SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-064
District Docket No. XIV-2020-0473E

In the Matter of Daniel A. Frischberg
An Attorney at Law

Argued
May 24, 2024

Decided
September 4, 2024

Colleen L. Burden appeared on behalf of the
Office of Attorney Ethics.

Respondent waived appearance for oral argument.

Table of Contents

Introduction 1
Ethics History 1
Facts 2
The Parties' Positions Before the Board 9
Analysis and Discipline 12
    Violations of the Rules of Professional Conduct 12
    Quantum of Discipline 15
Conclusion 29

Introduction

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Respondent stipulated to having violated RPC 8.1(b) (failing to cooperate with disciplinary authorities), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer – theft of law firm funds), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) and the principles of In re Siegel, 133 N.J. 162 (1993) (knowingly misappropriating law firm funds).

For the reasons set forth below, we determine that respondent knowingly misappropriated law firm funds and recommend to the Court that he be disbarred.

Ethics History

Respondent earned admission to the New Jersey bar in 2007 and to the New York bar in 2008. He has no disciplinary history. During the relevant timeframe, he practiced law as an associate at a law firm located in Marlton, New Jersey (the Firm).

Facts

In September 2015, respondent began his employment at the Firm as an associate. Shortly thereafter, the Firm's managing partner added him as an authorized user of the Firm's credit card, allowing him to make firm-related purchases, including office supplies, via his personal Amazon[1] account. Additionally, on some occasions, the managing partner authorized him to make "specific non-firm related purchases," including a pair of sunglasses for himself and a "gadget" for his mother to allow her "to open doors without touching them." The managing partner paid the Firm's credit card bill with law firm funds.

Respondent stipulated that, between December 2019 and August 2020, he utilized the Firm's credit card to purchase, via his personal Amazon account, $16,755.72 worth of "unauthorized gift card[s]," which he then used to purchase "game coin packs" to play an online casino game.[2] Prior to August 3, 2020, respondent "continuously" misrepresented to the Firm's bookkeeper that the Amazon charges represented legitimate firm expenses for office supplies and "website expenditures." Moreover, on August 3, 2020, when a member of the

---

[1] Amazon is a global online retailer.

[2] The parties stipulated that the "online casino games" did not appear to resemble casino games traditionally "found on the floor of a brick-and-mortar casino." Rather, "the games at issue . . . [were] similar to videogames."

Firm questioned him regarding certain charges on the July 2020 credit card statement, he claimed that "certain personal charges were mistakenly charged" to the Firm's credit card.

Respondent then resigned from the Firm, pursuant to an August 18, 2020 separation agreement. The separation agreement provided that respondent and the managing partner had agreed not to file "any lawsuit or claim" against one another "based on any events, whether known or unknown, occurring prior to the date of the execution of [the] agreement."[3] Prior to executing the separation agreement, respondent had disclosed to the managing partner his "mental health diagnosis."

On September 27, 2020, one month after his departure from the Firm, respondent sent the managing partner an e-mail, stating that it was "time I was honest with you" and that he had "betrayed your trust with the [Firm's credit card]." In his e-mail, he claimed that, after suffering a personal hardship, he "started playing this stupid came called club Vegas to occupy time. It's a fake casino game. I was buying coin packs until I was maxed out with my credit cards. No control. Needed to fill the void." After describing his personal struggles during the COVID-19 pandemic, respondent told the managing partner

[3] At the time of the separation agreement, the managing partner was not yet aware of respondent's unauthorized use of the Firm's credit card.

that he had "spiraled out of control into more self-destructive behavior. I used the [Firm's credit card] to buy game coin packs from Amazon. I needed to play this game like it was my crack. The only escape where I could turn my brain off." Respondent apologized for his actions and promised that he would "make good on paying you back in time" and "[a]s soon as I find a job I will start sending you what I can." He also indicated that he was "on the verge of bankruptcy."[4]

On September 29, 2020, the managing partner sent respondent a reply e-mail, stressing that it was imperative that respondent provide his Amazon account credentials to allow the Firm to determine the extent of his unauthorized credit card charges. Respondent, however, failed to provide the managing partner with his Amazon account credentials.

