SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-442 and 17-143
District Docket Nos. XIV-2016-0097E
and XIV-2017-0199E

IN THE MATTER OF

STEPHEN HAROLD LANKENAU

AN ATTORNEY AT LAW

Dissent

Argued: March 16, 2017 (DRB 16-442)
June 15, 2017 (DRB 17-143)

Decided: December 14, 2017.

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

We respectfully dissent from the majority determination in this matter and write to set forth our reasons. Upon review of the totality of respondent's misconduct underlying Lankenau I, which he exacerbated by his misconduct addressed in Lankenau II, we determine that disbarment is warranted.

We find that respondent's own admissions in the Delaware disciplinary proceeding establish, well beyond the clear and convincing standard, that he knowingly misappropriated law firm funds. Those admissions include:

- he signed a fee sharing agreement with Lundy Law, knew he was not supposed to do outside work or non-PI work, and knew that Lundy Law had a referral policy for cases it would not, itself, litigate;

- despite his employment agreement, he surreptitiously litigated these cases, which included non-PI cases, for pecuniary gain;

- he retained all fees in these matters, despite admitting they belonged to Lundy Law, and did not replace the costs that he had advanced;

- although Lundy had not asked for the fees, he later disgorged all of them to that firm; indeed, the Delaware Supreme Court found, as fact, that Lundy Law was injured, as respondent had taken money that belonged to the firm;

- he advanced costs in some of the matters using "old existing Lundy Law accounts" — the record says nothing about these actions being limited to an electronic filing fee service, or that financial matters were handled solely out of the firm's main office. Rather, respondent admitted that he used funds in accounts held by Lundy Law;

- he filed at least one of the cases under his firm's name, but directed the client to issue the legal fee check solely to him, to avoid detection, since he had done so secretly;

- he engaged in criminal conduct over a five-year period; and

- he knew he should not have committed any of the above misconduct, and unequivocally admitted so, before the Delaware Supreme Court.

Specifically, in Lankenau I, respondent unequivocally and unconditionally admitted, before the Delaware Supreme Court, that he had knowingly misappropriated and stolen $6,444.44 of his law firm's legal fees, in addition to $900 of his law firm's funds, by covertly representing clients and litigating matters, in violation

of the express terms of his employment contract. He kept the profits he had generated for himself. He did not assert that he needed the money to supplement the salary paid to him by Lundy Law or that he was otherwise engaged in a fee or salary dispute with the firm. Rather, he admitted that he had engaged in criminal theft from his law firm, over a five-year period. The Delaware Supreme Court found, as fact, that Lundy Law was injured, as respondent had taken money that belonged to the firm.

To avoid detection by his law firm, respondent arranged for all legal fees to be paid directly to him, depositing them into his personal account. After success in two matters, he secretly advanced the costs and fees for two subsequent matters from Lundy Law's funds – specifically, old, existing Lundy Law accounts - thereby eliminating his out-of-pocket expenses and increasing his pecuniary gains. In the third matter, respondent included Lundy Law's name in the caption of the pleading, despite admitting that the firm had no knowledge that he had filed the action, that he had paid the costs and fees from firm funds, or that he had earned and kept legal fees generated by the work. By respondent's own admission, provided in mitigation during the Delaware proceedings, he was the only Delaware-licensed attorney employed by Lundy Law, the only attorney assigned to the Delaware office, and the only attorney who had control of decisions made in respect of the firm's

Delaware cases. In his words, he answered to the management of Lundy Law regarding Delaware cases. In short, Lundy Law relied on respondent to operate its Delaware practice in the best interests of the firm.

Before the Delaware Supreme Court, respondent admitted that he was in a position, as an associate at Lundy Law, to file lawsuits, advance costs and fees, and receive legal fees without the knowledge of his law firm. He leveraged that position, that access, and that trust to commit his misconduct. The Delaware Supreme Court found, as fact, that respondent kept these legal fees, despite his knowledge that "the fees did not belong to him at the time he kept them" and that he had violated his duties to the law firm. In this context, respondent was no less a fiduciary than any partner.

For his misconduct in Lankenau I, respondent received an eighteen-month suspension in Delaware for, among other serious ethics improprieties, a finding that he knowingly misappropriated his law firm's funds. In Delaware, disbarment generally is not imposed for that offense. See, e.g., In re Vanderslice, 55 A.3d 322, 327 (Del. 2012) (suspending an attorney for one year for misappropriating law firm funds eight times in a ten-month period); and In re Staropoli, 2005 WL 27791 (Del. 2005) (suspending attorney

for one year for misappropriating firm funds one time). New Jersey disbarred Staropoli, as discussed below.

