SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-204
District Docket No. XIV-2016-0529E

IN THE MATTER OF	:
ALEX CONSTANTOPES	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 14, 2017

Decided: December 5, 2017

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

Respondent did not appear for oral argument, despite proper service.

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

This matter was before us on a motion for reciprocal discipline, pursuant to R. 1:20-14(a), filed by the Office of Attorney Ethics (OAE). The motion is based on respondent's disbarment in New York for misappropriation of client trust funds, escrow funds, and law firm funds, in violation of RPC 1.15(a) (failure to safeguard funds), RPC 8.4(c) (conduct involving

dishonesty, fraud, deceit, or misrepresentation),[1] and the principles of In re Wilson, 81 N.J. 451 (1979), In re Hollendonner, 102 N.J. 21 (1985), and In re Greenberg, 155 N.J. 138 (1998).

For the reasons set forth below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1994, and the New York and District of Columbia bars in 1996. At the relevant time, he practiced law in New York. Although he has no history of discipline in New Jersey, on August 22, 2017, the Court entered an Order administratively revoking respondent's license to practice law, effective August 28, 2017, based on his failure to comply with his attorney registration requirements for seven consecutive years. R. 1:28-2(c).[2]

A decision and order of the Supreme Court of New York, Appellate Division, Second Judicial Department (Appellate Division) describes the proceedings against respondent and his conduct as follows.

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[1] Respondent also was charged with a violation of New York's RPC 8.4(h) (engaging in conduct that adversely reflects on a lawyer's fitness as a lawyer), for which there is no New Jersey equivalent.

[2] Pursuant to R. 1:28-2(c), we, nevertheless, retain jurisdiction to discipline respondent because his misconduct pre-dated the effective date of the Court's revocation Order.

The Grievance Committee for the Second, Eleventh, and Thirteenth Judicial Districts moved (1) to suspend respondent from practicing law pending the consideration of the ethics charges against him; (2) to authorize the institution and prosecution of a disciplinary proceeding against him, based on a March 28, 2016 verified petition; and (3) to refer the issues raised to a special referee to "hear and report." The Grievance Committee filed an additional charge against respondent via a supplemental petition, dated May 3, 2016.

Respondent did not oppose the motion, which stemmed from the Grievance Committee's investigation of two complaints filed against him.

The Thomas Feeley Matter

In April 2010, Thomas Feeley retained respondent to represent him in the sale of his cooperative apartment. At the time, respondent was with the law firm of Wasserman, Constantopes and Sampson, LLC. (the W, C & S firm). On April 15, 2010, respondent deposited the buyer's $18,000 down payment into the W, C & S firm's escrow/IOLA account (the escrow account) maintained at Astoria Federal Savings (Astoria).

The closing took place on May 25, 2010. Although respondent was required to disburse $13,705 to Feeley at that time, instead,

he informed Feeley that, the following week, he would disburse the proceeds together with a closing statement. Feeley received neither. On August 24, 2010, Feeley filed a complaint with the Grievance Committee. Respondent issued a check to Feeley on or about November 29, 2011 from a different escrow account, which W, C & S maintained at TD Bank.

After the Grievance Committee filed a complaint, respondent's answer contended that, on June 8, 2010, he had sent the closing statement and a $13,705 escrow check to Feeley. He attached a copy of the closing statement and a copy of the front of the check, but submitted no confirmation that the check had cleared the escrow account.

The Grievance Committee subpoenaed respondent's escrow records from Astoria for the period of April 2010 through December 2011. The records showed that, on March 14, 2011, the balance in respondent's escrow account was only $4,941.94, "well below the $13,705 he should have been holding for Feeley."

Subsequently, respondent claimed that, in March 2011, he had transferred Feeley's funds to the firm's IOLA trust account (the TD IOLA account) and provided the Grievance Committee with monthly statements for February 2011 through December 2011. Those records, however, failed to confirm that respondent had transferred $13,705 into the TD IOLA account – only that a $13,705 check issued to

Feeley, on November 29, 2011, had cleared that account on December 5, 2011.

