

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-032
District Docket No. XIV-2019-0282E

In the Matter of
Emily Anne Tran
An Attorney at Law

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Corrected Decision

Argued: July 16, 2020

Decided: January 25, 2021

Ashley L. Kolata-Guzik appeared on behalf of the Office of Attorney Ethics.

Philip Touitou appeared in behalf of respondent.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following respondent's one-year suspension in New York. The OAE asserted that respondent was found guilty of violating the equivalents of New Jersey RPC 1.15(d) (failing to comply with recordkeeping requirements); RPC 5.5(a)(2)

(assisting another in the unauthorized practice of law); RPC 7.5(e) (using an improper professional designation that violates RPC 7.1, which provides that a lawyer shall not make false or misleading communications about the lawyer or the lawyer's services); RPC 8.3 (failing to report another lawyer's RPC violations that raise a substantial question as to that lawyer's honesty, trustworthiness, or fitness); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the OAE's motion and to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 2017 and to the New York bar in 2004. During the relevant timeframe, she practiced in New York, New York, and has no history of discipline in New Jersey.

In 2007, respondent became associated with the law firm of Char & Herzberg, focusing on real estate transactions. In May 2017, Herzberg split the partnership, and the law firm became "Steven Herzberg & Associates." Herzberg took over the office space, caseload, and staff of Char & Herzberg, retaining respondent as an associate. On July 18, 2017, about one month after the prior law firm's dissolution, the Supreme Court of New York, Appellate Division, suspended both Herzberg and Char from the practice of law for ethics

violations.

On July 25, 2017, respondent learned of Herzberg's suspension. On August 2, 2017, respondent started her own firm, Emily A. Tran & Associates, taking over the office space and staff that both Char & Herzberg and Steven Herzberg & Associates had used. Respondent described the time period from July 25, 2017 through August 2017 as chaotic and stressful, because she was the only licensed attorney in good standing at her new firm. On July 26, 2018, Herzberg was disbarred in New York.

Respondent stipulated to the facts underlying her ethics violations, which occurred from the end of July through August 2017. Respondent began the process of opening her own firm, naming it "Emily A. Tran & Associates," although she had no associates. She also improperly authorized a non-attorney as a signatory on her attorney trust account. Respondent then engaged in misconduct, in five distinct matters, during that time period. The crux of her misconduct in those matters was her failure to inform clients, other attorneys, and third parties that Herzberg had been suspended, as well as her improper use of both the Char & Herzberg or Steven Herzberg & Associates e-mail addresses and firm names in connection with her practice of law.

The Ras Capital/Levine Transaction

On August 1, 2017, after having learned of Herzberg's suspension,

respondent signed and sent a letter, on Steven Herzberg & Associates letterhead, to a buyer's attorney, enclosing a proposed contract for the sale of real estate. In the letter, respondent instructed the buyer's attorney to issue the buyer's earnest money deposit check to "Steven Herzberg & Associates." The buyer's attorney did so and, on August 10, 2017, the check was deposited in the Steven Herzberg & Associates attorney trust account. On August 11, 2017, respondent sent another letter, on Emily A. Tran & Associates letterhead, to the same buyer's attorney, enclosing an executed contract of sale which amended the seller's attorney to her new firm. Respondent misrepresented to the buyer's attorney that she also possessed the earnest money deposit. Moreover, she failed to disclose that Herzberg had been suspended and, thus, the firm Steven Herzberg & Associates could not serve as escrow agent for the transaction.

The Marcus Garvey/444 Melrose Transaction

Prior to his suspension and ultimate disbarment, Herzberg had represented a real estate crowdfunding lender called Sharestates. On August 1, 2017, following Herzberg's suspension, respondent sent an improper e-mail, using the Steven Herzberg & Associates e-mail signature, to a lender's attorney. Subsequently, respondent tried to resolve pending issues with a borrower's attorney, who insisted on dealing only with Herzberg. On August 2, 2017, despite his suspended status, Herzberg sent numerous e-mails to the borrower's

attorney, copying respondent. Respondent informed neither the lender's attorneys nor the borrower's attorneys of Herzberg's suspension.

