SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-137
District Docket No. XIV-2020-0315E

In the Matter of Scott Eric Diamond
An Attorney at Law

Argued
March 20, 2025

Decided
May 21, 2025

Darrell M. Felsenstein appeared on behalf of the
Office of Attorney Ethics.

Joshua J.T. Byrne appeared on behalf of respondent.

Table of Contents

Introduction

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 (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty pleas and felony convictions, in the United States District Court for the Eastern District of Pennsylvania (the EDP), for mail fraud, in violation of 18 U.S.C. § 1341, and wire fraud, in violation of 18 U.S.C. § 1343. The OAE asserted that these offenses constitute violations of the principles of In re Siegel, 133 N.J. 162 (1993) (knowing misappropriation of law firm funds), RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

On July 25, 2023, pursuant to R. 1:20-13(c)(2), we remanded an aspect of this case to Dina Gattuso, Esq., a Special Ethics Adjudicator (SEA), for a limited evidentiary hearing and report. In accordance with that Rule, we retained jurisdiction of this matter. Following a hearing, the SEA issued a report, dated November 26, 2024.

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

Ethics History

Respondent earned admission to the New Jersey and Pennsylvania bars in 1985. During the relevant timeframe, he was a partner at the Philadelphia law firm Sacks Weston Diamond, which is now Sacks Law, LLC.

Effective October 28, 2022, the Supreme Court of Pennsylvania temporarily suspended respondent in connection with his criminal conduct. He has not yet received final discipline in that jurisdiction.

Effective January 12, 2023, our Court temporarily suspended respondent in connection with his criminal convictions underlying this matter.

Facts

On July 20, 2022, in the EDP, before the Honorable Anita M. Brody, U.S.D.J., respondent entered guilty pleas to two counts of an information

charging him with mail fraud and wire fraud, in violation of 18 U.S.C. §§ 1341 and 1343, respectively.[1]

The facts underlying respondent's criminal conviction are as follows.

Respondent, a New Jersey certified civil trial attorney, was one of three partners with Sacks Weston Diamond (the Firm), a law firm specializing in complex commercial litigation, personal injury, and insurance subrogation. As a partner, he was entitled to a thirty-three percent share of the Firm's profits. His ownership interest in the Firm flowed through Diamond Law, P.C., a corporate entity he had formed prior to committing any of the misconduct underlying this matter.

In 2016, Jesse M. Cohen, Esq., who had a prior professional relationship with respondent, joined the Firm as an associate. Together, respondent and Cohen focused their practices on personal injury and insurance subrogation matters; Cohen was the primary source for subrogation clients. Cohen's salary was $65,000, and he additionally received a twenty-three percent share of legal fees generated by matters he originated on the Firm's behalf.

Beginning in June 2018 and continuing until July 2020, respondent and

[1] "SEAR" refers the SEA's November 26, 2024 report in this matter; "SEARex" refers to the exhibits to the SEA's report; and "SEARtr" refers to the transcripts of the evidentiary hearing in this matter.

Cohen devised and implemented a scheme to "defraud [the Firm] of legal fees and reimbursement of costs in connection with legal matters that [respondent and Cohen] diverted from [the Firm]" to themselves, using bank accounts controlled by respondent; the scheme was meant to assist them with financial issues they were facing. Respondent and Cohen leveraged Firm personal injury and insurance subrogation cases they personally were handling in order to conceal their misconduct from the Firm. In anticipation of a potential settlement, Cohen would advise respondent so that the case could be utilized in their scheme. When possible, respondent and Cohen would instruct the payor of funds to issue the payment to Diamond Law, P.C., at that entity's Philadelphia Post Office box, rather than issuing the payment to the Firm. Otherwise, respondent would intercept the physical checks at the Firm prior to the Firm's bookkeeper picking up the mail. On one occasion, respondent instructed a Minnesota law firm to send a check directly to his home address.