On October 9, 2020, the managing partner filed an ethics referral with the OAE, based on respondent's unauthorized use of the Firm's credit card.[5]

Two months later, on December 11, 2020, the managing partner sent the OAE an e-mail, indicating that, between September 2019 and September 2020, respondent had made 619 Amazon charges, totaling $43,691.16, to the Firm's

---

[4] At some point after his departure from the Firm, respondent filed a Chapter 7 bankruptcy petition, on notice to the managing partner.

[5] The managing partner declined to file a formal ethics grievance against respondent. Consequently, the parties referred to the managing partner as "referent" in the disciplinary stipulation.

credit card. The managing partner told the OAE that, without having access to respondent's Amazon account, the Firm could not determine which of the 619 Amazon charges represented legitimate firm expenses.

On December 17, 2020, respondent sent the OAE a letter, in reply to the ethics referral, in which he conceded he had utilized the Firm's credit card to purchase "game coin packs from Amazon." In his letter, respondent maintained that his September 27 e-mail to the managing partner reflected "a heartfelt, sincere attempt to inform someone with whom I had a close relationship about what I was going through." Respondent also noted that, upon leaving the Firm, he sought professional help to address his depression, anxiety, and addictive personality disorder.

Respondent argued, however, that he had not committed any unethical conduct, stressing that he and the managing partner had a close relationship in which he would "put furniture together in [the managing partner's] home, replaced his car headlamps, fixed flat tires, set up gaming devices, and otherwise helped every way I could with personal matters." Respondent also asserted that, during the pandemic, he had taken on the additional responsibility of handling the Firm's recordkeeping obligations. Respondent further maintained that there "was never any policy" as to his use of the Firm's credit card and that the managing partner previously had allowed him to make specific personal

purchases via the credit card. Additionally, respondent asserted that, prior to his departure from the Firm, the managing partner had questioned him regarding his use of the Firm's credit card to make purchases at a fast-food restaurant, a clothing store, and Amazon – purchases which, in respondent's view, reflected the managing partner's "awareness" that he "had made some personal purchases with [the Firm's credit] card." Finally, respondent claimed that "[c]ircumstances with [his] co-worker . . . led to [his] decision . . . to leave the [F]irm" and, further, expressed his view that the managing partner was experiencing "buyer's remorse" concerning the separation agreement in which they had agreed to release any claims against each other "based on events, whether known or unknown, occurring prior to the date of the execution of [the] agreement."

On April 8, 2021, respondent appeared for the OAE's demand interview, during which the OAE directed him to provide his Amazon account credentials so that it could determine the extent of his unauthorized use of the Firm's credit card.

On May 8, 2021, following the demand interview, respondent sent the OAE a letter, enclosing more than six pages of spreadsheets that he created, detailing his numerous unauthorized gift card purchases to procure the "game coin packs." His spreadsheets listed the dates of the unauthorized gift card purchases and the price of each transaction, the amounts of which ranged from

$22.65 to $139, and totaled $16,755.72. In his accompanying letter, respondent emphasized how "upsetting" and "mentally difficult" it was to prepare the spreadsheets. Respondent noted, however, that he took "responsibility for his actions" and stated that "having to deal with the fallout is part of the . . . process" to recover from "social casino addiction."

On July 16, 2021, the OAE sent the managing partner an e-mail, attaching respondent's spreadsheets and inquiring whether the transactions listed therein comported with the Firm's credit card statements. The managing partner, however, noted that he could not confirm the accuracy of respondent's spreadsheets without reviewing respondent's "Amazon account statements."

On February 7, 2022, the OAE sent respondent an e-mail, again directing that he provide the OAE with his Amazon account credentials so it could determine the extent of his illicit purchases with the Firm's credit card. Approximately one hour later, respondent replied, claiming that he had "provided as much detail as [he] could" in his spreadsheets regarding his unauthorized Amazon gift card purchases. Respondent also stated that he was "not sure what else the OAE would like from me" and that he did not "have a printer to print out every page."

Respondent stipulated that he failed to comply with the OAE's directive to provide his Amazon account credentials. Respondent further stipulated that

he failed to provide the OAE any other original document which might have revealed the precise amount of his unauthorized Amazon purchases via the Firm's credit card.

As of April 1, 2024, the date of the disciplinary stipulation, respondent had failed to repay the Firm for his unauthorized credit card purchases. However, of the at least $16,755.72 in unauthorized charges, respondent attempted to make a $350 partial repayment, via a personal check to the Firm. The Firm, however, declined to negotiate respondent's $350 check.