The 2461 Eighth LLC v. Shaniqua Carter Matter

Herzberg had represented Shaniqua Carter in litigation in the Supreme Court, New York County. From July 26 through August 17, 2017, following Herzberg's suspension, he and Howard Chun, who represented 2461 Eighth LLC, engaged in settlement communications, via e-mail, which either copied or were forwarded to respondent. On August 23, 2017, respondent sent an e-mail to Chun, referring to "her client," and, on August 24, 2017, informed Chun that she had received a check and asked that it be re-issued to her, rather than to Herzberg. Chun asked respondent whether she was the new attorney on the case. The record does not reveal whether respondent replied. However, on August 29, 2017, respondent signed and filed a stipulation in the case in behalf of Char & Herzberg. She admitted that she signed the stipulation because Herzberg was suspended, and that she had failed to inform anyone involved in this matter about his suspension.

The Slavet/Tewari Transaction

Herzberg represented a seller in a real estate transaction. On August 2,

2017, following Herzberg's suspension, respondent replied to an e-mail from the buyer's attorney with the e-mail address of Char & Herzberg, and the e-mail signature of "Emily A. Tran, Esq. Steven Herzberg & Associates P.C." On August 3, 2017, respondent sent an e-mail to the buyer's attorney, noting a "slight change in companies," and asked that the deposit check be issued in her name. She failed to inform the buyer's attorney that Herzberg had been suspended.

The 2075 Pacific Street Transaction

In May 2017, Herzberg had completed a transaction in behalf of Sharestates. On August 8, 2017, the parties again began communicating, via e-mail. Although he was suspended by that time, Herzberg replied to the e-mails and copied respondent. In turn, respondent sent e-mails from the Char & Herzberg e-mail account, but with the signature of Emily A. Tran & Associates, and copied Herzberg. Respondent failed to inform the parties of Herzberg's suspension.

* * *

On August 16, 2017, respondent met with the New York Attorney Grievance Committee for the First Judicial Department (the Committee) in connection with the Char and Herzberg disciplinary investigations. Respondent acknowledged that she knew that both partners had been suspended. The

Committee specifically advised respondent to refrain from aiding Char and Herzberg in the unauthorized practice of law.

On February 7, 2019, respondent filed a joint motion for discipline by consent with the Supreme Court of New York, Appellate Division, First Judicial Department (the Appellate Division), stipulating to the following seven charges: using the law firm name of “Emily A. Tran & Associates,” when there were no associates in the firm, in violation of New York RPC 7.5(b) (prohibiting lawyer from practicing under a misleading firm name) (Charge One); allowing a non-attorney to be a signatory to the firm’s trust account, in violation of New York RPC 1.15(e) (only an attorney may be a signatory on an attorney trust account) (Charge Two); sending out letters, e-mails, and contracts bearing the name of Steven Herzberg & Associates after Herzberg had been suspended; taking directions from Herzberg regarding legal matters subsequent to his suspension; signing stipulations for Herzberg; and continuing to engage in legal matters initially taken on by Steven Herzberg & Associates without informing opposing counsel or third parties that Herzberg had been suspended, in violation of New York RPC 5.5(b) (aiding in the unauthorized practice of law) (Charge Three); informing an attorney that she was in possession of escrow funds, and designating herself as escrowee, when she was not, in violation of New York RPC 8.4(c) (prohibiting lawyer from conduct involving dishonesty, fraud,

deceit, or misrepresentation) (Charge Four); signing a stipulation for a suspended attorney without informing the court that the attorney had been suspended, in violation of New York RPC 8.4(d) (prohibiting lawyer from engaging in conduct prejudicial to the administration of justice) (Charge Five); failing to report Herzberg's unauthorized practice of law to the authorities, in violation of New York RPC 8.3(a) (reporting professional misconduct) (Charge Six); and aiding Herzberg in the unauthorized practice of law; continuing his legal cases without informing opposing counsel or third parties that he had been suspended from the practice of law; taking directions from Herzberg regarding legal matters after his suspension; and copying Herzberg on e-mail communications to others after his suspension, in violation of New York RPC 8.4(c) (prohibiting lawyer from conduct involving dishonesty).

