SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-424
District Docket No. XIV-2013-0539E

IN THE MATTER OF	:
JASON M. TABOR	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 15, 2018

Decided: June 11, 2018

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a recommendation for disbarment filed by Special Master Patricia B. Santelle. The single-count complaint charged respondent with violating RPC 1.15(a) and In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client funds), RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer

in other respects);[1] and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons set forth below, we recommend that respondent be disbarred.

Respondent was admitted to the New Jersey bar, as well as the Pennsylvania and Massachusetts bars, in 2002. At the relevant times, he maintained offices for the practice of law at Tabor Legal Solutions, LLC, in Billerica, Massachusetts. New Jersey has jurisdiction over this matter, pursuant to RPC 8.5(a), which provides that "a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the lawyer's conduct occurs."

Respondent has no disciplinary history in New Jersey.

This matter originally was before us in September 2013 as a default. Subsequently, on October 22, 2013, we granted respondent's motion to vacate the default, and remanded the matter for a hearing. Following a hearing, the matter is again before us on a recommendation for disbarment.[2]

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[1] Although the complaint did not allege a violation of a specific criminal statute, it charged that respondent's "conversion of funds" constituted a violation of RPC 8.4(b).

[2] According to the special master's report, respondent refused to travel to New Jersey to attend the hearing. He, therefore, was

(Footnote cont'd on next page)

This matter involves respondent's handling of funds received on behalf of the grievant, Gregory Buchanan. Specifically, the complaint alleged that respondent knowingly misappropriated $16,250 intended for his client, Buchanan, and/or his client's company, Buchanan & Associates (B&A). Although respondent admits that he used the funds for his own purposes, he maintains that he was Buchanan's business partner – not his lawyer – and that the funds represented his "sweat equity" in the business. Thus, he claims, the funds at issue do not constitute "client funds," and, therefore, are not properly the subject of RPC 1.15(a) or In re Wilson, 81 N.J. 451 (1979).

The background leading to respondent's use of the subject funds is somewhat involved and convoluted. Moreover, presumably because the parties dispute the characterization of the funds at issue, a fair amount of the testimony was devoted to the nature of respondent's relationship with Buchanan and/or his companies.

Sometime in 2008 or 2009, a mutual friend, Kyle Spells, introduced Buchanan to respondent, indicating that respondent was a New Jersey attorney. Buchanan claims that, soon thereafter, respondent began providing legal services to him,

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(Footnote cont'd)

permitted to testify and otherwise participate by telephone. Nonetheless, respondent did appear at the hearing before us.

including the review of contracts, purchase and sale agreements, and lease agreements, as well as general legal advice relating to one or more of his companies. Respondent admits that he performed these tasks, but denies that his services were legal in nature or that he ever functioned as Buchanan's attorney.

According to respondent, he, Spells, and a third individual created Vinamar, LLC (Vinamar) in order to provide professional consulting services to Buchanan and his several companies. Respondent consistently pointed to the consulting agreement between Transworld World Power, LLC (Transworld), a Buchanan-owned company, and Vinamar, which specifically refers to non-legal services, to support his claim that he did not function as Buchanan's attorney. Ultimately, however, the work Vinamar performed for Transworld included incorporating foreign entities, as well as drafting corporate resolutions and operating agreements.

Buchanan testified that he considered respondent to be a very competent attorney. In fact, in his opinion, respondent provided all of the value from Vinamar, which is why respondent eventually left Vinamar and formed his own entity. Specifically, he formed Tabor Legal Solutions (Tabor Legal), which, respondent maintained, was also a non-legal services company. After respondent formed Tabor Legal, Buchanan had no further contact

with anyone at Vinamar, other than respondent. Thus, Buchanan testified, Vinamar was not involved in the $16,250 payment dispute that ultimately developed. Respondent, however, maintained that Tabor Legal was formed while the agreement with Vinamar was still in effect, that the Vinamar agreement was never terminated, and that, therefore, Tabor Legal and Vinamar are one and the same.[3]