The verified petition charged that respondent misappropriated funds entrusted to him as a fiduciary, a violation of RPC 1.15(a).

The Gus and Gina Plakas Matter

In August 2013, Gus and Gina Plakas retained respondent for representation in the sale of their house. Gordon Chang, Esq. represented the buyers. By letter dated August 27, 2013, respondent forwarded an executed contract to Chang. Respondent's cover letter represented that he would deposit the $71,500 down payment into his "IOLA non-interest bearing account." The contract of sale required respondent to hold the monies in escrow until either the closing of title or the termination of the contract.

In a March 26, 2014 letter, Chang canceled the contract and requested the return of the down payment, together with reimbursement of the buyers' costs, because the sellers were unable to close on the transaction. Respondent did not return any of the funds. The buyers, thus, retained Brian Yang, Esq. who instituted a lawsuit, which resulted in the entry of a March 17, 2015 default judgment against respondent, his clients, and his former law firm. The judgment required the defendants to pay $71,500, together with $200 in costs and $445 in disbursements.

The Grievance Committee subpoenaed bank records from Astoria, which showed that, on September 11, 2013, respondent had deposited the $71,500 down payment from the Plakas transaction into the escrow account and that the balance in the escrow account fell below that amount. Indeed, by March 24, 2014, the balance had decreased to $63.27.

The verified petition charged that respondent violated RPC 1.15(a).

The Sacco & Fillas, LLP Matter

In June 2015, Elias Fillas, a partner with the law firm of Sacco & Fillas, LLP (the S & F firm) filed a grievance against respondent. Fillas alleged that, on May 21, 2015, respondent, who was then an associate with the S & F firm, had issued a $73,301.30 check from the firm's escrow account, payable to the Law Offices of Brian Yang. At the time, respondent was a signatory on the S & F firm's escrow account. According to Fillas, respondent admitted issuing the check without the S & F firm's knowledge or consent, in order to satisfy the judgment against him in connection with the Plakas real estate transaction that he had handled prior to joining the firm.

On October 29, 2015, the Grievance Committee questioned respondent under oath. During that examination, respondent

admitted that, on May 21, 2015, he issued a check from the S & F firm's escrow account to satisfy a personal judgment against him, without the firm's knowledge or consent, and that he had arranged for the hand-delivery of the check to Brian Yang's law office.

On March 29, 2016, the Grievance Committee filed an Order to Show Cause, supported by an Affirmation, seeking respondent's immediate temporary suspension.

The verified petition charged that respondent violated RPC 1.15(a).

The Peter Kazanas Matter

As noted above, a supplemental petition, dated May 3, 2016, contained one charge, which alleged that respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. The Appellate Division's order of disbarment recited that respondent had engaged in such dishonest conduct by, among other things, misleading a client about the status of a settlement.

The supplemental petition specifically described that conduct. In March 2013, Peter Kazanas retained respondent to resolve ongoing disputes with a Dunkin Donuts coffee shop located next door to Kazanas' pizzeria. Respondent subsequently misrepresented to Kazanas that the matter had been resolved and that Kazanas would receive a check from GEICO [Government

Employees Insurance Company]; that respondent's new associate had determined that "FedEx" had lost the check to Kazanas from GEICO; that a stop order had been placed on the check, and that, if a new check were not received timely, he would file a lawsuit on Kazanas' behalf for more than the settlement amount.

Respondent knew that he had not settled the matter with Dunkin Donuts and that no GEICO settlement check, therefore, had been issued.

Respondent made those misrepresentations after Kazanas threatened to file an ethics grievance if he did not receive the GEICO check and his file by the close of business on October 18, 2013. In late October 2013, respondent also misrepresented to Kazanas that he had forwarded his client file via "UPS," when he knew that he had not done so.

The verified petition charged respondent with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and conduct that adversely reflected on his fitness as an attorney, in violation of RPC 8.4(c) and RPC 8.4(h), respectively.

During the Grievance Committee's investigation, respondent claimed that he no longer intended to practice law, had no current clients, had a real estate broker's license, and was in the process of opening a real estate brokerage and consulting firm.