Respondent deposited the funds generated by the scheme in either an attorney trust or attorney business account held by Diamond Law, P.C. Respondent and Cohen would then disburse the portion of funds owed to clients and, on occasion, would reimburse the Firm for costs incurred in the relevant matters. However, in some matters associated with the scheme, respondent did not reimburse the Firm for incurred costs. To further conceal the thefts,

respondent deleted files and other Firm records relating to the cases that he and Cohen were leveraging to divert funds. Respondent also made false entries in the Firm's case management system, to make it appear there had been no settlement or other favorable resolution of a case.

Respondent admitted that his and Cohen's scheme generated more than $750,000 in gross proceeds. After disbursements to clients and the payment of costs, they equally shared approximately $319,931 – or $159,965.50 each. However, respondent also engaged in a separate scheme to divert funds from the Firm, without Cohen's involvement, and he kept all the proceeds of that endeavor for himself. In some cases, respondent also improperly billed clients for his personal expenses, including for his residential insurance premiums, his medical bills, and for construction at his residence. In connection with his plea agreement, respondent admitted that he had kept a total of $277,283 in proceeds "obtained from the offenses of mail fraud and wire fraud."

As a factual basis for his guilty plea to mail fraud, respondent admitted that, on February 24, 2020, he and Cohen diverted to Diamond Law, P.C. legal fees and costs owed to the Firm in an insurance subrogation case, via the United States Postal Service, an interstate carrier.[2] In connection with the wire fraud, respondent admitted that, on June 2, 2020, he and Cohen diverted legal fees

[2] Cohen also was charged via the same information and pleaded guilty.

owed to the Firm in an insurance subrogation case to respondent's home, via an e-mail sent to a law firm in Minnesota, transmitted in interstate commerce. Respondent and Cohen used the funds diverted on these occasions for their own pecuniary benefit. During respondent's plea colloquy, his attorney asserted to the court that the "background" for respondent's crimes "was a big partnership dispute and [respondent] took a short cut and that's why he's here."

Following respondent's guilty plea, on March 20 and 22, 2023, on the government's motion, Judge Brody held an evidentiary hearing. The hearing centered on respondent's limited dispute regarding whether he intentionally had clients pay him directly for certain personal expenses. Respondent did not dispute the main thrust of his guilty plea regarding his scheme of fraud concerning theft of legal fees from the Firm. As of the date of the evidentiary hearing, respondent had made full restitution as required pursuant to his guilty plea.

Following the extensive testimony of the postal inspector who had conducted the primary investigation of respondent's crimes, respondent and the government stipulated that respondent, in fact, had submitted false invoices and other documents to the Firm "in order to get payment on his personal expenses that were then billed to client files" and, ultimately, constituted expenses directly borne by clients. Included in this aspect of respondent's fraud were

personal expenses disguised as legitimate litigation expenses, including, for example, $500 for condominium insurance and $1,495 for preparation of personal tax returns. Respondent asserted that he never intended to harm a client – his intent was that the Firm would "end up bearing the expense" of these defalcations. Ultimately, respondent paid these funds back to the affected clients, in addition to the restitution he paid to the Firm.

During the March 22, 2023 sentencing hearing, respondent argued, through counsel, that, in crafting the proper sentence, the court should consider his otherwise spotless career; the fact that he already had been suspended from the practice of law in Pennsylvania and New Jersey; his humiliation and embarrassment; and the fact that he had paid the full $319,000 in restitution, despite Cohen's joint and several liability, in satisfaction of the plea agreement. Based on his arguments, respondent requested a probationary, rather than a prison sentence.

The government, for its part, called John Weston, one of respondent's prior partners at the Firm, as a witness. In summary, Weston recounted that he and Sacks formed the Firm in 2012 and 2013, and that respondent, an experienced and certified trial lawyer, was recommended to them, by colleagues, as a third partner. According to Weston, in 2020, he and Sacks discovered that respondent was "stealing us blind . . . You don't expect your partner to be doing

that obviously."

Weston further recounted that, in January 2013, respondent approached Sacks, requesting a letter stating that he was "guaranteed a certain salary," a document which respondent purportedly needed to get a mortgage; the salary was $250,000. Weston drafted the letter and Sacks signed it but, about a year later, Sacks told respondent that he would not receive a salary in that amount. From Weston's perspective, as of 2014, respondent could have sued the Firm based on the letter, or could have departed the Firm, but chose not to do so. Weston stated that respondent "was always dissatisfied" with his compensation and had threatened to leave the Firm before engaging in his scheme – which did not commence until 2018 – but never left.