In New Jersey, however, disbarment generally is imposed for the knowing misappropriation of law firm funds. Therefore, the crux of this case is whether respondent's actions constituted misappropriation of law firm funds. A comprehensive review of applicable case law is necessary to answer that question.

In In re Sigman, 220 N.J. 141 (2014), the most recent opinion addressing the theft of law firm funds, the Court stated that it has:

> construed the 'Wilson rule, as described in Siegel,' to mandate the disbarment of lawyers found to have misappropriated firm funds '[in] the absence of compelling mitigating factors justifying a lesser sanction, which will occur quite rarely.'
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> [Sigman, supra, 220 N.J. at 157 (quoting In re Siegel, 133 N.J. 162, 167-68 (1993).]

In In re Siegel, supra, 133 N.J. 162, the Court addressed, for the first time, the question of whether knowing misappropriation of law firm funds should result in disbarment. During a three-year period, Siegel, a partner at his firm, had converted more than $25,000 in funds from his firm by submitting false disbursement requests to the firm's bookkeeper. Id. at 163-64. Although the disbursement requests listed ostensibly legitimate purposes, they represented Siegel's personal expenses, including a mortgage

service fee for his mother-in-law. Ibid. While the payees were not fictitious, the stated purposes of the expenses were. Ibid.

Although we did not recommend the attorney's disbarment, the Court agreed with the dissenting public members, who "saw no ethical distinction between the prolonged, surreptitious misappropriation of firm funds and the misappropriation of client funds." Ibid. The Court concluded that knowing misappropriation from one's partners is just as wrong as knowing misappropriation from one's clients, and that disbarment was the appropriate discipline. Id. at 168.

In In re Greenberg, 155 N.J. 138 (1998), the Court refined the principle announced in Siegel. Greenberg also was disbarred, after misappropriating $34,000 from his law firm partners, over a sixteen-month period, and using the ill-gotten proceeds for personal expenses, including mortgage payments and country club dues. Id. at 153, 159. He improperly converted the funds by endorsing two insurance settlement checks to a client, rather than depositing the checks in his firm's trust account. Id. at 141. Per his instructions, the client then issued checks for legal fees directly payable to Greenberg. Ibid. Additionally, the attorney falsified disbursement requests, and used those proceeds to pay personal expenses. Id. at 141-43.

In mitigation, Greenberg asserted that a psychiatric condition, which he attributed to childhood development issues and

depression, rendered him unable to form the requisite intent to misappropriate his firm's funds. Id. at 153. Additionally, he submitted over 120 letters from peers and community members, attesting to his reputation for honesty and integrity. Id. at 162. Determining that Greenberg appreciated the difference between right and wrong, and had "carried out a carefully constructed scheme," the Court rejected his mitigation and disbarred him. Id. at 158, 162.

As noted earlier, in In re Staropoli, 185 N.J. 401 (2005), the attorney received a one-year suspension in Pennsylvania and Delaware, but was disbarred in New Jersey, for retaining a $3,000 legal fee, two-thirds of which belonged to his firm. Staropoli, an associate in a Pennsylvania law firm, was aware that contingent fees were to be divided in certain percentages between the firm and its associates, if the associates originated the cases. In the Matter of Charles C. Staropoli, DRB 04-319 (March 2, 2005) (slip op. at 2). In May 2000, Staropoli settled a personal injury case he had originated, earning a contingent fee. Ibid. The insurance company issued a check payable to both him and the client. Ibid. He did not tell the firm of his receipt of the check and deposited it in his personal bank account, rather than the firm's account. Ibid. He then distributed $6,000 to the client and kept the $3,000 fee for himself. Ibid.

In August 2000, Staropoli left the firm without disclosing his receipt of the fee in the personal injury case. Id. at 3. The firm learned of his misconduct when the insurer called the firm seeking the client's post-settlement release. Ibid. When the firm confronted Staropoli, he alternately misrepresented that he had not charged the client a fee because she was a friend; that he charged her less than a one-third fee; and that he charged her only $1,500. Ibid. In May 2001, he made restitution to the firm for its portion of the fee. Ibid.