* * *

Based on the foregoing, and on respondent's substantial admissions under oath, including that he had improperly used funds from his law firm's escrow account to satisfy a personal judgment against him, the Appellate Division suspended him from practicing law, on August 19, 2016, pending further order of the Court. The Appellate Division also authorized the Grievance Committee to institute and prosecute disciplinary proceedings against respondent, based on the verified petition, and referred the matter to a special referee.

On February 8, 2017, the Appellate Division issued an opinion and order disbarring respondent, following his failure to file an answer to the verified petition and supplemental petition, deeming the charges against him established.

The OAE maintained that identical discipline is warranted here because respondent was found guilty by default of knowing misapplication of client and law firm trust funds. In support of its recommendation for disbarment, the OAE cited, among other cases, In re Wilson, supra, 81 N.J. 451 (knowing misappropriation of client funds), In re Noonan, 102 N.J. 157 (1986) (knowing misappropriation of client funds), In re Hollendonner, supra, 102 N.J. 21 (knowing misappropriation of escrow funds), In re Greenberg, supra, 155 N.J. 138 (knowing misappropriation of law

firm funds), and In re Siegel, 133 N.J. 162 (1993) (knowing misappropriation of law firm funds).

The OAE maintained that respondent: (1) made unauthorized disbursements from the escrow/IOLTA account of funds held on behalf of Feeley; (2) made unauthorized disbursements from the escrow account and failed to return the deposit to the buyers in the Plakas matter when the real estate contract was terminated; and (3) misappropriated his employer's funds to satisfy a judgment against him and to satisfy his prior knowing misappropriation of escrow funds.

The OAE added that respondent failed to notify it of his New York discipline, as required by R. 1:20-13(a)(1). For the totality of respondent's ethics violations, the OAE recommended respondent's disbarment.

* * *

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

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state."

The New York proceedings clearly and convincingly establish that respondent misappropriated client, escrow, and law firm funds, made misrepresentations to a client, and failed to notify the OAE of his New York discipline, as required by R. 1:20-13(a)(1).

The Court has defined misappropriation as:

> any unauthorized use by the attorney 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.
>
> [In re Wilson, supra, 81 N.J. 455, n.1.]

As noted by the Court in In re Noonan, 102 N.J. 157 (1986):

> The misappropriation that will trigger automatic disbarment under [In re Wilson], disbarment that is "almost invariable," [citation omitted] consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer of for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of *Wilson* is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: It is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. . . . The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality" -- all are irrelevant.
>
> [Id. at 160.]

As to respondent's theft of law firm funds, the Court stated in In re Greenberg, supra,

> [T]he Court has recognized "no ethical distinction between a lawyer who for personal gain willfully defrauds a client and one who for the same untoward purpose defrauds his or her partners. [citation omitted.] Our perception that such acts of theft are morally equivalent does not derive from the relationships between attorneys and their clients or attorneys and their partners but, rather, from our belief that "misappropriation from the latter is as wrong as from the former." [citation omitted.] Moreover, it is not clear that a distinction between client funds and firm funds is readily made by the average person. The general public is unlikely to know that attorneys are required to maintain separate accounts for client and firm funds, RPC 1.15, and may fear that the misappropriation of firm funds is synonymous with the misappropriation of client funds. It is this threat to public confidence in the integrity and trustworthiness of the bar that motivated the Court in Wilson.
>
> The Wilson rule . . . applies in this case: in the absence of compelling mitigating factors justifying a lesser sanction, which will occur quite rarely, misappropriation of firm funds will warrant disbarment.
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> [Id. at 153.]

Respondent blatantly misappropriated client, escrow, and law firm funds. Thus, under R. 1:20-14(a)(4) and In re Wilson and its progeny, we recommend respondent's disbarment.

Members Clark 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 Alex Constantopes
Docket No. DRB 17-204

Argued: September 14, 2017

Decided: December 5, 2017

Disposition: Disbar

Members	Disbar	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