SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-433
District Docket No. XIV-2014-0137E

IN THE MATTER OF	
JOHN MICHAEL IOANNOU	
AN ATTORNEY AT LAW	

Decision

Argued: April 20, 2017

Decided: June 27, 2017

Al Garcia 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 final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c), following respondent's conviction in the Supreme Court of New York, New York County, of the following crimes: one count of first-degree scheme to defraud (New York Penal Law §190.65(1)(b)); one count of identity theft (New York Penal Law §190.80); two counts of third-degree insurance fraud (New York

Penal Law §172.20); one count of first-degree offering a false instrument for filing (New York Penal Law §175.35); two counts of second-degree grand larceny (New York Penal Law §155.40)(1)); and four counts of third-degree grand larceny (New York Penal Law §155.35(1)). We determine to grant the OAE's motion and to recommend respondent's disbarment.

Respondent was admitted to the New Jersey and New York bars in 1983. Respondent was censured in New York, on November 15, 2007, for recordkeeping violations and for neglect in a personal injury matter. Effective July 19, 2013, he was disbarred in New York based on his criminal conviction.

Effective April 8, 2014, the Supreme Court temporarily suspended respondent, based on the conduct underlying this matter. In re Ioannou, 217 N.J. 275 (2014). He remains suspended to date.

The facts underlying respondent's actions are contained in a March 25, 2014 report of the Supreme Court of New York, Appellate Division, First Judicial Department. Other details are contained in the indictments themselves, as follows.[1]

[1] Respondent admitted to all of the facts and charges contained in the indictments.

Between August 2012 and July 2013, a New York County grand jury handed up four indictments against respondent. On July 19, 2013, respondent pleaded guilty to the first three indictments against him. On July 31, 2013, he pleaded guilty to the fourth indictment.

Between April 2007 and August 2012, respondent engaged in an ongoing scheme to defraud his clients. Specifically, he (1) accepted their personal injury cases; (2) negotiated settlements; (3) obtained the clients' signatures on releases authorizing payment of the settlements; (4) embezzled the clients' settlement funds, converting them to his own personal use and for other purposes; and (5) lied to the clients to hide his thefts.

In respect of the August 2012 indictment, respondent solicited a relative to purchase property, and accepted the relative's $250,000 deposit for the transaction. When respondent changed the terms of the transaction, the relative canceled the deal and demanded the return of the deposit. Respondent, however, had already stolen and spent the funds. At the time of the indictment, respondent still owed the victim $171,000.

In a second matter, respondent drafted a bogus letter and forged a former client's signature to it. The letter purported to withdraw Garfield Derrick's ethics complaint, then pending against respondent with the New York disciplinary authorities. Respondent had urged Derrick to withdraw the complaint, but the client had refused to do so. The forgery was apparent on its face, respondent having reversed the client's name when signing it as "Derrick Garfield."

In respect of the October 2012 indictment, respondent pleaded guilty to first-degree identity theft, and third-degree insurance fraud.

Respondent assumed the identity of Sevon Carty, a dialysis patient, who had been injured in a motor vehicle accident involving an ambulance that was transporting her home from an in-hospital dialysis treatment. Although Carty had declined a solicitation, apparently from hospital staff, to retain respondent for her accident claim (she already had retained an attorney), respondent opened a client file for her.

Carty never had any contact with respondent, yet he sent a letter of representation to the insurance carrier for the ambulance company. Nine months later, he sent the carrier another letter claiming to be Carty's "trial counsel," along

with a HIPAA request that he had forged, seeking Carty's medical information. Respondent then settled the bogus claim he had created, for $4,500. Respondent once again forged Carty's name to the insurance release, obtained the settlement proceeds, forged her name to the carrier's settlement check, and stole all of the proceeds.

In respect of the February 2013 indictment, respondent pleaded guilty to grand larceny in the third degree.

In 2011, respondent accepted a personal injury case involving Luis Alicea-Suarez, a newlywed who died shortly after suffering injuries as a passenger in a vehicle involved in a single-car accident. Suarez' wife, Phalla Chhoum, retained respondent to recover a settlement for their infant daughter's future needs.

On September 14, 2011, respondent secured a $50,000 settlement, representing the maximum payment provided under the driver's insurance policy. The carrier sent two checks to respondent, as directed by order of the surrogate's court, with Chhoum acting as administratrix for Suarez' estate and as guardian for their daughter. One check, for $14,500, represented respondent's fee.

Respondent deposited both insurance checks into his escrow account on September 14, 2011. The second check in the amount of $35,000, representing the client's share, had been made payable to Chhoum, as guardian of property of the infant daughter. Within a month of signing Chhoum's name to the check and depositing it, respondent had embezzled all of the child's funds. Respondent's bank records showed that he used the funds to repay other clients for funds he had previously stolen from them.