On May 2, 2019, as a result of respondent's stipulated misconduct, the Appellate Division issued an order suspending respondent from the practice of law for one year. On May 10, 2019, respondent reported her New York discipline to the OAE, as R. 1:20-14(a) requires.

The OAE asserted that respondent's New York violations are identical or equivalent to New Jersey RPC 1.15(d); RPC 5.5(a)(2); RPC 7.5(e); RPC 8.3; RPC 8.4(c); and RPC 8.4(d). Relying on R. 1:20-14(a)(5), the OAE argued that the facts as stipulated in the joint motion for discipline should be taken as

undisputed facts for purposes of this motion.

The OAE acknowledged that respondent received a one-year suspension in New York, but recommended a six-month suspension, contending that such a sanction was the usual discipline for New Jersey attorneys who assist suspended or disbarred attorneys in the unauthorized practice of law. In support of its recommendation, the OAE relied on In re Hancock, 221 N.J. 259 (2015), and the cases cited therein. In Hancock, a motion for reciprocal discipline matter, a New York attorney aided Burton Pugach, a disbarred New York attorney, in the unauthorized practice of law by hiring Pugach as a paralegal. Hancock did not properly supervise Pugach and allowed Pugach to draft documents and conduct bankruptcy proceedings under Hancock's name. For these violations, Hancock received reciprocal discipline of a six-month suspension in New Jersey.

The OAE also relied on In re Garcia, 195 N.J. 164 (2008), in which an attorney aided her spouse, a suspended Pennsylvania attorney, in the unauthorized practice of law. Garcia also practiced under a false and misleading firm name, lacked candor to the tribunal, filed several frivolous lawsuits, and made numerous false and reckless allegations about judges' qualifications. For the totality of her misconduct, the Court imposed a fifteen-month suspension, the same discipline imposed in Pennsylvania.

In support of its recommendation for a six-month suspension, the OAE

emphasized that, based on the incidents listed above, respondent had the opportunity to inform parties of Herzberg's suspension but failed to do so and, further, made misrepresentations to opposing counsel by using Herzberg's firm name on correspondence. The OAE also argued that a six-month suspension was warranted because respondent created and used the firm name "Emily A. Tran & Associates," although she had no associates, and because she authorized a non-attorney paralegal to be a signatory on her attorney trust account.

In mitigation, the OAE acknowledged that respondent properly reported her New York discipline to the OAE and has no disciplinary history in New Jersey. The stipulation of facts also noted that respondent cooperated with the ethics investigations of Char, Herzberg, and herself; that she allowed a non-attorney to be a signatory on the firm accounts because she was not aware of the rule's prohibition, and that, in any event, the non-attorney had not signed checks or made any deposits; and that, although she used the Herzberg & Associates name during that time period, her new firm had not yet been incorporated and she was unsure whether she could use it.

In aggravation, on August 16, 2017, the Committee warned respondent to refrain from aiding Char or Herzberg in the unauthorized practice of law; yet, she subsequently assisted Herzberg in his practice of law while suspended.

In her brief to us, respondent requested a three-month suspension,

retroactive to her New York suspension. Respondent noted that the five incidents addressed in the stipulation took place within one month of Herzberg's suspension, asserting that she was shocked when she learned that she was the only attorney left in good standing at the firm, and that her main concern became protecting the interests of the firm's clients. To that end, she took steps to establish a law firm under her own name; however, as of August 2, 2017, she did not yet have a liability policy and was working out the details of incorporation. Respondent further claimed that she thought the clients she serviced during that July to August 2017 time period knew of Herzberg's suspension.

Additionally, respondent claimed that she incorporated her firm name using "& Associates" because she intended to hire associates, and because she used outside attorneys to assist when she needed help. Finally, respondent promptly removed the non-attorney as a signatory on her firm's trust account as soon as she became aware of its impropriety. Claiming she was the victim of Char and Herzberg's wrongful conduct, respondent argued that her unblemished record and the impact of the New York suspension, coupled with the interest of fairness, support less severe discipline than a six-month suspension.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "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).

