DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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February 24, 2020

Heather Joy Baker, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of William J. Peiffer**
Docket No. DRB 19-373
District Docket No. XIV-2017-0717E

Dear Ms. Baker:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate) filed by the Office of Attorney Ethics (OAE) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a censure for respondent's violation of RPC 5.3(a), (b), and (c)(2) (failure to supervise nonlawyer employees).

Specifically, according to the stipulation, in 1997, respondent and a partner formed Enviro Board Corporation (Enviro), an entity seeking to monetize proprietary technology that purportedly recycled agricultural waste into "low-cost, environmentally friendly building materials." During the relevant timeframe, respondent served as Enviro's co-CEO and general counsel.

As of 2011, Enviro was struggling to maintain profitable production levels of its proprietary materials. Nevertheless, from 2011 through 2014, Enviro raised approximately $6 million from investors, using "financial projections that had no reasonable basis in fact," through offerings not registered, as required by law, with the Securities and Exchange Commission (SEC).

Respondent admitted that, despite his role as general counsel, he wholly failed to monitor the work performed by Enviro's nonlawyer employees or to perform any due diligence. Consequently, he did not recognize that Enviro's investment solicitation materials were grossly inaccurate and deceptive, in respect of the state of Enviro's ability to produce its products; its access to financing; the issuance of beneficial state and federal tax credits; and its projections of immediate, substantial profits ranging from $32 to $95 million. Moreover, respondent admitted that he had assisted in drafting the business plans and marketing materials that ultimately were used to solicit investment in Enviro, incorporating those fabricated representations. Finally, respondent admitted that he and the other principals of Enviro had failed to register with the SEC any of the transactions or securities that they offered or sold.

In August 2016, the SEC filed a civil action in the United States District Court for the Central District of California (CDC), charging Enviro, respondent, and two additional corporate principals with engaging in the fraudulent and unregistered offering of Enviro securities. In 2017, without admitting the allegations of the SEC complaint, respondent consented to the entry of a final judgment against him and waived his right to appeal. On December 5, 2017, the CDC entered a final judgment against respondent and ordered him to disgorge $343,200, plus $16,893.93 in interest; imposed a civil penalty of $175,000; and prohibited him from serving as an officer or director of any entity that issues securities registered with the SEC or that must file reports with the SEC.

Respondent stipulated that his conduct violated RPC 5.3(a), (b), and (c)(2). The OAE emphasized that respondent had abdicated his obligations as general counsel to Enviro in respect of the investors, resulting in the civil fraud. The OAE did not, however, conclude that respondent had participated in a knowing scheme to defraud investors.

The OAE and respondent further stipulated, as to mitigation, that respondent has no prior discipline; was not criminally charged; had no ethics grievances filed against him by investors; fully cooperated with the SEC, producing more than one million documents during a forty-five month investigation; and had accepted responsibility and agreed to pay his portion of the $15 million in restitution the SEC sought. In aggravation, the stipulation cited the "sheer amount of money involved."

The Board found that respondent's conduct violated RPC 5.3(a), (b), and (c)(2). Attorneys who fail to supervise their nonlawyer staff and have no serious prior discipline typically receive an admonition or a reprimand, depending on the presence of other ethics infractions or aggravating and mitigating factors. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition; attorney failed to reconcile and review his attorney records, thereby enabling an individual who helped him with office matters to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, his numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and his lack of a disciplinary record); and In re Murray, 185 N.J. 340 (2005) (reprimand; attorney failed to supervise nonlawyer employees, which led to an unexplained misuse of client trust funds and to negligent misappropriation; the attorney also

failed to maintain books and records that would have revealed the mysterious scheme; she also failed to perform quarterly reconciliations of her trust account and, for a time, failed to maintain an active trust account; prior admonition for similar deficiencies).

Harsher discipline has been imposed in cases where the attorney failed to make a reasonable investigation that could have uncovered instances of misconduct by nonlawyer employees, resulting in egregious consequences that otherwise could have been prevented or discovered. See, e.g., In re Brown, 218 N.J. 387 (2014) (censure by consent for attorney who failed to reconcile his attorney trust account and to supervise a nonlawyer (his paralegal/bookkeeper), who forged checks and conducted real estate closings without the attorney's knowledge, in most cases in furtherance of a mortgage fraud scheme to which she eventually pleaded guilty; the attorney also made misrepresentations on HUD-1 forms in two matters, was guilty of gross neglect and pattern of neglect, and negligently misappropriated trust funds; in aggravation, the Board considered that the improprieties could have been avoided if the attorney had paid close attention to his accounting responsibilities; mitigation included the attorney's ready acknowledgement of wrongdoing by entering into a stipulation, and his full cooperation with law enforcement authorities investigating his employee); In re Hecker, 167 N.J. 5 (2001) (three-month suspension for attorney whose clerk stole $15,000 from the attorney's trust account; thereafter, the clerk was sentenced to five-year's imprisonment for an unrelated criminal offense; when the clerk was released from prison, the attorney rehired him; the clerk, thereafter, stole $6,850 from an estate for which the attorney was serving as the administrator; the attorney was guilty of failing to supervise a nonlawyer employee, negligent misappropriation of client trust funds, failure to safeguard funds, recordkeeping violations, gross neglect, and lack of diligence); In re Ejiogu, 197 N.J. 425 (2009) (one-year suspension for attorney who abdicated his responsibilities in a busy immigration and real estate practice; the attorney's utter failure to supervise his primary nonlawyer employee allowed that employee to divert and misappropriate client and trust funds); and In re Stransky, 130 N.J. 38 (1992) (one-year suspension for attorney who failed to supervise a nonlawyer employee by abdicating his non-delegable fiduciary responsibilities for client trust funds to his secretary/bookkeeper wife by improperly designating signatory power to her; his wife then misappropriated trust account funds and diverted audit and temporary suspension notices from his attention; he also engaged in recordkeeping improprieties).

Here, the Board considered, in aggravation, the serious consequences of respondent's failure to perform the obligations of general counsel – $6 million in fraudulent investments, an SEC action, and a demand for $15 million in restitution to the government and to the defrauded investors. Although respondent's misconduct was serious, and led to egregious consequences, especially for Enviro's investors, his role in those fraudulent investments appears to have been passive, rather than knowing and intentional. Had the OAE concluded that clear and convincing evidence of his active fraud existed, respondent would have been charged accordingly.

In respect of mitigation, the Board gave substantial weight to respondent's unblemished disciplinary record since his 1993 admission to the bar. Moreover, respondent fully cooperated with the SEC, accepted responsibility, and agreed to pay his portion of the $15 million in

restitution the SEC sought. Finally, he has represented that he is no longer engaged in the practice of law.

The Board determined that, on balance, a censure is a sufficient quantum of discipline to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent (date illegible).

2. Stipulation of discipline by consent, dated October 4, 2019.

3. Affidavit of consent, dated October 2, 2019.

4. Ethics history, dated February 24, 2020.

Very truly yours,

Ellen A. Brodsky
Chief Counsel

Encls.

c: (w/o enclosures)
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Disciplinary Review Board (e-mail)
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