In 2018 and 2019, the Firm took out loans for approximately $5 million; respondent signed on as a personal guarantor of the loans, along with Sacks and Weston. According to Weston, the Firm defaulted on some of those loans but was not, as of that time, being sued by the lenders; however, the Firm was sued by a lender in connection with a separate, $150,000 loan. Weston acknowledged that, even though the Firm terminated respondent, he remained personally liable for the loans.

When Weston and Sacks initially confronted respondent, toward the end of July 2020, they were aware of only four instances of his theft from the Firm,

to which respondent immediately confessed. The Firm then referred respondent to the Office of the United States Attorney, and the ensuing criminal investigation uncovered the entire scope of respondent's criminal conduct. Weston acknowledged that the Firm anticipated receiving restitution via the federal criminal matter but also had filed a state court civil suit to preserve the Firm's causes of action against respondent. Weston represented to the EDP that, if the Firm received the criminal case restitution, it would immediately withdraw the civil lawsuit. The government was aware of the state court action and the reasons the Firm had commenced the suit.

During his cross-examination of Weston, respondent argued, through counsel, that, as a partner at the Firm, there had been assurances made to him that he would "make a certain amount of money," but, over time, that was not the case. Respondent's counsel additionally asserted that, when the Firm began taking out loans and asking respondent to personally guarantee them, "he was getting very, very nervous about . . . his ability to support himself. He became angry. He became resentful about what was happening . . . ." Respondent, thus, "convinced himself that [his scheme] was justified," and began to take "what he felt in his mind he was owed by [the Firm]."

The government argued that, in committing his crimes, respondent had abused his position as an attorney and taken advantage of the trust of his partners

at the Firm. Given the attendant circumstances, and the seriousness of respondent's criminal conduct, the government urged the imposition of a twenty-seven to thirty-three-month term of incarceration.

Respondent then addressed the EDP. In summary, he apologized to his former partners at the Firm for "taking partnership money without their permission . . . I have no excuse . . . I know I betrayed their confidence, their trust in me." Respondent continued, "I thought I was owed money and I did the wrong thing . . . ." Respondent further apologized to his wife and children for the "shame and embarrassment" he had put them through. He also emphasized his thirty-seven-year unblemished record and extensive volunteer work, mentoring, and status as a husband and a father.

Before sentencing respondent, Judge Brody noted that she had received several character letters on his behalf. Having considered the entire record, including respondent's comments to the court, Judge Brody concluded that a probationary sentence would send the "wrong message" to the public in reaction to respondent's crimes. Mainly focused on general, versus specific, deterrence, Judge Brody determined that a period of incarceration was required to avoid the disparate impact of respondent receiving a lighter sentence than what other defendants might receive for a white-collar brand of theft. Accordingly, Judge Brody sentenced respondent to a six-month term of incarceration, followed by

three years of supervised release, with the first six months of that release served on home confinement. Judge Brody waived the imposition of any fine, noting respondent's full payment of court-ordered restitution, but imposed a mandatory $200 special assessment.

The Parties' Initial Positions Before the Board

Via its initial brief to us, the OAE sought the imposition of final discipline based on respondent's federal convictions. Moreover, the OAE asserted that the record clearly and convincingly establishes that respondent repeatedly and knowingly misappropriated law firm funds, in violation of Siegel. Citing disciplinary precedent, the OAE acknowledged that the misappropriation of law firm funds is not always met with disbarment, in cases where the attorney can demonstrate an ongoing business dispute with their firm and a reasonable belief to entitlement to the funds.

The OAE attempted to distinguish respondent's misconduct in the instant matter from those cases where attorneys have escaped disbarment, maintaining that, even if respondent had a business dispute with the Firm, he was not able to demonstrate a reasonable belief to entitlement to the misappropriated law firm funds. Consequently, the OAE argued that respondent must be disbarred under the principles of Siegel.

The OAE asserted that respondent's admitted crimes also supported a secondary basis for his disbarment pursuant to New Jersey disciplinary precedent – specifically, the well-settled principles of In re Goldberg – discussed below.