In New York, “[i]t has consistently been held by the Appellate Divisions that the standard of proof in attorney disciplinary proceedings is a fair preponderance of the evidence.” In re Capoccia, 453 N.E.2d 497, 498 (N.Y. 1983). We note that, in this case, respondent stipulated to the facts and admitted her misconduct.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

- (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary or disability order of the foreign

jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

Respondent stipulated to the underlying conduct that violated each charge of the New York Rules of Professional Conduct. A review of the record supports her admissions, which constitute corresponding violations of the New Jersey Rules of Professional Conduct. Specifically, respondent violated RPC 1.15(d) by allowing a nonlawyer paralegal to be a signatory on the attorney trust account for her new firm. Further, respondent repeatedly violated RPC 5.5(a)(2) by assisting Herzberg, a suspended attorney, in the practice of law by conferring with him and including him in settlement communications and other transactions. Alarming, she did so even after the New York disciplinary authorities warned her not to do so. Moreover, respondent violated RPC 8.3 by failing to report Herzberg's unauthorized practice of law to ethics authorities.

Respondent's use of "Emily A. Tran & Associates" as a firm name, when she had no associates at the firm, violated RPC 7.5(e).

Respondent violated RPC 8.4(c) by failing to inform clients, parties, and counsel of Herzberg's suspension, and including Herzberg in e-mail and other firm correspondence. She violated this RPC again, in the Ras Capital/Levine Transaction, when she claimed to be in possession of escrow funds and designated herself as escrowee, despite the fact that she did not possess those funds.

Finally, respondent violated RPC 8.4(d) by signing the stipulation in the Carter matter and filing it with the court, without informing the court that both Herzberg and Char had been suspended from the practice of law.

In sum, we find that respondent violated the equivalent of New Jersey RPC 1.15(d); RPC 5.5(a)(2); RPC 7.5(e); RPC 8.3; RPC 8.4(c); and RPC 8.4(d). The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Although respondent consented to a one-year suspension in New York, the OAE recommended a six-month suspension for her violations of the New Jersey Rules of Professional Conduct. Respondent, however, seeks a three-month suspension, retroactive to her New York suspension.

The core of respondent's misconduct is her repeated violation of RPC 5.5(a)(2) by assisting Herzberg in the unauthorized practice of law. Although

there are numerous cases in which attorneys have assisted nonlawyers in the unauthorized practice of law, there are relatively few in which lawyers have assisted suspended or disbarred lawyers. See, e.g., In re Ezon, 172 N.J. 235 (2002) (reprimand imposed on attorney for assisting a disbarred lawyer in the practice of law; by executing a stipulation to extend time to file an answer to a complaint, the attorney misled the court and other attorneys that, along with his father, he represented the client; considered in mitigation was the fact that the disbarred lawyer whom the attorney assisted was his father); In re Martin, 226 N.J. 588 (2016) (motion for reciprocal discipline; six-month suspension for assisting a suspended attorney in the unauthorized practice of law while still purporting to be the attorney of record; the attorney also knowingly disobeyed a court order, failed to supervise a nonlawyer employee, and shared fees with the suspended attorney); In re Kronegold, 197 N.J. 22 (2008) and In re Hancock, 221 N.J. 259 (2015) (companion cases) (motions for reciprocal discipline; six-month suspensions for attorneys who assisted a disbarred attorney in the unauthorized practice of law; the clients “hired” the disbarred attorney, who paid Hancock and Kronegold to provide legal services; in one matter, Hancock appeared for oral argument, at the disbarred attorney’s request, and made a misrepresentation to the court, claiming he was representing the client pro bono; the disbarred attorney then prepared and filed a brief with the appellate court,