According to Buchanan, sometime in 2010, Transworld officially hired respondent, as an individual, to perform various legal services. A written agreement to that end was never drafted. Despite the lack of a formal fee agreement, Buchanan periodically sent respondent money to cover "out-of-pocket expenses." Otherwise, respondent would participate in the ownership structure of any new entity acquired by Transworld, which Buchanan described as a "success-fee type of relationship." Buchanan also described the relationship as one that gave respondent an equity stake in lieu of a fee. Buchanan testified that, ultimately, respondent was a partner only in Transworld Aerospace and Transworld Capital. They had formed

[3] We presume that respondent makes this point to argue that the agreement between Vinamar and Transworld for "professional consulting services" is imputed to Tabor Legal, and, therefore, Tabor Legal also was not providing legal services to Buchanan or to Transworld.

those two entities together, but, unfortunately, nothing ever came to fruition beyond that.

When Buchanan did pay respondent, it was either by check or in cash. The checks ranged from $1,000 to $5,000 so respondent "wouldn't fall behind." He considered respondent a trusted friend. Therefore, if respondent said he needed a few dollars, Buchanan would give it to him.

Eventually, Buchanan began operating B&A, an executive search and recruiting company. Buchanan consistently denied that respondent had been an equity partner in B&A, that respondent assisted in its creation, or that respondent provided any legal services to B&A. Conversely, respondent claimed he was an owner/partner of B&A.

B&A eventually began providing recruiting services for Chromalloy Gas and Turbine, LLC (Chromalloy). These services involved the recruitment of Ricardo Cruz. It is undisputed that respondent had no involvement with Cruz's recruitment. Rather, according to Buchanan, respondent became involved with B&A only when Buchanan began establishing that entity. Buchanan needed somewhere to bill for the Chromalloy job and he had not yet formed B&A. When he asked respondent's advice, respondent offered to establish a "d/b/a" account under Tabor Legal to which Chromalloy could send money until Buchanan was able to

"set-up" the new entity.

Respondent, on the other hand, categorized the Chromalloy business as a venture between Transworld and Tabor Legal. For tax purposes, the money was to flow through respondent's entity, Tabor Legal, in order to move the partnership forward. To that end, on June 3, 2011, respondent opened a business checking account ending #9988 under "Tabor Legal Solutions, LLC DBA Buchanan Associates." The address on the account was respondent's home address in Billerica, Massachusetts.

On August 8, 2011, Chromalloy issued a $5,000 check to B&A, as a retainer for services. On August 12, 2011, respondent deposited that check into account #9988, bringing the balance of the account to $4,265.17.[4] Respondent immediately began making regular ATM withdrawals and debit card payments from the account, to businesses such as Exxon Mobil, K-Mart, and Best Buy. On several occasions, the account fell into an overdraft status, thereby accruing significant fees. As of August 31, 2011, the ending balance of account #9988 was ($617.24).

[4] The record does not disclose the source of the funds respondent used to open the account ending in #9988. Exhibit C5, however, shows negative balances on multiple dates throughout the month of July 2011. At the time respondent deposited the $5,000 Chromalloy check, the account had a negative balance of $734.83. Thus, a portion of the newly deposited funds replenished that negative balance.

Buchanan testified that he never received the $5,000 retainer check from Chromalloy. The check was sent directly to respondent, and, at some point, Buchanan told respondent to keep the check as a retainer to cover any future expenses. Buchanan was clear, however, that this money was intended to cover future services since, as of August 8, 2011, respondent had been compensated for all past work with other "monies and equity."

Respondent disputed Buchanan's explanation. First, he asserted, he did not receive this money into his company as an attorney. More importantly, respondent claimed, he cashed the $5,000 check and sent the funds back to Buchanan. At another point in his testimony, however, respondent explained that he kept the $5,000 for services "between me, my entity, Transworld Power, and Chromalloy." He also argued that the fee represented his compensation for consulting performed for Cruz, but then admitted that he had no involvement with the recruitment of Cruz or his services. Rather, he explained, his involvement was limited to the formation of Tabor Legal Solutions d/b/a Buchanan & Associates, as well doing the general corporate work for the entity.