In respondent's initial brief to us, submitted through counsel, he argued that his misconduct does not warrant disbarment. Specifically, respondent asserted that, when he agreed to join the Firm, he did so with the understanding that he would receive a guaranteed minimum salary of $250,000. He maintained that, in the event of a shortfall, Sacks had agreed to fund capital to meet that salary. Respondent conceded that he did not receive that guaranteed salary in 2012 and 2013, and claimed that, at some point, he maintained a ledger that reflected that the Firm owed him approximately $300,000 in compensation. Respondent argued that, rather than pay him according to their agreement, the other partners at the Firm (Sacks and Weston) repeatedly voted to deny paying him the agreed $250,000 salary. Respondent claimed that he previously had proof of his contentions, but that the Firm denied him access to both Firm and personal records when he was terminated.

According to respondent, in 2017, he demanded that the Firm pay him $300,000 in arrearages and, in response, Sacks promised him that the Firm was about to settle "several larger cases" and respondent would be paid in full plus

receive his percentage of Firm profits. However, in 2018, nothing changed; accordingly, beginning in June 2018, respondent and Cohen implemented their scheme of theft from the Firm. Respondent maintained that he was doing so to recoup the salary arrearages owed to him.

In his brief, respondent further claimed that he had conducted research regarding New Jersey and Pennsylvania law in respect of the Firm treating him as an "oppressed minority shareholder," and had concluded that he had an "equitable right" to "set off the moneys he was owed from the [Firm]." Although respondent acknowledged that he should have pursued "an appropriate civil action to address the breaches of fiduciary duty owed to him by his partners," he asserted that he can prove, by clear and convincing evidence, that he had a genuine business dispute with the Firm and demonstrate a reasonable belief to entitlement to the misappropriated law firm funds. Accordingly, relying on relevant caselaw, Siegel and its progeny, as discussed below, and citing the mitigation recognized by the EDP at his sentencing, respondent argued that disbarment for his misappropriation of the Firm's funds was not warranted. Finally, he urged us to withhold any recommendation for discipline until respondent's Pennsylvania disciplinary proceedings have concluded.

Notably, in his brief to us, respondent did not address the application of Goldberg or its progeny to his criminal conduct.

The Remand For An Evidentiary Hearing

As noted above, on July 25, 2023, following our preliminary review, we remanded this matter to a SEA for a limited evidentiary hearing. In our remand letter to the parties, we noted that the record supported the conclusion – consistent with both his criminal convictions and his conceded position in connection with this matter – that respondent knowingly misappropriated law firm funds, in violation of the principles of Siegel, RPC 8.4(b), and RPC 8.4(c). Accordingly, we stated that, pursuant to New Jersey disciplinary precedent, respondent's misconduct mandates disbarment unless he establishes a recognized defense. See R. 1:20-6(c)(2)(B) and (C), and In re Gifis, 156 N.J. 323, 359 n. 8 (1998) (holding that respondent has the "burden of going forward regarding defenses . . . to charges of unethical conduct").

In connection with the remand, we noted that, both during his plea colloquy and in connection with the pending motion for final discipline, respondent asserted that his criminal conduct was connected directly to a business dispute with his partners. In our view, however, given the record at the point of the limited remand, respondent had not met his burden of establishing that business dispute. Specifically, we determined that the record was not sufficiently developed to determine whether respondent's misappropriation of law firm funds arose out of a legitimate business dispute, given the posture of

this matter as a motion for final discipline, along with respondent's pending assertion that he could successfully mount the affirmative defense established pursuant to Siegel disciplinary precedent – a defense which was not available or relevant during the criminal proceedings before the EDP.

The Court previously has addressed the potential procedural obstacles of the application of the principles of Siegel via OAE motion practice. See In re Barrett, 238 N.J. 517 (2019). In that matter, which came before us and the Court as a motion for reciprocal discipline, the OAE sought an attorney's disbarment, pursuant to Siegel, and the Court issued an opinion imposing a one-hundred-and-fifty day suspension on an attorney who had, unbeknownst to his law firm, traded legal fees earned for his firm, in two separate client matters, in exchange for construction work performed at his Utah residence. Id. at 520. The attorney's actions deprived his law firm of more than $20,000 in legal fees. Ibid. The Court declined to disbar the attorney and, instead, imposed a suspension identical to the Utah quantum of discipline.