Based on the foregoing facts, respondent stipulated that he violated RPC 8.1(b) by failing to comply with the OAE's requests for his Amazon account credentials. Additionally, respondent stipulated that he committed third-degree fraudulent use of a credit card, in violation of N.J.S.A. 2C:21-6(h) and RPC 8.4(b), by using the Firm's credit card "with fraudulent intent" to purchase the "game coin packs." Finally, respondent stipulated that he violated RPC 8.4(c) and the principles of Siegel, 133 N.J. 162, by knowingly misappropriating law firm funds via his fraudulent use of the Firm's credit card to purchase the game coin packs.

The Parties' Positions Before the Board

In support of its recommendation that respondent be disbarred for his knowing misappropriation of law firm funds, the OAE analogized respondent's misconduct to that of disbarred attorneys whose knowing misappropriation of law firm funds was unrelated to any genuine business disputes with their firms. By contrast, in In re Sigman, the Court declined to disbar an attorney whose underlying knowing misappropriation of law firm funds arose out of "a business dispute between the attorney and his firm." 220 N.J. 141, 162 (2014).

The OAE argued that, unlike the attorney in Sigman, respondent conceded that his improper use of the Firm's credit card to fund his ability to play an online casino videogame was unrelated to a genuine business dispute with the Firm. Consequently, based on disciplinary precedent, the OAE argued that respondent's "intentional theft from his firm" warranted his disbarment. Moreover, the OAE noted that, on this record, and consistent with disciplinary precedent, respondent's claimed "social casino addiction" did not mitigate the seriousness of his theft of law firm funds.

In the disciplinary stipulation, respondent expressed his intent to argue why he should not be disbarred. Specifically, he urged, in mitigation (1) his lack of prior discipline; (2) the fact that he stipulated to his misconduct and voluntarily disclosed his actions to the managing partner; (3) his receipt of a

2012 pro bono service award from Volunteer Lawyers for Justice; and (4) the fact that, at the time of his misconduct, he suffered from anxiety, depression, and "an addictive personality disorder" for which he began receiving treatment in 2020.

In his April 24, 2024 letter to us, respondent noted that his September 27, 2020 e-mail to the managing partner represented a "heartfelt" message in which he truthfully disclosed his improper use of the Firm's credit card to satisfy his "gaming addiction." Further, he asserted that the OAE was seeking his disbarment "for voluntarily coming forward, admitting I have a problem, and seeking treatment from a licensed psychologist."

Respondent also claimed that the OAE violated the confidentiality requirements of R. 1:20-9 by purportedly disclosing to the managing partner his December 17, 2020 reply to the ethics referral. In respondent's view, because the managing partner had declined to file a formal ethics grievance against him, the OAE's alleged disclosure of that document to the partner was improper.[6]

Moreover, respondent noted that he had not practiced law since 2020 and, since that time, the OAE had not attempted to seek his temporary suspension for his misconduct for which it now seeks his disbarment. Regarding his failure to

---

[6] The record before us is devoid of any evidence that the OAE provided the managing partner respondent's December 2020 reply to the ethics referral.

repay the Firm for his illicit purchases, respondent noted that the managing partner had declined to enter an appearance in connection with respondent's Chapter 7 bankruptcy or to negotiate the $350 partial reimbursement check that he had sent to the Firm. Respondent also emphasized that both he and the managing partner "waived our rights" pursuant to their August 2020 separation agreement.

Furthermore, contrary to his stipulation that he violated RPC 8.1(b), respondent claimed that he "provided the . . . information sought by the OAE" and what he "provided was apparently not good enough for them." Respondent further argued that he had no obligation to provide the managing partner with his Amazon account credentials and accused the partner of accessing his personal computer that he had brought to the Firm.

Respondent maintained that the OAE "misstate[d] the quantum of discipline in this matter." In support of his contention that his knowing misappropriation of law firm funds does not warrant disbarment, respondent emphasized that he never misused client or escrow funds and, further, that he "did not personally gain" from his improper use of the Firm's credit "other than self-satisfaction of an addiction in the moment."

Finally, respondent stated that he "st[ood] by" his decision to disclose his improper use of the Firm's credit card to the managing partner. In respondent's

view, his "true character [was] shown in acknowledging what I did was wrong and making [the managing partner] aware of it." Nevertheless, respondent characterized as "disheartening" his view that, "by taking responsibility for my actions, I have put myself in a worse position than had I said nothing at all."