In yet a third explanation, respondent testified that, as an owner/partner of B&A, he was not required to perform any services. Rather, the money he kept was for his share in the

partnership and not payment for services. Elaborating further, respondent explained that the $5,000 rightfully belonged to him for taking all of the risk, such as insurance costs, taxes, liability (if Chromalloy sued), and other liabilities to which he was exposed. "I had all the risk [Buchanan] had none." According to respondent, this was the deal he made with Buchanan, albeit a verbal arrangement that was never reduced to writing.

In still a fourth explanation, respondent maintained that he returned the $5,000 to Buchanan during a meeting in the fall of 2011. Almost within the same breath, however, he claimed that he had sent a $5,000 money order to Buchanan's home in New Jersey.

As noted earlier, a review of respondent's account ending #9988 began and ended with a negative balance for the month of August 2011. Bank statements evidence various transactions over the course of the month, depleting the $5,000 he deposited – all in the form of ATM and debit card transactions and overdraft fees, with only several entries for more than $100. When challenged on the lack of evidence supporting his claimed distribution of the $5,000 to Buchanan, respondent explained that he had paid the monies from his separate, personal account, not account #9988, and not by check. Thus, he had no record of

the payment. He later maintained that he paid the money to Buchanan by money order. His final argument was that he must have paid the money back because Buchanan filed a complaint against him for an amount that did not include the $5,000.[5]

During the same time, between February 2010 and September 2011, many e-mails were exchanged among Buchanan, respondent, and other business partners. The topics of these e-mails included warranty agreements, non-disclosure agreements, and many other documents legal in nature. Buchanan asserted that he regularly sought legal advice from respondent via e-mail. He added that the only value respondent contributed to his businesses was legal advice. All e-mail sent to or received from respondent was through jason@taborlegal.com.

Respondent denied having offered legal advice in the e-mails. In response, the OAE pointed to a specific e-mail from January 11, 2011, in which respondent touted his "extensive experience in negotiating corporate leases when I was counsel for Iron Mountain." Respondent insisted that this statement was a "lie" and that he was never corporate counsel for Iron

[5] On February 29, 2012, Buchanan filed a complaint against respondent for conversion in Lowell District Court in Massachusetts. Respondent did not participate, and Buchanan was eventually awarded a judgment for $16,250. That judgment amount did not include the $5,000 Chromalloy had paid to B&A. Buchanan has been unsuccessful in collecting on that judgment.

Mountain. Rather, he claimed he worked in its legal department as a "contract specialist," and not as an attorney. The reason he lied in the e-mail was to help the non-attorney recipient understand, generally, what he was doing.

Another such e-mail, dated September 21, 2011, sought advice on a warranty. In reply to the inquiry, respondent wrote:

> Greg emailed me a copy of the Warranty document. I have good news and bad news. The bad news is that the document needs a lot of work to make this warranty enforceable. The good news is that you have me at your disposal. I will work on this later this afternoon....
>
> [Ex.C4].

Respondent relied on the dichotomy between legal advice and non-legal advice to further his position that he gave only business-consulting advice, not legal advice. He testified that he had merely offered his "opinion," not legal advice. He also stood firm in his explanation that, although he sent all of these e-mails from his Tabor Legal account, he was providing non-legal services on behalf of Vinamar while in discussions with Transworld and Buchanan about becoming a partner.

Later in the fall of 2011, Buchanan met with his business partner, Rich Bohadik, and respondent, in Sturbridge, Massachusetts. Respondent told Buchanan that he was going through some tough times personally. Because Buchanan happened to have a lot of cash at the time, he gave respondent $3,000 to

$4,000. He told respondent to take the money, adding that, if respondent did more work for him in the future, "we will even up."