At the Pennsylvania disciplinary hearing, Staropoli expressed remorse and embarrassment. Id. at 4. In addition, two lawyers, from the very firm from which he misappropriated the funds, testified to his good character. Id. at 5. At no point, during either the Pennsylvania or New Jersey disciplinary proceedings, however, did Staropoli assert that he misunderstood his firm's fee-sharing policies; that there was a genuine dispute about his entitlement to the entire fee; or that he had resorted to "self-help" because the firm denied him compensation to which he was entitled. Id. at 20. Rather, he admitted that he misappropriated the legal fees due to financial need and anger at the firm, caused by the imminent termination of associates, including him. Ibid.

We issued a divided decision. Four members found that the attorney's single aberrational act should not require "the death

penalty on [Staropoli's] New Jersey law career." Id. at 22-23. Those members were convinced that his character was not permanently flawed or unsalvageable. Id. at 23.

The four members who voted for disbarment found that the attorney did not have a reasonable belief of entitlement to the funds that he withheld from the firm, and that he had advanced no other valid reason for his misappropriation of law firm funds. Id. at 19-20, 22. The Court agreed and disbarred the attorney.

See also In re Malanga, 227 N.J. 2 (2016) (attorney, who was a shareholder in his firm, disbarred for knowingly misappropriating client and law firm funds, repeatedly, over the course of years; although the attorney asserted that he had committed no misappropriation of funds, the evidence revealed that he had engaged in a methodical scheme designed to render his invasion of funds undetectable; the attorney also had fabricated court documents to conceal from his clients his mishandling of their cases); In re Leotti, 218 N.J. 6 (2014) (attorney, who was an associate, disbarred for knowingly misappropriating funds from his law firm; in six cases, the attorney instructed clients to pay fees directly to him; he then retained the funds for his personal benefit); In re Epstein, 181 N.J. 305 (2004) (attorney, who was an associate, disbarred for knowingly misappropriating funds from his law firm; in four cases, the attorney instructed clients to issue

fee checks to him; he then cashed the checks and retained the funds); and In re LeBon, 177 N.J. 515 (2003) (attorney, who was of counsel, disbarred for diverting $5,895.23 of law firm funds by instructing a client to make a check for fees payable to him; he directed his secretary to confirm the instructions).

The misappropriation of law firm funds is not always met with disbarment. Lesser sanctions have been imposed where attorneys have been engaged in business disputes with their law firms.

In In re Bromberg, 152 N.J. 382 (1998), the attorney entered into an employment agreement with two other attorneys, in February 1994. In the Matter of Arthur D. Bromberg, DRB 97-129 (December 16, 1997) (slip op. at 3). Although the parties later disagreed over whether the agreement created a partnership, Bromberg reasonably believed that he was a partner in the firm. Id. at 3-4. Compensation problems surfaced almost immediately, due to dissatisfaction with the amount of fees Bromberg generated. Id. at 5-6. In September 1994, the attorney in control of the firm's finances informed Bromberg that he would no longer receive his $8,000 monthly salary, despite the fact that the executed agreement provided that he would receive that sum through the end of 1994. Id. at 6-7.

By September 1994, Bromberg was receiving no income from the firm. Id. at 9-10. In late October or early November 1994, Bromberg

requested that one of his corporate clients send its legal fee checks directly to him. Ibid. The client did not reply to the request and Bromberg did not pursue it. Ibid. Subsequently, however, Bromberg asked the firm's accounts receivables clerk to permit Bromberg to examine the firm's mail, and misrepresented that he was expecting mail from his prior law firm. Id. at 7-8. On November 13 or 14, 1994, Bromberg intercepted an envelope from his client, containing two checks payable to the firm, in the amounts of $3,260.18 and $3,355.38. Ibid. He endorsed those checks by signing the firm's name and his own name, and deposited them in his own business account, which he had maintained because he was still receiving fees from his prior law practice. Ibid.

In late November or early December 1994, he told his "partner" that he had taken the checks. Id. at 9. It was eventually agreed that Bromberg would remain with the firm until the end of December 1994, because he was to begin selecting a jury for matters in New York. Ibid.

Although the OAE argued that Bromberg should be disbarred for knowing misappropriation of law firm funds, he received only a reprimand. Id. at 18. We found that Bromberg

> reasonably believed that he was a partner with that firm. Even if [Bromberg's] belief was mistaken, that belief led him to understand that he was entitled to receive the checks from [the client]. [Bromberg] had not been paid any salary for October or November. He

> was experiencing cash flow problems and he felt that [his partner] had unilaterally breached the letter-agreement. Thus, he resorted to 'self-help.' That is not to say that [Bromberg] acted correctly . . . [but he] did not have the mens rea to steal. In his mind, he was advancing to himself funds to which he was absolutely entitled. He acted out of self-righteousness. It is the manner in which [Bromberg] chose to make things right that is reproachable.
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> [Id. at 19-20.]