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine that the stipulated facts in this matter clearly and convincingly support the conclusion that respondent knowingly misappropriated law firm funds, in violation of RPC 8.4(b), RPC 8.4(c), and the principles of Siegel. Consequently, we recommend to the Court that he be disbarred.

Specifically, in or around September 2015, shortly after respondent joined the Firm as an associate, the managing partner allowed him to use the Firm's credit card for firm-related expenses and, on some occasions, for specific, pre-approved personal purchases. More than four years later, between December 2019 and August 2020, respondent abused his privileges by using the Firm's credit card to surreptitiously purchase, via his personal Amazon account, at least $16,755.72 in gift cards that he used to acquire "game coin packs" to play an online casino videogame. Prior to his August 2020 separation from the Firm,

respondent concealed his misappropriation by repeatedly misrepresenting to the Firm's bookkeeper that the improper Amazon charges, which occurred in numerous small dollar amounts, represented legitimate firm expenses.

Until respondent voluntarily disclosed his misconduct to the managing partner in September 2020, the Firm had not detected his illicit transactions, given that the partner had allowed him to make legitimate firm-related purchases via Amazon. Respondent's prolonged theft of the Firm's funds allowed him to spend exorbitant sums on an online casino videogame and resulted in a significant financial loss to the Firm. Thus, as respondent stipulated, his misconduct constituted a clear violation of RPC 8.4(c) and the principles of Siegel.

Likewise, respondent violated RPC 8.4(b) by committing third-degree fraudulent use of a credit card, in violation of N.J.S.A. 2C:21-6(h). That statute provides, in relevant part, that "a person who . . . with unlawful or fraudulent intent . . . uses any actual . . . credit card, whether alone or together with names of credit cardholders, . . . is guilty of a crime of the third degree." "Fraudulent intent" within the meaning of N.J.S.A. 2C:21-6(h) occurs when someone acts with the purpose "to deprive a person of property . . . by deceit or artifice, to cheat." Model Jury Charges (Criminal), "Credit Card Crimes: Fraudulent Use of Credit Cards (Furnishing) (N.J.S.A. 2C:21-6h)" (approved June 8, 1998).

Here, respondent admittedly violated N.J.S.A. 2C:21-6(h) by using the Firm's credit card with the "fraudulent intent" to purchase, without the managing partner's knowledge or permission, at least $16,755.72 in gift cards that enabled him to play the casino videogame. Respondent's conduct resulted in a prolonged, brazenly fraudulent scheme in which he disguised his numerous small-dollar illicit purchases as legitimate firm expenses, acquired through an online retailer.

Finally, respondent violated RPC 8.1(b) by failing to comply with the OAE's repeated requests for his Amazon account credentials. As the managing partner had informed the OAE in his December 11, 2020 e-mail, respondent utilized the Firm's credit card, between September 2019 and September 2020, to make 619 purchases, totaling $43,691.16, via his personal Amazon account. The managing partner, however, advised the OAE that, without having access to respondent's Amazon account, he could not determine the extent of respondent's illicit credit card activity. Indeed, respondent had refused to comply with the managing partner's September 29, 2020 request to provide his Amazon account credentials. Consequently, during the April 2021 demand interview, the OAE directed that respondent provide his account credentials. Respondent, however, failed to comply.

In May 2021, respondent provided the OAE several pages of spreadsheets he had created, detailing his numerous unauthorized Amazon gift card purchases, totaling $16,755.72, via the Firm's credit card. However, in April 2022, respondent again refused to comply with the OAE's directive that he provide his Amazon account credentials to the OAE. Moreover, as respondent stipulated, he failed to provide the OAE "any other original document" to corroborate the scope of his fraudulent transactions. Based on his repeated failure to comply with the OAE's requests for his Amazon account credentials, the OAE was unable to verify whether respondent had made only $16,755.72 in unauthorized charges to the Firm's credit card, as he had alleged, or whether he had made additional unauthorized charges in connection with the $43,691.16 in total Amazon purchases that he had charged to the Firm's credit card.

In sum, we find that respondent violated RPC 8.1(b), RPC 8.4(b), and RPC 8.4(c) and the principles of Siegel. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The crux of respondent's misconduct is his knowing misappropriation of law firm funds, through his improper use of the Firm's credit card, to make at

least $16,755.72 in fraudulent purchases to enable him to play an online casino videogame.