Respondent disputed this version of the meeting. He described the Sturbridge meeting as the first time he had ever met in person with Buchanan.[6] He noted that Buchanan and Bohadik were "high and drunk." More glaringly, respondent claimed that, rather than having received cash from Buchanan, he gave money to Buchanan, referring to a money order for $5,000, representing the Chromalloy retainer payment. Respondent explained that Buchanan had no personal or corporate checking accounts and was hiding the Chromalloy deal from his partner, Bohadik. Respondent paid Buchanan in such a manner to conceal it from Buchanan's partner. Nevertheless, as previously noted, in the same explanation, respondent testified that he had mailed the money order to Buchanan's home in New Jersey.[7]

Subsequently, on December 23, 2011, B&A invoiced Chromalloy

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[6] At this point, the two had been in a business relationship for almost three years.

[7] The special master adjourned the hearing for additional discovery so that respondent could produce bank records demonstrating that he returned the $5,000. However, during supplemental discovery, respondent did not produce any bank records to support his claim of repayment from an account other than #9988.

$21,250. The total that Chromalloy owed on the invoice was $16,250, the $5,000 retainer having been credited. On January 27, 2012, Chromalloy sent, to respondent's home address, a $16,250 check, payable to B&A. Buchanan never received those funds. Rather, he only learned that Chromalloy had sent the check when, after the invoice was past due, he contacted Chromalloy, which, in turn, confirmed that its check had been cashed and had cleared its account. Buchanan was consistent throughout his testimony that respondent was not entitled to any portion of the $16,250 Chromalloy payment.

Meanwhile, on February 2, 2012, respondent had opened a new business checking account (ending in #3391) for B&A, with a deposit of $16,250. Respondent explained that he opened a new account, instead of depositing the funds in the original d/b/a account, because "we" were changing accounts in order to add Buchanan to the account as a business partner. Buchanan could not have been added as a signatory to the new account, however, because he would have had to appear in person at the bank. When confronted with bank statements, respondent was unable to explain why the d/b/a account ending in #9988 was administratively closed by TD Bank on January 25, 2012, eight days before he opened the new account, with a balance of ($1,562.10).

Respondent does not deny depositing the Chromalloy check, or keeping and spending the funds. Rather, he maintains that this was his "portion of the deal" and he wanted his money upfront. He considered the $16,250 as payment for his willingness to become Buchanan's business partner through his company — Tabor Legal — rather than through Buchanan's own company. Respondent insisted that this was not payment for past services, legal or otherwise, but rather, was future compensation, because he was taking all the risk. Respondent later testified, however, that, during a conversation just before he received the check, Buchanan had told him that he could keep the money as his "cut" of the business transaction.

Eventually, Buchanan telephoned respondent to inquire about the $16,250. According to Buchanan, respondent admitted that he had spent some of the money, but promised to repay it. Respondent agreed to send him a check for $7,500, which he did. However, on February 21, 2012, respondent ordered a stop payment on that check. Buchanan never spoke with respondent again.

Respondent does not dispute having such a conversation with Buchanan. He explained that Buchanan asked for half the money, to which respondent agreed. After the call, however, he had a change of heart and decided, instead, to claim the entire amount as "sweat equity," which he had not received before. Thus, he

ordered a stop payment on the $7,500 check he had issued to Buchanan.

Following his telephone conversation with Buchanan, respondent called Bohadik. During that call, respondent explained to Bohadik the full nature of his business relationship with Buchanan, complaining that it always had been based on his "sweat equity," and that it had never "come to fruition." Respondent told Bohadik that he was keeping the $16,250 for payment for his past work, and that, going forward, they could have a new arrangement for any future deals.

On March 22, 2012, just short of two months from the date it was opened, the B&A account ending #3391 was closed with an ending balance of $0.00. The records for this account, too, show many deductions by way of debit card and ATM withdrawals for respondent's everyday personal expenses.

* * *

The special master found respondent's testimony inconsistent and contradicted by the overwhelming testimonial and documentary evidence. She noted that respondent altered his position on a number of issues. For example, he first testified that he was entitled to keep the $16,250 payment from Chromalloy because he and Buchanan had entered into a partnership through B&A. Later, however, respondent testified that he kept the

entire payment from Chromalloy to account for past unsuccessful "sweat equity" arrangements. Later still, respondent testified that, in a conversation with Buchanan before Chromalloy sent the check for $16,250, Buchanan stated that respondent could keep the next payment.

