SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-063
District Docket No. XIV-2011-0634E

IN THE MATTER OF	:
DOUGLAS JOSEPH DEL TUFO	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 18, 2017

Decided: August 16, 2017

Reid A. Adler appeared on behalf of the Office of Attorney Ethics.

Marc Allen Futterweit appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent stipulated to having violated RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter), RPC 8.4(b) (engaging in criminal conduct that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud,

deceit, or misrepresentation). The OAE maintained that a prospective one-year suspension is appropriate discipline. For the reasons expressed below, we agree with the OAE's recommendation and determine to impose a one-year suspension for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1997. In October 2011, he was admonished for failure to communicate with a client in a matrimonial matter and failure to cooperate with the district ethics committee's investigation of the grievance. In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011).

In May 2012, respondent was reprimanded, on a motion for discipline by consent, for commingling personal and business funds in his attorney trust account, and paying personal and business expenses from that account. The OAE previously had informed respondent that the practice was a violation of the recordkeeping rules. Respondent also was guilty of additional recordkeeping violations, as well as a failure to cooperate with disciplinary authorities. In re Del Tufo, 210 N.J. 183 (2012).

In January 2014, respondent was suspended for three months. In that matter, he had been appointed to serve as the public defender for two defendants. Notwithstanding that appointment, and the public defender fees that the clients had paid to the

court, respondent accepted fees from both clients to act as their private attorney. In re Del Tufo, 216 N.J. 332 (2013).

In one matter, the judge directed respondent to provide him with a letter explaining how he had achieved the status of private attorney, while acting as the township's public defender. Respondent failed to comply with that directive. He neither refunded the client's retainer and expert fees, nor provided the client with an itemized bill, despite the client's requests.

Respondent also failed to provide the other client with a writing communicating the basis or rate of his fee and charged unreasonable fees in both matters, all in violation of RPC 1.5(a) and (b) and RPC 8.4(c) and (d). He remains suspended to date.

Respondent was temporarily suspended on two occasions, in July 2011 and July 2012, for failure to comply with fee arbitration determinations. In re Del Tufo, 207 N.J. 36 (2011), and In re Del Tufo, 211 N.J. 156 (2012). He was reinstated on both occasions, after he paid the fee arbitration awards and the sanctions that we imposed. In re Del Tufo, 207 N.J. 343 (2011), and In re Del Tufo, 212 N.J. 99 (2012).

The facts set forth in the stipulation are as follows. On October 20, 2011, Tracy Rubinetti reported the theft of her 1.6-

carat diamond engagement ring to the Mount Arlington Police Department and identified respondent as responsible for the theft.[1] In a recorded telephone conversation with Rubinetti, respondent admitted that he had taken the ring without her permission. He admitted the same to the police, as well as the fact that he had sold the ring at a jewelry store.

On October 26, 2011, respondent was charged with the theft and, on May 24, 2012, was indicted by a Morris County Grand Jury for third-degree theft, in violation of N.J.S.A. 2C:20-3a, and third-degree receiving stolen property, in violation of N.J.S.A. 2C:20-7a.

On December 11, 2015, respondent was admitted into the pretrial intervention program (PTI).

Respondent failed to inform the OAE of the criminal charges filed against him, as required by R. 1:20-13(a)(1). In December 2011, the OAE learned about the criminal charges and docketed the matter for investigation. After respondent's admission into PTI, on April 12, 2016, the OAE wrote to respondent's counsel, seeking a written reply to the grievance. On May 13, 2016, respondent submitted a certification stating that Rubinetti had

[1] Respondent had been in a "dating" relationship with Rubinetti.

authorized him to sell the ring and that he had given her the proceeds from the sale.

The certification, however, contained materially false statements. Specifically, respondent had informed the police that Rubinetti had not given him permission to take or sell the ring and that he had not given her the proceeds from the sale.

Respondent stipulated that he violated RPC 8.4(b) by stealing and then selling the ring without Rubinetti's permission, and RPC 8.1(a) and RPC 8.4(c) for his misrepresentations in the certification to the OAE.

The OAE maintained that a prospective one-year suspension was appropriate discipline and that respondent should be required to pay full restitution to the insurance companies, as ordered by the court. The OAE relied on the following cases in making its recommendation: In re Walzer, 203 N.J. 581 (2010) (censure for attorney employed by the New Jersey Department of Human Services who, on at least fourteen occasions, took various food and/or beverage items, totaling approximately $100, from a blind refreshment vendor, without paying for the items; neither the Mercer County Prosecutor nor the Office of the Attorney General elected to prosecute the attorney for shoplifting, a violation of N.J.S.A. 2C:20-11(c)(4); the attorney had no ethics history in his thirty-six years at the bar, paid $1,200 to the

vendor, and was retired from the practice of law); In re Masciocchi, 208 N.J. 406 (2011) (reprimand for attorney guilty of misconduct in four matters that included misrepresentations to the OAE, misrepresentations to clients in two of the matters, gross neglect, pattern of neglect, and failure to communicate with the clients; in a fifth matter, he failed to communicate the basis or rate of the fee in writing and failed to return the unearned portion of the fee; compelling mitigation considered); and In re Sunberg, 156 N.J. 396 (1998) (reprimand for lying to the OAE about the fabrication of an arbitration award and failing to consult with a client before permitting two matters to be dismissed).

The stipulation noted, in mitigation, that respondent agreed in the criminal matter and, as part of the ethics stipulation, to pay full restitution to the victim and/or "the insurance companies." The stipulation recited, as aggravating factors, that respondent's conduct resulted in financial injury to an innocent victim; that his misconduct was for personal gain; that respondent has an ethics history (an admonition, a reprimand, and a three-month suspension); and that he failed to report the criminal charges to the OAE.