In New Jersey, "[d]isbarment is mandated for the knowing misappropriation of clients' funds." In re Orlando, 104 N.J. 344, 350 (1986) (citing In re Wilson, 81 N.J. 451, 456 (1979)). In Wilson, the Court described knowing misappropriation of client trust funds 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.
>
> [In re Wilson, 81 N.J. 455 n.1.]

In Sigman, the Court explained that it had "construed the 'Wilson rule, as described in Siegel,' to mandate the disbarment of lawyers found to have misappropriated firm funds '[i]n the absence of compelling mitigating factors justifying a lesser sanction, which will occur quite rarely.'" 220 N.J. at 157 (alteration in original) (quoting In re Greenberg, 155 N.J. 138, 67-68 (1998)).

In Siegel the Court addressed, for the first time, the question of whether knowing misappropriation of law firm funds should result in disbarment. 133 N.J. at 168. During a three-year period, Siegel, a partner at his firm, converted more than $25,000 in funds from his firm by submitting false disbursement

requests to the firm's bookkeeper. Id. at 165. Although the disbursement requests listed ostensibly legitimate purposes, they represented Siegel's personal, luxury expenses, including tennis club fees, theater tickets, and sports memorabilia. Ibid. The payees were not fictitious; however, the stated purposes of the expenses were. Ibid. Although we did not recommend Siegel's disbarment, the Court agreed with our dissenting public members, who "saw no ethical distinction between the prolonged, surreptitious misappropriation of firm funds and the misappropriation of client funds." Id. at 168. The Court concluded that knowing misappropriation from one's partners was just as wrong as knowing misappropriation from one's clients, and that disbarment was the appropriate discipline. Id. at 170.

In Greenberg, the Court refined the principle announced in Siegel. 155 N.J. 138. The attorney in Greenberg also was disbarred after misappropriating $34,000 from his law firm partners, over a sixteen-month period, and using the ill-gotten proceeds for personal expenses, including mortgage payments and country club dues. 155 N.J. at 158. Greenberg improperly converted the funds by endorsing two insurance settlement checks to a client, rather than depositing the checks in his firm's trust account. Id. at 141. Per Greenberg's instructions, the client then issued checks for legal fees directly payable to Greenberg. Ibid.

Additionally, Greenberg falsified disbursement requests and used those proceeds to pay for personal expenses. Id. at 141-42.

In mitigation, Greenberg asserted that a psychiatric condition, which he attributed to childhood development issues and depression, rendered him unable to form the requisite intent to misappropriate his firm's funds. Id. at 182-84. Additionally, he submitted more than 120 letters from peers and community members, attesting to his reputation for honesty and integrity. Id. at 186. Determining that Greenberg appreciated the difference between right and wrong, and had "carried out a carefully constructed scheme," the Court rejected his mitigation and disbarred him. Id. at 158.

Since the Court's decisions in Siegel and Greenberg, multiple associate attorneys also have been disbarred for knowing misappropriation of law firm funds.

For instance, in In re Staropoli, 185 N.J. 401 (2005), an associate attorney received a one-year suspension in Pennsylvania and Delaware, but was disbarred in New Jersey, for retaining a $3,000 legal fee, two-thirds of which belonged to his firm. Staropoli was aware that contingent fees were to be divided in certain percentages between the firm and its associates, if the associates originated the cases. In the Matter of Charles C. Staropoli, DRB 04-319 (March 2, 2005) at 2. In May 2000, Staropoli settled a personal injury case he had originated, earning

a contingent fee. Id. at 2. The insurance company issued a check payable to both Staropoli and the client. Ibid. Staropoli, however, did not tell the firm of his receipt of the check and deposited it in his personal bank account, rather than the firm's account. Ibid. He then distributed $6,000 to the client and kept the $3,000 fee for himself. Ibid.

We issued a divided decision. Four Members found that Staropoli's single aberrational act should not require "the death penalty on [his] New Jersey law career." Id. at 22. The four Members who voted for disbarment found that Staropoli did not have a reasonable belief of entitlement to the funds that he withheld from the firm, and that he had advanced no other valid reason for his misappropriation of law firm funds. Id. at 20. The Court agreed and disbarred him. Staropoli, 185 N.J. 401.