In its written opinion, the Court explained that, in New Jersey, "evidence of a business dispute may be a defense to the misappropriation of law firm funds." Id. at 523 (citing Sigman, 220 N.J. at 162). However, no such business dispute defense existed in Utah, the original jurisdiction underlying the reciprocal discipline matter. Id. at 519. Hence, during the Utah proceedings, the

Utah judge permitted the attorney "to elicit testimony regarding a business dispute . . . only to assist the [judge] in assessing the testifying law firm partner's credibility." Id. at 524. Because the Utah judge limited the presentation of business dispute evidence between the attorney and his law firm, and because evidence that may have existed in Utah could not "be compelled" by the attorney or the OAE, our Court could not find clear and convincing evidence, based solely on the Utah record, that the attorney "knowingly misappropriated law firm funds under circumstances justifying greater discipline than" the one-hundred and fifty-day suspension "imposed in Utah." Id. at 525.

Here, although respondent was not limited by the EDP in his presentation of evidence of a business dispute with the firm, such a business dispute does not serve as a defense to the federal crimes of mail and wire fraud, to which respondent pleaded guilty. Regardless, while before the EDP, respondent clearly asserted that alleged business dispute as a mitigating factor for consideration in crafting his appropriate criminal sentence. Moreover, in reply to the instant motion for final discipline, and during the 2023 oral argument before us, respondent expressly maintained that he could mount such a defense.

In our disciplinary system, the OAE bears the burden of proving, by clear and convincing evidence, that a respondent knowingly misappropriated law firm funds. In turn, a respondent can mount a defense to disbarment under Siegel. R.

1:20-6(c)(2)(B) and (C). Specifically, respondent has the burden to prove such a business dispute, by clear and convincing evidence, in accord with precedent. Accordingly, applying the Court's logic in Barrett, and considering both the record before the EDP and the representations made by respondent in his brief to us, we previously were not in a position to determine whether respondent had a valid business dispute with the firm. See In re Gallo, 178 N.J. 115, 120 (2003) (finding that the imposition of discipline premised on an incomplete record "would not be fair" absent the opportunity for further testimony); cf. In re Gipson, 103 N.J. 75, 77 (1986) (imposing discipline where "the procedures afforded respondent accorded with principles of fundamental fairness").

Accordingly, we determined that, given the due process considerations underpinning the New Jersey disciplinary system, as discussed in Barrett, we could not yet reach a sound determination regarding whether respondent should be disbarred for violating the principles of Siegel by knowingly misappropriating law firm funds. Thus, we determined to remand this matter to a SEA for a limited evidentiary hearing and report focused on respondent's claimed business dispute with his prior firm.

In connection with the limited evidentiary hearing, we noted that respondent specifically should address the application of Siegel and its progeny to the unique facts of this case, and endeavor to prove that he should not be

disbarred because he was engaged in a business dispute with his firm. Moreover, we invited respondent to directly address the effect of his admitted scheme with Cohen – who was not a partner with the Firm and alleged no business dispute with the Firm – on the application of the established Siegel case law. Stated differently, respondent was invited to address why disbarment is inappropriate when, as part of the admitted scheme, he split the misappropriated law firm funds (at least in connection with the joint scheme) with Cohen.

The Evidentiary Hearing and the SEA's Report

Following a limited evidentiary hearing, which took place in July 2024, and after hearing testimony, reviewing the exhibits, and considering the factual and legal arguments submitted by the parties, the SEA concluded that respondent had not met his burden of establishing, by clear and convincing evidence, a genuine business dispute with the Firm, which may constitute a recognized defense to Siegel. The SEA noted that, during the evidentiary hearing, respondent primarily relied on Sacks' "five-year personal guarantee" letter from February 2013, again claiming that the Firm had failed to pay him in accordance with that promise. Respondent testified that, three years after joining the Firm, he was no longer being paid his guaranteed salary. He, thus, admitted that, in response, beginning in 2018, he implemented his scheme to defraud the

Firm for his and Cohen's pecuniary benefit. Respondent further admitted that he and Cohen focused on diverting funds from cases that Cohen originated.

