

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. 16-412  
District Docket No. XIV-2015-0246E

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IN THE MATTER OF :  
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MATTHEW S. NEUGEBOREN :  
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AN ATTORNEY AT LAW :  
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Decision

Argued: March 16, 2017

Decided: June 28, 2017

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

Respondent, who is incarcerated, did not participate in 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)(2), following respondent's guilty plea to one count each of wire fraud and tax fraud, violations of RPC 8.4(b) (commission of 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). For the reasons set forth below, we determined to grant the motion and recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 2002 and to the New York bar in 2003. At the relevant times, he was in-house counsel to a home health care and nursing service, referred to as "Company A" throughout the proceedings.

Although respondent has no disciplinary history in New Jersey, the Court temporarily suspended him on June 2, 2015, based on his guilty plea to the crimes underlying this motion for final discipline. In re Neugeboren, 221 N.J. 507 (2015). He remains suspended.

On May 10, 2016, the State of New York disbarred respondent, based on his conviction of the same crimes.

On May 26, 2015, a two-count information charged respondent with one count of wire fraud, in violation of 18 U.S.C. § 1343, and one count of tax fraud, in violation of 18 U.S.C. § 7206. On that same date, respondent pleaded guilty to both charges before the Honorable Mary L. Cooper, U.S.D.J., District of New Jersey, and admitted to certain facts in support of those charges.

In respect of the wire fraud charge, respondent testified that, between 2006 and 2013, he was in-house counsel to Company A. He maintained an attorney trust account with Sovereign (now

Santander) Bank and was the only person who had access to the account.

On some occasions, respondent paid Company A expenses with trust account monies. To obtain Company A funds, he directed a Company A accounts payable clerk to either issue a check to his trust account or to transfer funds to the account by wire.

On other occasions, respondent fraudulently obtained Company A funds "under the guise of paying expenses on Company A's behalf from [his] attorney trust account." Instead of paying the expenses, he used Company A's monies to support his gambling addiction.

Specifically, from January 2008 to December 2012, respondent directed the transfer of approximately \$2,644,911.91 in Company A funds to his trust account. On December 12, 2012, respondent transferred \$500,000 to his personal account. He, thus, pleaded guilty to wire fraud.

In respect of the tax fraud charge, respondent testified that, on March 12, 2012, he filed a federal income tax return with the Internal Revenue Service (IRS). Respondent knowingly omitted from the return \$630,000 in gross income that he had fraudulently obtained from Company A, in 2011. He, thus, pleaded guilty to tax fraud.

On February 9, 2016, respondent was sentenced, on each count, to eighteen months' imprisonment, to run concurrently, followed by

supervised release for three years on each count, to be served concurrently. He was assessed \$200 and ordered to pay \$1,404,962.91 in restitution to Company A<sup>1</sup> and \$474,814 to the IRS.

On May 10, 2016, New York disbarred respondent.

\* \* \*

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(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); and In re Principato, 139 N.J. 456, 460 (1995). Specifically, respondent's conviction establishes a violation of RPC 8.4(b), which provides that, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Moreover, the nature of respondent's conduct supports the conclusion that he committed conduct involving dishonesty, fraud, deceit or misrepresentation, a violation of RPC 8.4(c). Hence, the sole issue is the extent of discipline to be imposed on respondent for a violation of RPC

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<sup>1</sup> At some point, during the four-year period, respondent returned to his trust account \$1,239,949 of the \$2,644,911.91 taken from Company A. Presumably, he transferred those funds back to Company A, as the restitution amount is the difference between the \$2,644,911.91 respondent took from Company A and the \$1,239,949 respondent returned to Company A.

8.4(b) and (c). R. 1:20-13(c)(2); In re Magid, supra, 139 N.J. at 451-52; and 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). Thus, we must take into consideration 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). Yet, even if the misconduct is not related to the practice of law, it must be kept in mind that an attorney "is bound even in the absence of the attorney-client relation to a more rigid standard of conduct than required of laymen." In re Gavel, 22 N.J. 248, 265 (1956). "To the public he is a lawyer whether he acts in a representative capacity or otherwise." Ibid.

Although respondent pleaded guilty to wire fraud and tax fraud, the nature of his conduct was the knowing misappropriation of more than \$2 million from Company A, his client, over a four-year period, for the purpose of fueling his gambling addiction. For this, he must be disbarred. In re Wilson, 81 N.J. 451 (1979) (disbarment mandated when an attorney knowingly misappropriates a client's money).

Disbarment also is warranted based on respondent's conviction of wire and tax fraud. In In re Goldberg, 142 N.J. 557, 567 (1995), the Court listed aggravating factors that normally lead to disbarment in criminal cases:

Criminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to theft by deception and fraud, ordinarily result in disbarment. We have emphasized that when a criminal conspiracy evidences "continuing and prolonged, rather than episodic, involvement in crime," is "motivated by personal greed," and involved the use of the lawyer's skills "to assist in the engineering of the criminal scheme," the offense merits disbarment. (Citations omitted.)

Goldberg supports disbarment in this case. Respondent's involvement in the fraud against Company A was "continuing and prolonged," extending over a period of four years and involved the embezzlement of more than \$2.5 million. In so doing, he was motivated by personal greed, the need to fund his gambling habit.<sup>2</sup> Finally, although respondent did not necessarily use his skills as a lawyer to carry out the scheme, he used and then abused the position of trust and power that he held, as in-house counsel, to divert Company A's funds to himself. His fraud against the U.S. Government,

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<sup>2</sup> It is well-settled that compulsive gambling cannot serve in mitigation of knowing misappropriation. See In re Goldberg, 109 N.J. 163 (1988); In re Nitti, 110 N.J. 321 (1988); and In re Lobbe, 110 N.J. 59 (1988).

by failing to declare and pay income tax on his ill-gotten gains, compounds the venality of his actions.

To conclude, we determined to grant the motion for final discipline, based on respondent's conviction of wire fraud and tax fraud, a violation of RPC 8.4(b) and (c). Because his criminal conduct stemmed from his knowing misappropriation of client funds, we recommend that he be disbarred.

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 Matthew S. Neugeboren  
Docket No. DRB 16-412

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Argued: March 16, 2017

Decided: June 28, 2017

Disposition: Disbar

<i>Members</i>	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