In a more recent case, In re Nicholson, 235 N.J. 331 (2018), the Court disbarred an associate attorney who knowingly misappropriated her law firm's funds in connection with her attempts to assist the firm in collecting outstanding client fees. In the Matter of Christie-Lynn Nicholson, DRB 18-037 (July 30, 2018) at 4. Per Nicholson's instructions, twelve law firm clients directly paid her a total of $19,161 toward outstanding legal fees, which she deposited in her personal bank account. Id. at 4-5. The client payments represented both legal fees owed to the firm for completed legal services and legal fees advanced for

future legal services. Id. at 5. Nicholson did not remit the client payments to the firm, even though she was neither authorized to settle outstanding fees, nor entitled to retain any legal fees paid to the firm. Ibid.

To conceal her misconduct, Nicholson removed pages from the firm's receipts book; intercepted monthly billing invoices, so that clients would not learn that their payments were not properly credited to their outstanding balances; instructed clients to lie to the firm's managing partner about making cash payments directly to her after the firm's normal business hours; and maintained secret notes concerning potential new clients, some of whom retained her to perform work outside the scope of her employment with the firm. Id. at 5, 13. Although Nicholson collected fees from those potential new clients, she never performed the legal services. Id. at 5.

After discovering Nicholson's misconduct, the managing partner terminated her employment and filed a criminal complaint, charging her with multiple counts of theft. Id. at 18. Nicholson, however, improperly threatened the managing partner that, unless he withdrew the criminal charges and the information that he had given to the New Jersey Department of Labor, she would report him to the relevant authorities for purported "'counter allegations' of fraud and crimes." Id. at 18-19.

In recommending Nicholson's disbarment, we found no evidence that she took the firm's funds in connection with a colorable business dispute, as in Sigman. Id. at 31. Rather, we found that Nicholson's protracted scheme of dishonesty and theft from the law firm compelled her disbarment, as in Siegel, Greenberg, and Staropoli. Id. at 31-32.

In 2022, the Court imposed a permanent bar on an associate attorney's ability to apply for future pro hac vice or plenary admission in New Jersey, following the attorney's guilty plea and conviction to one count of mail fraud, in violation of 18 U.S.C. § 1341. In re Mittin, 250 N.J. 182 (2022).[7] In that matter, the attorney admitted that he had engaged in an illegal, ten-year-long scheme to defraud his law firm of its entitled fees by referring the firm's cases to outside lawyers, who resolved the cases and shared the proceeds with the attorney. In the Matter of Neil I. Mittin, DRB 20-334 (August 5, 2021) at 3-4. Although Mittin was an associate, who was not permitted to remove a client's matter from the firm or to refer a client to an outside attorney, he enjoyed a

[7] Mittin had not earned plenary admission to the New Jersey bar. However, he had engaged in the criminal conduct while admitted, pro hac vice, to the New Jersey bar. Accordingly, the Court had jurisdiction to discipline him pursuant to R. 1:20-1(a) (providing that "[e]very attorney . . . authorized to practice law in the State of New Jersey, including those attorneys specially authorized for a limited purpose or in connection with a particular proceeding . . . shall be subject to the disciplinary jurisdiction" of the Court). Although the Court could not procedurally disbar Mittin, following the conclusion of his pro hac vice New Jersey bar admission, it imposed the functional equivalent of disbarment by permanently barring him from future pro hac vice or plenary admission in New Jersey.

position of trust from the partners and, thus, was not subject to significant supervision in his daily work. Ibid. Nevertheless, Mittin abused that trust by referring client matters, without the firm's knowledge, to outside lawyers as if he, not the firm, was entitled to a share of the financial recoveries in those matters. Id. at 5. Thereafter, Mittin systematically would close the corresponding files at the firm, which made it appear in the firm's records as if there was no settlement or resolution, effectively concealing from the firm that the matters were, indeed, viable, and that he fraudulently had referred the matters to outside attorneys. Ibid. Upon resolving the client matters, the outside attorneys would pay Mittin a referral fee and reimburse him for the costs incurred by the firm before he had referred the cases. Id. at 6.

In recommending Mittin's permanent bar from future pro hac vice or plenary admission, we found that his knowing misappropriation of law firm funds did not arise out of a business dispute over fees, as in Sigman. Rather, Mittin had embarked on a criminal scheme to steal nearly $4 million in fees to which the firm was entitled. Mittin, DRB 20-334 at 16. The Court agreed with our recommended discipline and permanently barred Mittin from such future admission to the New Jersey bar.