Specifically, respondent again asserted that, to induce him to join the Firm, Sacks and Weston had promised him an annual gross salary of $250,000, to commence in January 2013 and to conclude in January 2018, and that he had been paid that promised salary for three years, through 2016. Specifically, respondent testified "I was guaranteed $250,000 a year plus profits . . . . The personal guarantee was a five-year personal guarantee by Andrew Sacks, who was the financial backer of the [F]irm."

Respondent, however, claimed that he eventually learned that his salary was being funded via loans the Firm had obtained, which respondent, as a partner of the Firm, had personally guaranteed, and that from 2016 forward, the situation worsened because the Firm did not pay his guaranteed salary. Respondent focused on the litigation funding loans in connection with his purported defense and submitted, as an exhibit, proof that, in 2023, a litigation funding entity, Virage SPV 1 LLC (Virage), had sued both the Firm and respondent and the other partners, as individuals, in Texas, for more than $15 million. Respondent, again, acknowledged that he voluntarily had executed numerous documents with his partners at the Firm to secure these litigation funding loans.

In presenting his case for a business dispute, respondent failed to note that the event of default cited by Virage, as the basis for the lawsuit, was respondent's federal convictions for having defrauded the Firm; however, he claimed one of the reasons he had not left the Firm was his knowledge that his departure would send the litigation loans into default. Respondent also submitted into evidence numerous e-mails between Sacks and Virage discussing the existing loans, posturing regarding defaults and litigation, and negotiating potential new terms and additional litigation financing loans. Respondent submitted into evidence a second, 2022 lawsuit, in which Jordan Litigation Funding LLC, a local lender, had sued the Firm over breach of contract in connection with a series of litigation funding loans, totaling $124,000 in debt.

Respondent testified that, as a result of his salary demand not being met, he "directly addressed the alleged breach of the guarantee with Mr. Sacks," but that Sacks told him he would be putting no more money into the Firm and, thus, would not be paying respondent $250,000. Respondent further alleged that he confronted Sacks with knowledge that other lawyers with the Firm were being paid more than respondent, and that Sacks countered that respondent "would be paid when the next big case hit." During the evidentiary hearing, respondent described billion-dollar settlement cases the Firm was litigating toward settlements, along with the Firm's history of large settlements in matters.

Respondent testified that, despite his complaints, "Sacks said he wasn't . . . paying me because he did not want to put any more money into the firm, especially just to pay me, and he wouldn't budge, he wouldn't pay me." To demonstrate his own financial peril as a consequence of the Firm's breach of the "guarantee," respondent submitted into evidence his personal tax returns for 2015 through 2019, which illustrate a marked decline in his Firm income over that period. Specifically, respondent reported the following incomes:

2013 - $265,127;
2014 - $272,946;
2015 - $360,979;
2016 - $52,729;
2017 - $3,752;
2018 - $4,588;
2019 - $270,210

[SEARex4;SEARtr1pp30-32.][3]

Respondent acknowledged that, following this confrontation with Sacks, he did not leave the Firm but, rather, remained in place as a partner; he maintained, without any corroborating documents or third-party testimony, that he "constantly" asked when he was being paid, but that Sacks had threatened to "bury him in lawsuits if he left," and that he "didn't have enough money to hire

[3] The record is silent regarding whether respondent reported, as income, the proceeds of his criminal scheme, which commenced in 2018.

a decent lawyer" to file an action against the Firm.[4] As respondent summarized the situation, he "said, all right, I'll hang on a little bit, but I need to get paid." As of the date of the limited evidentiary hearing, respondent had not commenced a civil action against the Firm. Moreover, he admitted that, despite his knowledge of the Firm's financial troubles, he had recruited both Cohen and another attorney to the Firm.