* * *

Following a full review, we find that the stipulation clearly and convincingly establishes that respondent's conduct was unethical. By stealing Rubinetti's ring and then selling it without her permission, respondent engaged in criminal conduct, a violation of RPC 8.4(b). Further, respondent submitted a certification to the OAE in which he made false representations, a violation of both RPC 8.1(a) and RPC 8.4(c).

Generally, theft by an attorney results in a period of suspension, the length of which is determined by the severity of the crime and other mitigating or aggravating factors. See, e.g., In re Kopp, 206 N.J. 106 (2011) (retroactive three-year suspension for identity theft, credit card theft, theft by deception, and burglary; the attorney used the fruits of her criminal activity to support her addiction; mitigating factors included her "tremendous gains" in efforts at drug and alcohol rehabilitation); In re Bevacqua, 185 N.J. 161 (2005) (three-year suspension for attorney who used a stolen credit card to attempt to purchase merchandise at a K-Mart store under the assumed name, and had five additional fraudulent credit cards and a phony driver's license in his possession at the time; prior reprimand and six-month suspension); In re Meaden, 165 N.J. 22 (2000) (three-year suspension for attorney who stole a credit card, then attempted to commit theft by using the number to

purchase $5,800 worth of golf clubs, and made multiple misrepresentations on fire arms purchase identification cards and handgun permit applications by failing to disclose his psychiatric condition and involuntary commitment; prior reprimand); In re Pariser, 162 N.J. 574 (2000) (six-month suspension for deputy attorney general (DAG) who pleaded guilty to one count of third degree official misconduct for stealing items from co-workers, including cash; his conduct was not an isolated incident but viewed as a series of petty thefts occurring over a period of time; the attorney received a three-year probationary term and was ordered to pay a $5,000 fine, to forfeit his public office as a condition of probation, and to continue psychological counseling until medically discharged; the attorney's status as a DAG was considered an aggravating factor); In re Burns, 142 N.J. 490 (1995) (six-month suspension for attorney who admittedly committed three instances of knowing and unlawful burglary of an automobile, two instances of theft by unlawful taking, and one instance of unlawful possession of burglary tools). But see In re Walzer, supra, 203 N.J. 581 (censure for attorney employed by the Department of Human Services who, on at least fourteen occasions, took various items, totaling approximately $100, from a blind refreshment vendor).

Attorneys found guilty of lying to ethics authorities have received discipline ranging from a reprimand to a term of suspension. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the ethics committee the filing date of a complaint filed on a client's behalf; he also failed to cooperate with the investigation of the grievance; prior reprimand); In re Sunberg, supra, 156 N.J. 396 (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who misrepresented to an individual lender of his client and to the OAE that funds belonging to the lender, which had been deposited into the attorney's trust account, were frozen by a court order, when they, in fact, had been disbursed to various parties; the attorney also made misrepresentations on an application for professional liability insurance; mitigating factors included the passage of time, the absence of a disciplinary history over the attorney's lengthy career, and his public service and charitable activities); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who

submitted two fictitious letters to the ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; he also filed a motion on behalf of another client after his representation had ended, and failed to communicate with both clients); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who failed to diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three fictitious letters to the ethics committee in an attempt to show that he had worked on the matter); In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who improperly released escrow funds to his cousin, a party to the escrow agreement, and falsified bank records and trust account reconciliations to mislead the ethics investigator that the funds had remained in escrow); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension for attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the signature of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the ethics committee to

cover up his improprieties); and In re Penn, 172 N.J. 38 (2002) (three-year suspension, in a default, for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, the attorney lied to the client that the case had been successfully concluded, and fabricated a court order, signing the name of a judge; the attorney also lied to his adversary and to ethics officials, and practiced law while ineligible).

Clearly, respondent's conduct was not as serious as in the three-year theft cases, which involved aspects of credit card fraud. Respondent's conduct consisted of a single theft - not a series of thefts over a period of time. Nevertheless, we view respondent's conduct as more serious than that of the attorneys in Pariser (six months), Burns (six months), and Walzer (censure) because, even though each of those attorneys engaged in a series of thefts, the thefts involved small sums. Moreover, respondent's conduct is compounded by his violations of RPC 8.1(a) and RPC 8.4(c) by submitting to the OAE a certification containing misrepresentations, conduct that, alone, would warrant a three-month suspension.

Based on the totality of respondent's conduct, including the financial injury to the victim; respondent's ethics history consisting of an admonition, a reprimand, and a three-month

suspension; the fact that respondent did not notify the OAE of his criminal conduct, as required by R. 1:20-13(a)(1); and the principle of progressive discipline, we determine that a one-year prospective suspension is warranted.

We further condition respondent's reinstatement on his providing proof to the OAE that he has made full restitution in the underlying matters to "the victim and/or the insurance companies."

Chair Frost and Member Singer voted to impose a two-year prospective suspension. Member Gallipoli voted to recommend respondent's disbarment.

Vice-Chair Baugh and Members Rivera and Zmrich 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 Douglas J. Del Tufo
Docket No. DRB 17-063

Argued: May 18, 2017

Decided: August 16, 2017

Disposition: One-year suspension

Members	One-year Suspension	Two-year Suspension	Disbar	Did not Participate
Frost		X		
Baugh				X
Boyer	X			
Clark	X			
Gallipoli			X	
Hoberman	X			
Rivera				X
Singer		X		
Zmirich				X
Total:	3	2	1	3

Ellen A. Brodsky
Chief Counsel