The misappropriation of law firm funds, however, is not always met with disbarment. Lesser sanctions have been imposed where attorneys have been engaged in business disputes with their law firms.

For instance, in Sigman, an associate with a Pennsylvania law firm kept legal and referral fees, over a four-year period, repeatedly violating the terms of his employment contract. 220 N.J. at 145. Sigman knew he was prohibited from handling client matters and referrals independent of the firm, but did so anyway, and instructed clients to issue checks for fees directly to him. Id. at 147-48. In total, he withheld $25,468 from the firm. Id. at 145.

After the firm had terminated Sigman's employment, but prior to the imposition of discipline in Pennsylvania, Sigman successfully sued his prior employer, resulting in the award of $123,942.93 in legal and referral fees that the firm wrongfully had withheld from him. Id. at 151. During the disciplinary proceedings, however, Sigman did not cite the fee dispute with his firm as justification for his misappropriation. Id. at 162. For his violations of RPC 1.15(a) and (b), RPC 3.4(a), and RPC 8.4(c), the Pennsylvania Supreme Court, citing substantial mitigation, suspended Sigman for thirty months. Ibid.

In New Jersey, the Court imposed a thirty-month suspension, noting the presence of compelling mitigating factors, including Sigman's lack of prior discipline in Pennsylvania or New Jersey; his character references

demonstrating his significant contributions to the bar and underserved communities; his admission of wrongdoing and cooperation with disciplinary authorities; the fact that he did not steal funds belonging to a client; the fact that his misappropriation occurred in the context of fee payment disputes and a deteriorating relationship with his firm, where he ultimately was vindicated; and, the fact that his misconduct was reported only after the conflict over fees had escalated. Id. at 161.

In our view, respondent's prolonged and fraudulent misuse of the Firm's credit card to fund his exorbitant purchases for an online casino videogame bears striking resemblance to that of the attorney in In re Kokabi, 254 N.J. 267 (2023). In that matter, only a few months after achieving a trusted partner position at a large District of Columbia law firm, Kokabi embarked upon a two-year scheme to improperly use her firm's credit card to purchase approximately $30,000 in personal luxuries for herself and her husband, including vacations at high-end resorts, costly artwork, and expensive furniture. In the Matter of Azadeh Sophia Kokabi, DRB 22-010 (July 7, 2022) at 16.

Kokabi concealed her illicit credit card purchases by filing false expense reports, which misrepresented her numerous personal expenses as seemingly legitimate business expenses. Ibid. Thereafter, Kokabi continued to lie to the firm regarding the legitimacy of her purchases, even after her supervising

partner had confronted her with overwhelming evidence of her misconduct. Id. at 25. Following an annual budget review, the firm discovered Kokabi's misconduct, required that she resign from the firm, and directed that she reimburse the firm for her illegitimate purchases. Id. at 9.

Analogizing her knowing misappropriation to the disbarred attorneys in Siegel and Greenberg, we recommended that the Court impose a permanent bar on Kokabi's ability to apply for future pro hac vice or plenary admission in New Jersey, given that she never earned plenary admission to the New Jersey bar and had committed her misconduct while admitted pro hac vice in New Jersey. Id. at 2, 25. The Court agreed with our recommend discipline and permanently barred Kokabi from such future admission to the New Jersey bar. Kokabi, 254 N.J. at 267.

Here, unlike the attorney in Sigman, respondent stipulated that his misappropriation of law firm funds did not arise out of a legitimate business dispute over fees. Rather, like Kokabi, respondent brazenly abused his trusted position at the Firm by surreptitiously using its credit card to purchase at least $16,755.72 worth of Amazon gift cards to fund his ability to play an online casino videogame. To conceal his misconduct, respondent lied to the Firm's bookkeeper that the charges represented legitimate firm expenses. Moreover, rather than purchase the "game coin packs" directly with the Firm's credit card,

respondent acquired those "coin packs" with the gift cards that he fraudulently had purchased, via Amazon, to disguise his illicit activity on the Firm's credit card statements.

Although respondent eventually revealed his misconduct to his managing partner, one month after his departure from the Firm, he refused to cooperate with the partner's and the OAE's attempts to verify whether the remaining $26,935.44 of his $43,691.16 in total Amazon purchases with the Firm's credit card represented legitimate firm expenses. Moreover, despite his promises to the managing partner that he would reimburse the Firm for his fraudulent purchases, respondent has failed to make any meaningful effort to repay the Firm, which incurred at least a $16,755.72 financial loss as a result of his illegal activity.