Further, respondent denied having performed any work for Buchanan, or Transworld Power, through Tabor Legal. The special master, however, found that respondent's voluminous e-mail communications with Buchanan and Transworld Power employees, in which he used the jason@taborlegal.com e-mail address, "belie[d] Respondent's assertion."

Conversely, the special master found Buchanan's testimony credible, honest, and consistent. Although Buchanan previously had received a default judgment against respondent for the funds at issue, Buchanan did not appear to be influenced by any bias during the disciplinary proceeding, and the evidence supported his testimony more than it did respondent's testimony. Specifically, Buchanan's timeline of events was consistent with bank statements for respondent's accounts. Hence, based on the totality of the evidence in the record, the special master assigned greater weight to Buchanan's testimony than to respondent's testimony.

The special master next addressed respondent's defense that

he had not misappropriated funds because he had not maintained a law practice and had not served as an attorney for Buchanan, Transworld Power, or any entity controlled by Buchanan, but, rather, had formed a business partnership with Buchanan. In respect of that argument, the special master noted

> [i]f an attorney wishes to be a business man as well as perform the precise functions of a lawyer, he must act in the transactions with the high standards of his profession. The fiduciary obligation of the lawyer applies to persons, who although not strictly clients, [the lawyer] has or should have a reason to believe rely on him. To the public, he is a lawyer whether he acts in a representative capacity or otherwise.
>
> [SMRp.25, quoting In re Urbanick, 117 N.J. 300, 305 (1989) and In re Gavel, 22 N.J. 248, 265 (1956)].[8]

Consistent with those principles, the special master stated, a member of the bar should not act dishonorably in a business venture and, therefore, may be subject to disbarment for misappropriating funds from a partnership. There is "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" (citing In re Siegel, 133 N.J. 162, 167 (1993)).

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[8] "SMR" refers to the special master's report, dated October 23, 2017.

That notwithstanding, the special master determined that respondent, indeed, had served as an attorney for Buchanan and Transworld Power. In support of that determination, she noted that the OAE had presented documentary evidence establishing that, beginning in 2009, respondent completed work traditionally performed by a lawyer, such as reviewing and drafting contracts, purchase and sale agreements, warranty documents, and lease agreements, and offering general legal advice. In one instance, respondent even referred to himself in an e-mail as "counsel [for Iron Mountain]."

The special master rejected respondent's attempts to use the technical language he drafted in the Certificate of Organization for Tabor Legal Solutions [non-legal services] to obfuscate the nature of the work he performed for Buchanan. She noted that the Court had found a similar defense to be unpersuasive in the face of overwhelming documentary evidence of knowing misappropriation (citing In re Bell, 126 N.J. 261, 263 (1991)).

Finally, the special master found, respondent's assertion that he was Buchanan's business partner, rather than his attorney, did not negate the fact that an attorney-client relationship nevertheless existed. Indeed, both respondent and Buchanan testified that Buchanan would pay for respondent's

services with "sweat equity," or a share in the partnership of a successful acquisition.

The special master determined that Buchanan knew respondent was admitted to practice law, that Buchanan hired respondent to provide legal services for Transworld Power, and that respondent provided "no other value besides his legal advice." Hence, it is clear that respondent should have been aware that Buchanan relied on his advice because of his status as a lawyer, and, therefore, owed a fiduciary obligation to Buchanan. Thus, the special master concluded, respondent is subject to disbarment for misappropriation under RPC 1.15(a) and In re Wilson.

The special master specifically found that respondent knowingly misappropriated client funds in relation to the B&A matter. He failed to promptly notify Buchanan when he received the $16,250 check at issue or to hold those funds in trust and intact. Instead, respondent used the funds for his own personal expenses, making approximately ninety electronic withdrawals or debit card purchases and spending the entire sum in just over a month. "These facts . . . lead to the inevitable conclusion that respondent 'had to know' he was invading client funds when he began debiting the TD Bank account ending in #3391." Thus, the special master recommended that respondent be disbarred.

* * *

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence and, further, that he should be disbarred.

At the outset, we note that, although we are unanimous in our recommendation that respondent should be disbarred for breaching his fiduciary relationship by stealing from a partner in a close corporation, four members concluded that the record clearly and convincingly established that respondent's unethical conduct also occurred in the context of an attorney-client relationship. Thus, they concluded that respondent could be disbarred on the basis of his violation of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451.

Those members rejected respondent's argument that he neither provided legal advice or legal services to Buchanan or his companies nor served as their attorney. Indeed, respondent was introduced as an attorney; the only value he brought to any transaction was his legal expertise; the only substantive work he performed was on matters that were generally legal in nature, such as non-disclosure agreements; all of his communications came from an e-mail address that any reasonable person would believe was owned by an attorney; he referenced his previous experience as "counsel for Iron Mountain" to support his advice

– then said he was lying; and referred to the monies he kept as payments for past services that he had provided. Clearly, respondent was providing legal advice based on his status and experience as an attorney, and was not simply giving his "opinion."

In spite of respondent's mental gymnastics to support his claim that he was not acting as an attorney, Buchanan's perception carries great weight in respect of the existence of an attorney-client relationship. Indeed, Buchanan was consistent in his testimony that he relied on respondent as an attorney. The special master found his testimony to be credible and honest. "At its most basic, [the attorney-client relationship] begins with the reliance by a nonlawyer on the professional skills of a lawyer who is conscious of that reliance and, in some fashion, manifests an acceptance of responsibility for it." Kevin H. Michels, New Jersey Attorney Ethics: The Law of New Jersey Lawyering, 257 (2018), citing In re Palmieri, 76 N.J. 51, 58, 60 (1978). The relationship can begin absent an express agreement, a bill for services rendered, and the actual provision of legal services. Ibid. The relationship may be inferred from the conduct of the attorney and "client," or by surrounding circumstances. Id. at 58-59.

Here, even though some of us did not find clear and convincing evidence that an attorney-client relationship had been established, all of us conclude that respondent still should be disbarred for the theft of funds from his partner, Buchanan.[9]

In In re Imbriani, 149 N.J. 521 (1997), a former Superior Court judge was disbarred after he pleaded guilty to a third-degree crime of theft by failure to make required disposition of property received. Id. at 525. For thirty years, Imbriani had assisted in the control and management of the financial affairs of the Community Medical Arts Building (CMAB), the primary asset

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[9] Parenthetically, the record does not support a finding that respondent misappropriated the $5,000 Chromalloy retainer fee. Indeed, the complaint did not charge misappropriation in respect of that retainer. However, the controversy surrounding the $5,000 retainer serves as an illustration of respondent's inability to provide a consistent version of events. Although Buchanan neither accused respondent of misappropriating the $5,000 nor included that sum in the civil complaint he filed against respondent in Massachusetts, and although Buchanan admitted that he told respondent to keep those funds, respondent went out of his way to spin a tale about how he sent the $5,000 back to Buchanan. He was unable, however, to detail cogently or consistently when, by what method, or in what form, he delivered this payment to Buchanan, even after the special master adjourned the hearing to allow respondent to produce additional discovery on the point. Moreover, it appears that Buchanan gave respondent "permission to keep the funds after respondent already had used them." However, the complaint did not charge respondent with misappropriation of the $5,000. Therefore, we have omitted any discussion of the effect of an after-the-fact authorization.

of a real estate corporation that leased offices to professionals. Imbriani and others had formed the real estate corporation in 1963. Id. at 524.

Imbriani helped manage CMAB from its inception. He collected rent checks from the corporation's bookkeeper and helped the bookkeeper pay CMAB's bills and file CMAB's tax returns. He also assisted in the maintenance of the building. Id. In April 1992, the other stockholders discovered that the mortgage on CMAB was close to foreclosure. It was later determined that Imbriani had misappropriated rent and real estate tax checks payable to CMAB for his own use by endorsing such checks and depositing the monies into his personal account. Id. Additionally, between June 1987 and June 1992, Imbriani misappropriated funds from CMAB's corporate bank account by withdrawing funds and using the money for his personal purposes, issuing corporate checks to payees to whom CMAB owed no money and endorsing these checks in their names, and then using the funds for his own personal purposes, and removing funds from a CMAB investment account for his own personal uses without stockholder authorization. Id. at 524-525.