Similarly, in In re Glick, 172 N.J. 319 (2004), the attorney entered into an agreement with a law firm, whereby he would receive a base annual salary, plus benefits, reimbursement of expenses, and profit-sharing. In the Matter of Adam H. Glick, DRB 01-151 (January 29, 2002) (slip op. at 2). Glick was responsible for supervising a unit concentrating on personal injury cases and PIP medical arbitration work. Ibid. Because Glick had a prior solo practice, he continued to maintain his attorney business account to deposit fees earned from that practice. Ibid. Almost from the inception of his association with the law firm, Glick and the firm disagreed about his unit's productivity and about Glick's share of the firm's profits. Id. at 2-3.

Between 1994 and 1997, Glick deposited checks totaling $12,747.50 in his own attorney business account. Id. at 4. The checks had been made payable to him and the majority of the fees were for his services as an arbitrator on insurance matters that

he had originated. Ibid. However, Glick admitted that the fees were due to the firm, and that he had taken them without the firm's knowledge or consent. Ibid. He stated that he had retained the fees as a form of self-help to compensate him for the firm's failure, in his view, to properly remit his profit share. Ibid. Glick, too, received a reprimand. See also In re Spector, 178 N.J. 261 (2004) (reprimand for attorney who remained at a firm while in the process of forming his own firm; he was under the impression that the prior firm had failed to comply with its employment agreement and that it intended to cheat him; he, therefore, retained fees that he had earned while still at the prior firm, intending to hold them in escrow but, through a miscommunication with his new partner, some of the fees were deposited in the business account and were spent) and In re Nelson, 181 N.J. 323 (2004) (reprimand for attorney who took funds from his law firm while in the midst of a partnership dispute; the attorney had learned that legal malpractice lawsuits had been filed against the firm and had been concealed from him; that attorneys in the firm had made improper payments of referral fees to other attorneys; that one of his partners had been trying to "steal" his clients so that the partner would receive credit for generating the fees paid by those clients; and that, contrary to his expressed position, law firm funds had been expended for such items as payment of sanctions imposed on

individual attorneys in the firm or payment to an accountant to reconcile an individual attorney's accounts).

Finally, in Sigman, the attorney, an associate at a Pennsylvania law firm, misappropriated legal fees and referral fees, over a four-year period, repeatedly violating the terms of his employment contract. Sigman, supra, 220 N.J. at 145. Sigman knew he was prohibited from handling client matters and referrals independent of the firm, but did so anyway, and instructed clients to issue checks for fees directly to him. Id. at 147-48. In total, he misappropriated $25,468 from his firm. Id. at 145.

After the firm terminated his employment, but prior to the imposition of discipline in Pennsylvania, Sigman successfully sued his prior employer, resulting in the award of $123,942.93 in legal and referral fees that the firm had wrongfully withheld from him. Id. at 151. During disciplinary proceedings, he did not raise the dispute with his prior firm over legal fees as justification for his misappropriation. For his violations of RPC 1.15(a), RPC 1.15(b), RPC 3.4(a), and RPC 8.4(c), the Pennsylvania Supreme Court, citing substantial mitigation, suspended Sigman for thirty months. Ibid.

The OAE moved for reciprocal discipline, recommending that Sigman be disbarred; we agreed. The Court, however, imposed a thirty-month suspension, identical to the discipline imposed by

Pennsylvania, noting the presence of compelling mitigating factors: respondent had no disciplinary history in Pennsylvania or New Jersey; he submitted character letters exhibiting his significant contributions to the bar and underserved communities; he readily admitted his wrongdoing and cooperated with disciplinary authorities; he did not steal funds belonging to a client; his misappropriation occurred in the context of fee payment disputes and a deteriorating relationship with his firm, where he ultimately was vindicated; and his misconduct was reported only after the conflict over fees had escalated. Id. at 161. The Court further noted that the unique nature of the payment and receipt of referral fees in Pennsylvania warranted substantial deference to that jurisdiction's disciplinary decision. Id. at 160-61.