Finally, despite having received treatment since 2020 for depression, anxiety, and addictive personality disorder, respondent has failed to establish any meritorious defense to his stipulated misconduct. Although the burden of proof in proceedings seeking discipline is on the presenter, the "burden of going forward regarding defenses or demonstrating mitigating factors relevant to the charges of unethical conduct shall be on the respondent." R. 1:20-6(c)(2)(C).

It is well-settled that mental illness serves as a defense only where the illness reduces the mental state of the attorney beyond that required to establish the charged violations of the Rules of Professional Conduct. The Court has

explained that such a defense is not established where, as here, an attorney does not:

> furnish any basis grounded in firmly established medical facts for a legal excuse or justification for [the attorney's misconduct]. There has been no demonstration by competent medical proofs that respondent suffered a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful.
>
> [In re Jacob, 95 N.J. 132, 137 (1984).]

Further, the limited medical information contained in the record before us does not demonstrate that respondent was afflicted by "[a] mental illness that impair[ed] the mind and deprive[d] [him] of the ability to act purposely or knowingly, or to appreciate the nature and quality of the act he was doing, or to distinguish between right and wrong." In re Cozzarelli, 225 N.J. 16, 31 (2016).

The Court has "indicated that there may be circumstances in which an attorney's loss of competency, comprehension, or will may be of such magnitude that it would excuse or mitigate conduct that was otherwise knowing or purposeful." In re Goldberg, 109 N.J. 163, 168 (1988). However, the Court has observed that, "[a]lmost invariably," it will:

> find that the attorney has not lost comprehension or competency but rather has yielded to the compulsion, and whether the compulsion is due to drugs, gambling, or alcohol, dependent attorneys retain an area of volition sufficient that we cannot distinguish these

> attorneys from those who yield to the equally human impulse to avert shame, loss of respect, or family suffering.
>
> [In re Bock, 128 N.J. 270, 273 (1992) (internal quotation and citation omitted).]

Consequently, the Court has noted that, although "compulsive behavior may lead to misconduct, we will not allow the public to go unprotected." Ibid. See also In re Lobbe, 110 N.J. 59 (1988) (the attorney knowingly misappropriated client funds to sustain his gambling addiction; although the Court found that the attorney's compulsive gambling was a "but for" cause of the misappropriation, the Court nevertheless disbarred the attorney).

Here, although respondent's alleged compulsion to spend exorbitant sums on a casino simulation videogame may have driven him to make the numerous fraudulent purchases using the Firm's credit card, the record is devoid of any evidence that he was incapable of controlling his conduct or distinguishing between right and wrong. See In re Nitti, 110 N.J. 321, 326 (1988) (the attorney drew gambling markers against his firm's trust account to cover advances made to him by a casino; despite the seriousness of the attorney's compulsive gambling condition, the Court found that the condition did not "render[] him incapable of controlling his conduct" and disbarred him for knowing misappropriation).

Conclusion

In conclusion, given respondent's admitted knowing misappropriation of law firm funds and the absence of a genuine business dispute over fees, disbarment is the only appropriate sanction, pursuant to the principles of Siegel as applied by subsequent disciplinary precedent. Therefore, we need not address the appropriate quantum of discipline for respondent's additional ethics violations.

Member Spencer voted to recommend the imposition of an indeterminate suspension, with the conditions that, prior to reinstatement, respondent prove his fitness to practice law, as attested to by a medical doctor approved by the OAE, and to provide the OAE with an accounting of the $43,691.16 in total Amazon charges that he had made with the Firm's credit card, between September 2019 and September 2020. In Member Spencer's view, respondent's conduct should not result in the ultimate sanction of disbarment, considering his earnest claim that he suffers from a serious compulsion to engage in online gambling, which he insinuated drove him to commit his misconduct.

Member Campelo was absent.

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
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.),
Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Daniel A. Frischberg
Docket No. DRB 24-064

Argued: May 24, 2024

Decided: September 4, 2024

Disposition: Disbar

Members	Disbar	Indeterminate Suspension	Absent
Cuff	X		
Boyer	X		
Campelo			X
Hoberman	X		
Menaker	X		
Petrou	X		
Rivera	X		
Rodriquez	X		
Spencer		X	
Total:	7	1	1

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