for the record, the restitution figure is $1,146,556.40. And the — just so the defendant is clear, that's not only on the three cases he's now pled guilty to, but 17 other incidents. So I'd like to read those names of those individuals and/or corporations so he understands which cases the restitution covers.
>
> . . . .
>
> THE COURT: You're in agreement that's the number you owe?
>
> [RESPONDENT]: Yes.
>
> [OAEbEx.C,33-24 to 36-9.][3]

On April 1, 2014, Judge Warhit sentenced respondent to a prison term of one and one-half to four and one-half years on each of the three counts in the indictments, to be served concurrently, a $300 surcharge, $25 crime victim fee, and a $50 DNA fee.

Judge Warhit rejected the argument by respondent's counsel that a gambling disease was to blame for respondent's actions:

> So this disease and the blame being shifted by the defendant to the disease I really reject. Because what happened here was the

[3] OAEb refers to the OAE's September 27, 2016 brief in support of the motion for final discipline.

> defendant engaged in conduct that hurt many people. Hurt him as well. He's disbarred, as well he should be. But hurt many people. This was really about decisions and choices that he made. He didn't seek treatment for his disease before he stole money from clients. He stole more money from clients. He didn't seek help until the jig was up, and then he had to seek help because he was caught. So these were not impulsive acts. These were acts that occurred on a daily basis. He betrayed clients, he betrayed colleagues. Mr. Grossbarth, you betrayed all of them. You betrayed the court system. You lied to people who trusted you. You lied to people who relied upon you. Your acts were selfish, they were greedy. You stole well over a million dollars and you've now paid back a good portion of it.[4] But you're still going to state prison.
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> [OAEbEx.D,40-24 to 41-24.]

The OAE urged respondent's disbarment for his knowing misappropriation of client funds, citing In re Wilson, 81 N.J. 451 (1979). The OAE also relied on three cases in which attorneys were disbarred for knowing misappropriation after grand larceny convictions – In re Szeqda, 193 N.J. 549 (2008); In re Lee, 188 N.J. 279 (2006); and In re Hsu, 163 N.J. 559 (2000).

* * *

[4] As of the sentencing date, respondent had repaid $874,000 of the $1,146,556.40 restitution amount.

Following a review of the record, we determined to grant the OAE's motion. Respondent's criminal conviction clearly and convincingly establishes that he has committed a criminal act that reflects adversely on his honesty, trustworthiness, or fitness as a lawyer, in violation of RPC 8.4(b). Moreover, the facts underlying his conviction evidence that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of RPC 8.4(c). Furthermore, respondent is guilty of misappropriation of his clients' funds, in violation of RPC 1.15(a) and In re Wilson, supra, 81 N.J. 451.

A criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; In re Principato, supra, 139 N.J. at 460.

In determining the appropriate measure of discipline, the interests of the public, the bar, and the 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, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

Here, respondent stole in excess of $1,100,000 of client funds held in his attorney escrow account, and converted them to his own personal use, apparently in order to gamble. He was sentenced to one and one-half to four and one-half years in a New York state prison, as well as disbarred in that state.

We determine that, under In re Wilson, supra, 81 N.J. 451, and for the egregious financial crimes that respondent perpetrated upon his clients, he must be disbarred.

Members Gallipoli and Hoberman did not participate.

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 Joel A. Grossbarth
Docket No. DRB 16-337

Argued: February 16, 2017

Decided: May 12, 2017

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:	7		2

Ellen A. Brodsky
Chief Counsel