using Kronegold's name and purported signature; in another matter, Hancock failed to supervise the disbarred attorney, allowing him, as a "paralegal" in his firm, to conduct bankruptcy proceedings under Hancock's name; Hancock also made misrepresentations to the bankruptcy court regarding the disbarred attorney's role in the proceedings; in mitigation, we considered the passage of time (ten to twelve years) since the misconduct and Hancock's unblemished disciplinary record since his 1979 admission; Kronegold signed a notice of appeal for the client, at the disbarred attorney's request; the disbarred attorney then prepared and filed a brief with the appellate court, using Kronegold's name and purported signature; Kronegold also failed to set forth in writing the rate or basis of his fee; prior reprimand); and In re Cermack, 174 N.J. 560 (2003) (attorney consented to a six-month suspension after he entered into an agreement to permit a suspended lawyer to continue to represent his own clients while the attorney was the named attorney of record and made court appearances; the attorney also displayed a lack of diligence, failed to keep clients reasonably informed about the status of their matters, failed to explain matters to the extent reasonably necessary to permit clients to make informed decisions, failed to comply with recordkeeping requirements, failed to protect his clients' interests on termination of the representation, knowingly assisted another to violate the Rules of Professional Conduct, and engaged in conduct prejudicial to the

administration of justice; no prior discipline).

However, respondent argued that New Jersey case law also supports a three-month suspension. In support of her request for lesser discipline, respondent cited In re Gonzalez, 189 N.J. 203 (2007) (the Court reduced our six-month suspension to a three-month suspension, for an attorney who allowed an office manager to stamp the attorney's signature on checks and to execute retainer agreements, among other misconduct, in violation of RPC 5.5 and other rules); In re Ezon, 172 N.J. 235 (2002) (reprimand for attorney who assisted his father, a disbarred attorney, in the unauthorized practice of law, including conducting telephone calls with counsel, and identified his father as "of counsel" on the firm's letterhead, in violation of RPC 5.5(b)); In re Chulak, 152 N.J. 443 (1998) (three-month suspension for attorney who allowed a non-attorney to identify as "Esq." on company card, and for allowing the non-attorney to sign pleadings, in violation of RPC 5.5(b) and other rules); and In re Nadel, 227 N.J. 231 (2016), In re Butler, 215 N.J. 302 (2013), and In re Kingsley, 204 N.J. 315 (2011), where censures were imposed for violations of RPC 5.5(a).

Here, respondent admitted knowing, as of July 25, 2017, that Herzberg had been suspended from the practice of law. Yet, she assisted his practice of law while suspended; failed to report his unauthorized practice of law to the authorities, or to clients and parties involved in ongoing litigation; and

repeatedly used the Herzberg firm name in her signatures and e-mails.

In mitigation, respondent described the time at the firm as “chaotic,” and emphasized that she was the only remaining licensed attorney in the firm in good standing; the stipulated misconduct took place in August 2017, with most occurring prior to the August 16, 2017 Committee warning to respondent to refrain from aiding Herzberg in the unauthorized practice of law; respondent testified that her concern was the protection of the interests of the firm’s clients; respondent immediately began establishing her own firm during that first week in which she had learned of Herzberg’s suspension; until these incidents, respondent maintained an unblemished ethics history; and respondent properly and promptly reported the New York discipline to the OAE.

Based on the foregoing, we determine that a three-month suspension, to be served prospectively, is warranted. The conduct at issue in the five transactions set forth above occurred during a short time period, from July 26, 2017 through August 29, 2017, when respondent admittedly was aware of Herzberg’s suspension. New Jersey case law, including Hancock, Kronegold, Cermack, cited above, supports a six-month suspension, however, in light of the mitigating factors, we determine that the facts in this case warrant a lesser discipline to protect the public and preserve confidence in the bar. Finally, there is no basis for respondent’s request that the suspension be retroactive to her New

York suspension and, thus, we impose a three-month, prospective suspension.

Vice-Chair Gallipoli and Members Rivera and Zmirich voted for a one-year, prospective suspension.

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
Bruce W. Clark, Chair

By: /s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Emily Anne Tran
Docket No. DRB 20-032

Argued: July 16, 2020

Decided: January 25, 2021

Disposition: Three-Month Suspension

<i>Members</i>	Three-Month Suspension	One-Year Suspension	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou	X			
Rivera		X		
Singer	X			
Zmirich		X		
Total:	6	3	0	0

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel