Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-341
District Docket No. XIV-2016-0599E

In the Matter of	:
Richard John Barrett	:
An Attorney At Law	:

Decision

Argued: January 17, 2019

Decided: April 25, 2019

Eugene Racz appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea to one count of petit larceny, a class A misdemeanor,

in violation of N.Y. State Penal Law § 155.25 (Consol. 1967). The OAE seeks respondent's disbarment.

For the reasons set forth below, we determine to grant the motion and recommend respondent's disbarment for the knowing misappropriation of $170,000 in escrow funds.

Respondent was admitted to both the New Jersey and New York bars in 1999. At the relevant times, he maintained an office for the practice of law in Staten Island, New York. He has no history of discipline in New Jersey.

On February 27, 2019, the Supreme Court of New York, Appellate Division, Second Judicial Department disbarred respondent for "intentional misappropriation" and theft of $170,000 in escrow funds, among other things. In re Barrett, ___N.Y.S.2d___ (N.Y. App. Div 2019) (2019 NY Slip. Op. 01406).

On August 4, 2015, respondent was charged with nine criminal offenses, including one count of petit larceny, a class A misdemeanor, arising from his January 8, 2015 deposit of a $125,000 check into an "escrow account" maintained at Victory State Bank, in connection with his representation of Robert Beagan. On May 12, 2015, respondent issued a Victory State Bank check in the same amount. Two days later, the check was returned for insufficient funds. The detective who filed the criminal charges had examined

respondent's business records and learned that, as of May 1, 2015, the Victory State Bank escrow account balance was only $920.97. On the last day of the month, the account was empty.

On March 21, 2017, consistent with a plea agreement between respondent and the Richmond County District Attorney's Office, he pleaded guilty to one count of petit larceny, a class A misdemeanor, based on two incidents. The first was respondent's dissipation of $125,000, which his client Robert Beagan had given to respondent, in connection with Robert's divorce from Mary Beagan.[1] The second incident involved respondent's use of $45,000, which, as the attorney for the Estate of John Eppolito,[2] he was to distribute to three beneficiaries. By the date of the plea agreement, respondent had made full restitution in both matters.

Respondent agreed with the judge's recitation of the following supporting facts:

> Between the dates of January 8 and May 12, 2015, during the course of your employment as an attorney, you did

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[1] According to both the New York ethics complaint and respondent's testimony at the plea hearing, the $125,000 was to be paid to Mary Beagan. The plea agreement identified Mary Beagan as the intended recipient of the funds, but, for unknown reasons, her name was crossed out and replaced with Robert's. We accept that the funds were to be paid to Mary Beagan.

[2] The decedent's surname also appears as "Ippolito" in the record.

> deposit a check into [sic] local bank in the amount of $125,000, [sic] supposed to be placed in [sic] escrow account. You did, however, rather than use [sic] the money or monies to be used in [sic] escrow account on behalf of complainant, you did withdraw money from that account for your own personal use, without permission and authority of the owner of that property[.]
>
> [Ex.Dp.6,l.11 to l.19.][3]

Respondent acknowledged that he should have disbursed the funds to Mary Beagan.

Respondent also agreed that, between January 1, 2010 and January 1, 2017, he represented the Estate of John Eppolito. In that capacity, respondent took and used for his own benefit $45,000, which should have been distributed to Michael, Matthew, and Alyssa Tursi, who were Eppolito's beneficiaries.

Respondent received a one-year conditional discharge.

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a criminal conviction is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); and In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty plea to petit larceny establishes a violation of RPC

[3] Ex.D refers to the transcript of the combined plea and sentencing hearing, dated March 21, 2017.

8.4(b). Pursuant to that Rule, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Respondent's conduct also violated RPC 8.4(c), which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. Because, as shown below, respondent knowingly misappropriated escrow funds, he also violated RPC 1.15(a) (failure to safeguard funds) and the principle set forth in In re Hollendonner, 102 N.J. 21, 28-29 (1985). Although the OAE charged respondent with having violated RPC 1.15(b) (failure to promptly disburse funds) as well, that violation is subsumed by the act of knowing misappropriation and, thus, we dismissed that charge. Hence, the sole issue is the extent of discipline to be imposed. R. 1:20-13(c)(2); In re Magid, 139 N.J. at 451-52; and In re Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and the respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." In re Principato, 139 N.J. at 460. Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy

conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The transcript of respondent's guilty plea contains sufficient evidence to establish that respondent knowingly misappropriated $170,000 in escrow funds.

In In re Wilson, 81 N.J. 451, 455 n.1 (1979), the Court described knowing misappropriation as follows:

> Unless the context indicates otherwise, "misappropriation" as used in this opinion means any unauthorized use by the lawyer 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.

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under *In re Wilson,* 81 *N.J.* 451 (1979), disbarment that is "almost invariable," *id.* at 453, 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 or 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. To the extent that the language of the DRB or the District Ethics Committee suggests that some kind of intent to defraud or something else is required, that is not so. To the extent that it suggests that these varied circumstances might be sufficiently mitigating to warrant a sanction less than disbarment where knowing misappropriation is involved, that is not so either. The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality" – all are irrelevant. While this Court indicated that disbarment for knowing misappropriation shall be "almost invariable," the fact is that since *Wilson*, it has been invariable.
>
> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

In In re Hollendonner, 102 N.J. 21 (1985), the Court held that the Wilson principle also applies to other funds that an attorney must hold inviolate, such as escrow funds.

In this case, respondent pleaded guilty to petit larceny, contrary to N.Y. Penal Law § 155.25 (Consol. 1967), which states: "A person is guilty of petit larceny when he steals property." The common definition of "steal" is to take the property of another without permission or right. Respondent's guilty plea to petit larceny, and the facts underlying the crimes, support the conclusion that he knowingly misappropriated $170,000.

Specifically, respondent agreed that Robert Beagan had given him $125,000, which respondent was to hold in escrow and disburse to Mary

Beagan. Instead of disbursing the funds as required, respondent withdrew the monies from the account for his own personal use, "without permission of the owner," leaving the account with a zero balance. Until the escrow funds were disbursed to Mary Beagan, both she and Robert Beagan had an interest in them. Thus, respondent could not release the funds without both parties' permission. In re Hollendonner, 102 N.J. at 27. The judge's reference to permission of the "owner" could refer to either Robert or Mary Beagan, individually, or both. Respondent's acknowledgment that he did not have one of the party's permission and authority to use the monies is sufficient to establish that he knowingly misappropriated the $125,000 in escrow monies.

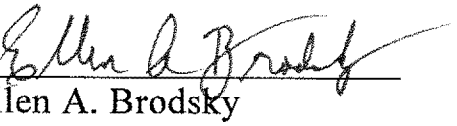
The facts underlying the Eppolito matter also support the conclusion that respondent knowingly misappropriated the $45,000 intended for the Tursis, the beneficiaries of the Eppolito estate. Although respondent did not testify that he took the funds without permission or authority, his guilty plea to petit larceny incorporates that element.

To conclude, the facts underlying respondent's guilty plea to petit larceny, that is, his theft of the $170,000 that he was required to hold in escrow for Robert and/or Mary Beagan and the Eppolito beneficiaries, clearly and convincingly support the determination that he knowingly misappropriated the

funds. Therefore, for respondent's violation of RPC 1.15(a), RPC 8.4(b), and RPC 8.4(c), we recommend his disbarment.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Disbar

Members	Disbar	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman	X		
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9	0	0

Ellen A. Brodsky
Chief Counsel