Here, during New Jersey's disciplinary proceedings, respondent seized upon an argument that he had not himself raised in either his Delaware or Pennsylvania disciplinary proceedings. Rather, it was an argument first asserted by the OAE in its brief in support of reciprocal discipline. The OAE theorized that respondent's firm would not have accepted the cases that he surreptitiously litigated, and, therefore, he did not steal his law firm's funds. Respondent promptly adopted that theory. This "alternative" position, however, is not only disingenuous and undeserving of serious consideration, but also completely ignores

respondent's admissions to Delaware's highest court and our Court's ruling in Siegel and its progeny.

Additionally, this alternate theory, apparently accepted by the majority, wholly disregards the Court Rules governing reciprocal discipline. R. 1:20-14(a)(5) states that "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." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). The Delaware Supreme Court found specific facts in support of its determination that respondent was guilty of knowing misappropriation of law firm funds, including respondent's admission that he had committed criminal theft in respect of Lundy Law firm funds. In our view, we cannot and should not reject those findings simply to avoid the result of disbarment.

In support of the "alternate theory," the OAE contends that respondent's misconduct was most similar to that of the attorneys in Bromberg and Sigman, and, thus, disbarment is not the appropriate sanction. The OAE generously describes respondent's misconduct as the "violation of an employment contract and the

temporary borrowing of $900 as filing fees from a Lundy Law account." The OAE further asserts that the legal fees that respondent collected "likely did not belong to Lundy Law," since respondent was "acting entirely outside of the scope of his employment when he accepted those cases." In support of its position, the OAE cites Lundy Law's stringent restrictions on the acceptance of cases, which respondent knew, and consciously ignored, when he accepted and litigated matters for his pecuniary gain, while accepting his salary from Lundy Law. Simply put, the OAE contends that respondent's acceptance of the four cases, and the resultant fees generated, were ultra vires, and, thus, are outside the ambit of knowing misappropriation.

In his brief to us, respondent also argues that his misconduct does not warrant disbarment. Eagerly following the OAE's lead, and utterly ignoring the detailed admissions that he made during Delaware disciplinary proceedings, he now contends that, although he "has fully and freely admitted his wrongdoings," the fees he accepted were "not Lundy Law cases and would not be Lundy Law cases." Moreover, respondent now asserts that his employment agreement with the firm "did not specifically prohibit" his performance of work outside of Lundy Law, a defense that he did not raise during Delaware proceedings where, again, he admitted criminal theft.

In urging discipline short of disbarment, both the OAE and respondent entirely ignore (i) the absence of any colorable business dispute between respondent and his firm; and (ii) respondent's unequivocal admissions of misconduct contained in the record. Furthermore, neither the OAE nor respondent contend that respondent's case includes "compelling mitigation," as weighed heavily by the Court in Sigman.

Rather, during the Delaware disciplinary proceedings, respondent candidly admitted that Lundy Law was entitled to the $6,444.44 in legal fees he took, pursuant to the terms of his fee-sharing agreement with the firm. He also conceded that he acted with calculated deceit and selfish motive by covertly taking on these matters for pecuniary gain, identifying his firm in a pleading without authorization, and secretly fronting the costs for two matters with Lundy Law's funds, thereby increasing his profits.[1] Respondent never asserted that he only "temporarily borrowed" those funds or that he was entitled to the fees under some theory of entitlement or "self help." Rather, he openly admitted that he misappropriated the Lundy Law funds, in the amount

[1] The OAE does not allege that respondent knowingly invaded clients' and/or third parties' funds held in Lundy Law's trust account in connection with this component of his misconduct. Moreover, the record does not provide specific details as to whether the Lundy Law funds improperly used to front these costs were identifiable as trust funds, or were simply operations funds available to attorneys at the firm.

of $900, and legal fees, in the amount of $6,444.44, and that his acts constituted criminal theft under Delaware law.

Moreover, the speculative position taken by the OAE and respondent, and now sanctioned by the majority, ignores the framework that existed within the Lundy Law firm for the outside referral of the matters that respondent decided to handle himself in order to supplement his income. Accordingly, the argument that there was 'no harm, no foul,' since Lundy Law would have rejected the four cases, is misplaced. The Delaware Supreme Court found, as fact, that Lundy Law was injured, as respondent had taken money that belonged to the firm.

Based on the application of New Jersey jurisprudence, respondent's scheme of knowing misappropriation of law firm funds shares none of the mitigating characteristics that distinguished the misappropriation committed by the attorneys in Sigman, Bromberg, Glick, Spector, and Nelson, and, thus, spared them the ultimate sanction of disbarment.