As to the July 2013 indictment, respondent pleaded guilty to one count of second-degree grand larceny and three counts of third-degree grand larceny, all relating to his theft of settlement funds in the following four additional client matters.

In 2009, Jiwenrica Marcena, described as a young, single mother, was involved in an automobile accident. Another vehicle "broadsided" Marcena's automobile on the driver-side door, causing Marcena multiple serious injuries, including severe internal injuries and broken bones. She retained respondent to file suit against the other driver.

Marcena had required a hospitalization and, while she was recuperating, respondent visited her and offered his services.

Following the accident, Marcena required extensive therapy and post-hospitalization care. During her recovery, she lost both her job and the apartment where she lived with her child forcing both of them to move into Marcena's mother's living quarters. Mercena hoped for a settlement of her claim in order to aid in her recovery and to help her regain her independence.

Thereafter, and without Marcena's knowledge or consent, respondent settled her case for $100,000, signed her name to the insurance release and stole all of the settlement proceeds.

In 2009, Mary Misfud, a client in her seventies, retained respondent for injuries sustained when an automobile struck her as she was crossing a street, knocking her to the pavement. One of her injuries required her to undergo shoulder surgery. At some point during the representation, Misfud declined a $60,000 settlement offer from the defendant. Undeterred, respondent settled the case anyway. He then forged her signature (apparently to the insurance release) and stole the settlement proceeds. Thereafter, he ceased taking Misfud's calls. When Misfud travelled to Manhattan to meet with him, she found that he had closed his law office.

Respondent also stole the settlement proceeds in two matters referred to him by a fellow attorney, Sidney

Baumgarten. In respect of a 2010 matter, Gerald Cannon, a National Guardsman, was in his vehicle when it was struck from behind, the force pushing him into the vehicle ahead. Cannon suffered injuries of an undisclosed nature. Respondent settled that matter for $11,500.

The second referral involved client Robert Pollack, described as a septuagenarian recovering from treatment for lymphoma, who retained respondent for injuries he sustained when a motor vehicle ran over his foot while he waited at a bus stop. Respondent settled Pollack's matter for $10,000.

Respondent stole both Cannon's and Pollack's settlement proceeds, and repeatedly lied to Baumgarten about his actions. Finally, in May 2013, respondent admitted to Baumgarten that he had taken their funds. In an attempt to dissuade Baumgarten from reporting the larcenies "to the District Attorney or the [disciplinary authorities]," respondent promised to promptly repay Cannon and Pollack. At the time, however, respondent was actively "reporting to both this [Supreme Court of New York, New York County] and to the District Attorney's Office that he lacked any funds with which to pay any of his victims, much less Mr. Cannon and Mr. Pollock."

The OAE urged respondent's disbarment for his knowing misappropriation of client funds, citing In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985). The OAE also cited cases involving attorneys who were disbarred for knowing misappropriation after grand larceny convictions, including In re Szegda, 193 N.J. 549 (2008); In re Lee, 188 N.J. 279 (2006); In re Singer, 185 N.J. 163 (2005); and In re Hsu, 163 N.J. 559 (2000).

* * *

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).

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). Respondent's guilty plea to first-degree scheme to defraud, identity theft, two counts of third-degree insurance fraud, first-degree offering of a false instrument for filing, two

counts of second-degree grand larceny, and four counts of third-degree grand larceny, establishes a violation of RPC 8.4(b). 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).

That an attorney's conduct did not involve the practice of law or arise from a client relationship will not excuse the ethics transgression or lessen the degree of sanction. In re Musto, 152 N.J. 167, 173 (1997) (citation omitted). Offenses that evidence ethics shortcomings, although not committed in the attorney's professional capacity, may, nevertheless, warrant discipline. In re Hasbrouck, 140 N.J. 162, 167 (1995). The

obligation of an attorney to maintain the high standard of conduct required by a member of the bar applies even to activities that may not directly involve the practice of law or affect his or her clients. In re Schaffer, 140 N.J. 148, 156 (1995).

Here, respondent stole $395,000 of trust funds from an array of clients and at least one non-client. He did so by depositing client and escrow funds in his attorney escrow account, and thereafter converting them to his personal use and to repay other clients from whom he had previously stolen funds. He received a twenty-eight month to seven-year term of incarceration in a New York state prison for his crimes, and was disbarred in that state.

Respondent's criminal thefts of client and escrow funds from his attorney escrow account, often perpetrated upon his most vulnerable clients, for his own personal gain, constitute knowing misappropriation. Because respondent is guilty of knowing misappropriation, we need not consider the appropriate quantum of discipline for his crimes of larceny. We determine that, In re Wilson, supra, 81 N.J. 451 and In re Hollendonner, supra, 102 N.J. 21, require respondent's disbarment. We so recommend.

Member Gallipoli 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John M. Ioannou
Docket No. DRB 16-433

Argued: April 20, 2017

Decided: June 27, 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:	8		1

Ellen A. Brodsky
Chief Counsel