Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-011
District Docket No. XIV-2018-0173E

In the Matter of	:
Michael J. Rosenblatt	:
An Attorney at Law	:

Decision

Argued: March 21, 2019

Decided: July 31, 2019

Amanda W. Figland appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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 second-degree grand larceny, a class C felony, in violation of New York State Penal Law § 155.40(1) (Consol. 1986). These offenses constitute violations of RPC 1.15(a) and the principles set forth in In

re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation of client or escrow funds), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to grant the motion and recommend respondent's disbarment for the knowing misappropriation of more than $50,000 in trust funds.

Respondent was admitted to the New Jersey and New York bars in 1988. At the relevant times, he maintained an office for the practice of law in New York City.

On November 16, 2001, following respondent's six-month suspension in the State of New York for ethics infractions equivalent to New Jersey RPC 8.4(c) and RPC 8.4(d) (conduct prejudicial to the administration of justice), the Court imposed reciprocal discipline of a six-month suspension on him. In re Rosenblatt, 170 N.J. 36 (2001). Respondent remains suspended to date.

Specifically, after respondent's business associate had defaulted on the final two installments of a payment plan, respondent and his father threatened the associate with physical harm if he did not make the payments. In the Matter

of Michael J. Rosenblatt, DRB 00-393 (June 20, 2001) (slip op. at 2). Respondent also left the associate two threatening voice mail messages. Ibid. When the associate reported the incidents to the New York City Police Department, respondent denied having made the threats. Thereafter, and while under oath, he repeated those denials to New York state disciplinary authorities. Id. at 3.

On January 10, 2006, respondent received a censure in New York for conduct equivalent to New Jersey RPC 8.4(b). In re Rosenblatt, 806 N.Y.S.2d 425 (N.Y. App. Div. 2006). In that case, respondent pleaded guilty, in a New York state court, to soliciting business on behalf of an attorney, an unclassified misdemeanor, and was sentenced to a one-year conditional discharge. Ibid. Respondent did not report the conviction or the censure to the OAE and, thus, he received no discipline in this state for that crime.

Here, on March 25, 2016, respondent pleaded guilty to second-degree grand larceny, a class C felony, in violation of New York State Penal Law § 155.40(1), which states: "A person is guilty of grand larceny in the second degree when he steals property and . . . [t]he value of the property exceeds fifty thousand dollars." Respondent stole more than $50,000 in funds that he was holding in trust for a third party, pursuant to the terms of a court order.

On January 10, 2017, the Supreme Court of New York, Appellate Division, First Judicial Department (New York court), disbarred respondent, nunc pro tunc to March 25, 2016, the date of his conviction of the felony, which constitutes grounds for automatic disbarment in that state. In re Rosenblatt, 68 N.Y.S.3d 884 (N.Y. App. Div. 2017).[1] That conviction is the basis for the motion for final discipline now before us.

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 second-degree larceny establishes a violation of RPC 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 the record contains clear and convincing evidence

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[1] Under New York Judiciary Law § 90(4)(a) (Consol. 2013), any attorney convicted of a felony ceases to be an attorney on conviction.

that respondent knowingly misappropriated more than $50,000, which he was holding in trust for a third person pursuant to a court order, he knowingly misappropriated trust funds. He, therefore, also violated RPC 1.15(a) and the principles set forth in In re Wilson, 81 N.J. 451, and In re Hollendonner, 102 N.J. 21. 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 OAE recommends respondent's disbarment for theft of trust funds. In our view, the record supports that determination. Respondent's guilty plea to second-degree grand larceny, and the facts underlying that crime, support the conclusion that he knowingly misappropriated more than $50,000 from the party on behalf of whom he was holding the funds in trust pursuant to a court order.

In In re Wilson, 81 N.J. at 455 n.1, 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.
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> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

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

The Court has consistently disbarred attorneys in cases such as this. See, e.g., In re Reis, 230 N.J. 460 (2017) (New York attorney pleaded guilty to second-degree grand larceny and one count of first degree fraud for stealing at least $213,000 in funds from multiple clients); In re Grossbarth, 230 N.J. 386 (2017) (New York attorney pleaded guilty to two counts of second-degree grand larceny for stealing more than $1.1 million in client funds and one count of second-degree forgery); and In re Lee, 188 N.J. 279 (2006) (New York attorney pleaded guilty to one count of second-degree grand larceny for stealing over $50,000 of client funds that were to be held in escrow).

Accordingly, for respondent's violation of RPC 1.15(a) and the principles set forth in Wilson and Hollendonner, RPC 8.4(b), and RPC 8.4(c), we recommend his disbarment.

Member Gallipoli 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael J. Rosenblatt
Docket No. DRB 19-011

Argued: March 21, 2019

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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:	8	0	1

Ellen A. Brodsky
Chief Counsel