Rather, respondent's misconduct is most akin to that of Greenberg, and his "carefully constructed scheme," that beckoned disbarment. There was neither a colorable business dispute between respondent and his firm, nor the presence of compelling mitigation. Rather, like Greenberg and Staropoli, respondent misappropriated funds from his law firm in the selfish pursuit of additional income.

He surreptitiously litigated four cases, in knowing violation of his employment agreement, and retained legal fees that he admitted belonged to Lundy Law. He conceded to the Delaware Supreme Court that he would not have needed that additional income, but for his mismanagement of his own finances and desire to hide the truth from his wife. Knowing that he was misappropriating law firm funds, he made affirmative efforts to avoid detection, including personally filing the first two matters. Like Greenberg and Staropoli, he used the ill-gotten proceeds of his misconduct for personal expenses. Emboldened after successfully profiting from the first two matters, he escalated his misconduct, covertly advancing the fees and costs for the next two matters from the coffers of his firm, thus maximizing his profit. As he admitted to the Delaware Supreme Court during Lankenau I, he perpetrated this misconduct for dishonest and selfish motives, even stipulating that his conduct constituted criminal theft. The fact that respondent only now purposefully ignores those very precise admissions should cause us to take a very circumspect view of his character and veracity.

Unlike the attorney in Greenberg, respondent did not argue that his mental health issues left him unable to appreciate that his conduct was wrong. Rather, he conceded knowingly misappropriating law firm funds for personal gain. Respondent's dishonest mens rea is further illustrated by his additional

misconduct – his successful forbearance of mortgage payments to Wells Fargo through fraud and forgery, his duplicitous brief to us in Lankenau I, which ignored his unvarnished admissions of theft before the Delaware Supreme Court, and his blatant, self-serving misrepresentations to Delaware disciplinary authorities addressed by Lankenau II.

Respondent admitted that he was acutely aware of Lundy Law's stringent rules for accepting a case. Nonetheless, rather than referring the matters in question to another law firm, in accordance with the firm's operating procedures, respondent engaged in a premeditated scheme to misappropriate his law firm's funds to supplement his own income. Unlike the misconduct in Staropoli, which warranted disbarment, this was not a singular, aberrant act – it was four matters, over an extended period. Indeed, the record is bereft of evidence to support a theory that, had respondent's misconduct gone undiscovered, he would have ended his unauthorized conduct or returned any monies to Lundy Law. To the contrary, the evidence suggests that, at the time he was caught, respondent was escalating his misconduct in response to the pending foreclosure on his home and his desire to keep his wife in the dark in respect of his mismanagement of their finances.

The majority seeks not only to circumvent the application of Wilson and Siegel and R. 1:20-14(a)(5), but also, and inexplicably,

to invent a new line of reasoning - purportedly supported by the rulings of Wilson and Siegel - to excuse respondent's knowing misappropriation of law firm funds. Again, we must stress that respondent never pleaded this reasoning before the Delaware Supreme Court. Moreover, the majority's focus on respondent's status as an associate at Lundy Law is of no moment. Multiple associates – the attorneys in Staropoli, Leotti, and Epstein - and one of counsel – the attorney in LeBon - have been disbarred in New Jersey for the misappropriation of law firm funds. Finally, respondent was entrusted to run Lundy Law's Delaware office as the responsible attorney for all Delaware cases, and he had access to the firm's funds – facts he conclusively demonstrated by covertly filing lawsuits and advancing costs and fees from firm coffers to increase his own pecuniary gain. Respondent held a position of trust and access at Lundy Law, as an associate, that was not unique, but is common at law firms. He had a duty not to breach the trust, access, and power he had at Lundy Law while acting on behalf of the firm. In sum, he was clearly a fiduciary of Lundy Law.

The facts of this case compel us to determine, just as in Siegel, Greenberg, Staropoli, Malanga, Leotti, Epstein, and LeBon, that there is no ethical distinction between respondent's "prolonged, surreptitious misappropriation of firm funds and the

misappropriation of client funds." Siegel, supra, 133 N.J. at 168. This case presents neither "compelling mitigation," as in Sigman, nor a colorable business dispute to justify respondent's retention of his firm's funds.

Accordingly, we would apply subsection (E) of R. 1:20-14(a)(4), since respondent's unethical conduct warrants substantially different discipline than that imposed by Delaware, and recommend that respondent be disbarred.

Disciplinary Review Board
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By:
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