In our decision recommending disbarment, we recognized that a misappropriation from business associates would not invariably require disbarment as under Wilson. We concluded, however, that

Imbriani should be disbarred because the misconduct was extreme, occurred over a long period, and involved a substantial amount, and Imbriani used deceptive practices to cover his theft. Id. at 526-527.

In turn, the Court determined to disbar Imbriani, finding that he had pleaded guilty to a crime of dishonesty resulting from several acts of misappropriation occurring over an extended period. "Ordinarily, when a crime 'evidence[s] continuing and prolonged, rather than episodic, involvement in [illegal activity and] . . . [is] motivated by personal greed,' the offense merits disbarment." Id. at 532 (citing In re Goldberg, 105 N.J. 278, 283 (1987); In re Siegel, 133 N.J. 162 (1993) (disbarring attorney who misappropriated partnership funds); and In re Lunetta, 118 N.J. 443, 449 (1989) (disbarring attorney involved in "protracted" criminal plan to receive and sell stolen securities)).

In Siegel, the Court addressed, for the first time, the question of whether knowing misappropriation of law firm funds should result in disbarment. There, during a three-year period, the attorney converted more than $25,000 in law firm funds by submitting false disbursement requests to the firm's bookkeeper. Although the disbursement requests listed ostensibly legitimate purposes for the funds to be disbursed, they represented actual

expenses incurred by either Siegel personally or by others, such as a mortgage service fee for his mother-in-law. While the payees were not fictitious, the stated purposes of the expenses were not legitimate.

The Court concluded that knowing misappropriation from one's partners is just as wrong as knowing misappropriation from one's clients. The Court agreed with our dissenting members, who "saw no ethical distinction between the prolonged, surreptitious misappropriation of firm funds and the misappropriation of client funds."

Based on the foregoing, therefore, an attorney may be disbarred for misappropriating funds outside of the traditional attorney-client relationship. Hence, respondent should be disbarred for conversion of partnership funds under RPC 8.4(b) and In re Imbriani.

N.J.S.A. 2C:20-9 provides, in relevant part:

> [a] person who purposely . . . retains Property . . . subject to a known legal obligation to make specified . . . disposition . . . is guilty of theft if he deals with the property as his own and fails to make the required payment of disposition . . . .

Here, respondent received funds he knew were intended for Buchanan and/or B&A. Instead of holding those funds intact and remitting them to Buchanan, respondent proceeded to use them for

his own personal purposes, without Buchanan's knowledge or consent. When Buchanan confronted him about the funds, respondent did not deny that the funds belonged to Buchanan and/or B&A. Rather, he admitted that he had used them, but promised to repay them. He then sent Buchanan a check for part of the funds, but promptly stopped payment on that check, determining, instead, to keep the funds, allegedly for past services unrelated to B&A. He articulated his intent to keep the monies in a subsequent telephone conversation with Buchanan's business partner.

It is true that, in determining to disbar Imbriani, the Court noted his prolonged involvement in criminal activity. It did not, however, require a particular temporal component as a precondition to disbarment for theft. Here, respondent brazenly took $16,250 that he knew did not belong to him. He has since spun multiple tales in an attempt to justify his unauthorized use of those monies. Although respondent's conduct was not as pervasive as was Imbriani's, it is no less serious or blatant. Therefore, we recommend that respondent be disbarred.

Chair Frost and Members Gallipoli, Hoberman, and Singer would also find the existence of an attorney/client relationship.

Member Boyer 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 Jason M. Tabor
Docket No. DRB 17-424

Argued: March 15, 2018

Decided: June 11, 2018

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:	8	1

Ellen A. Brodsky
Chief Counsel