Respondent then admitted that, ultimately, in response to Sacks's rebuff, he began to divert "money in various ways into his account, along with" Cohen, who was a friend for whom he felt responsible. Respondent conceded that the Firm was paying Cohen his negotiated salary but recalled that Cohen repeatedly expressed that he "wanted more than what he was being paid." Respondent claimed that he did not take more from the Firm for himself than what was, in his opinion, owed to him. However, he claimed he could not produce records of exactly what was owed to him, maintaining that, when his scheme was discovered, he was "locked out of his office," and, thus, "the proof continued to be unavailable to him;" based on memory, he estimated the Firm owed him approximately $400,000.

On cross-examination, respondent represented that the idea to commence the scheme to defraud the Firm initially had been Cohen's, and that he agreed to

[4] As noted previously, respondent is a certified civil trial attorney.

the scheme, and "that's how it started." Respondent admitted that, pursuant to their criminal scheme, Cohen was being paid half of the Firm's entitlement to settlement funds, versus the lower percentage Cohen was entitled to; thus, respondent acknowledged that a portion of Cohen's share of the criminal proceeds would have gone to the Firm.

Respondent further admitted – as had been established in connection with his criminal guilty plea and sentencing – that he independently had diverted clients' funds by disguising personal expenses as litigation costs and then billing the clients under these false pretenses. Respondent paid the full amount of restitution required in connection with his guilty plea (despite the restitution having been imposed jointly and severally with Cohen). On cross-examination, respondent agreed that what he should have done in this case is resign from the Firm, stating "[t]hat's what I should have done, that's what I would do next time."

During the evidentiary hearing, respondent called multiple witnesses who testified to his good character. The SEA summarized this character testimony, noting that, although credible as to their high opinion of respondent, none of the character witnesses "had firsthand knowledge of the claimed business dispute" between respondent and the Firm.

In turn, the OAE called Cohen to testify. Cohen noted that, effective 2022,

Pennsylvania had suspended him from the practice of law for four years, and that he remained temporarily suspended in New Jersey. Cohen joined the Firm in 2016; initially, he had no defined salary but, rather, was paid a percentage of the fees earned on his matters. After repeatedly complaining about his lack of a salary, respondent assisted him in negotiating a new arrangement with the Firm – a $65,000 salary plus twenty-two percent of the fees he generated. Cohen admitted that, with the exception of the occasional dispute over the percentage assigned to a particular case, the Firm honored his employment arrangement. Cohen testified that, generally, he and respondent were unhappy with their compensation by the Firm, feeling that they were doing much of the work and generating much of the income, yet were being treated unfairly.

According to Cohen, given their unhappiness, he and respondent jointly devised the scheme to divert funds from the Firm and equally split the proceeds. Because respondent had sole control of the Firm's practice management software, he was able to manipulate firm records to conceal the scheme. Cohen testified that he and respondent never had a conversation about an upper limit or a cap on funds they would steal from the Firm.

Ultimately, the Firm discovered their scheme and Cohen made the decision to hire counsel, to cooperate with the federal government's investigation, and to record incriminating telephone conversations with

respondent; in return for his cooperation, Cohen received a lesser, probationary criminal sentence. Cohen provided no testimony supporting an ongoing business dispute between respondent and the Firm, besides generally stating that he and respondent regularly spoke about their unhappiness with their compensation by the Firm.

Turning to her findings of fact and law, the SEA prefaced her determinations by noting that we already had opined that the record supports the conclusion – consistent with both respondent's criminal convictions and his conceded position in connection with this matter – that he knowingly misappropriated law firm funds, in violation of the principles of Siegel, RPC 8.4(b), and RPC 8.4(c). The purpose, thus, of the limited evidentiary hearing was to determine whether respondent could establish his potential affirmative defense – a claimed genuine business dispute with the Firm.

The SEA reviewed applicable disciplinary precedent, Siegel in particular, noting that the attorney in that case had not engaged an associate attorney in his defalcations from his law firm, and had not engaged in the knowing misappropriation of law firm funds for multiple years. Next, the SEA emphasized Cohen's testimony that the Firm was honoring his specific compensation agreement and, thus, respondent "had no basis to involve [an] associate in [a] scheme that he claims was related to a business dispute between

him and his business partners." The SEA noted that, together, in a criminal scheme spanning two years, respondent and Cohen had diverted $715,000 in Firm funds, splitting $319,000 for their own pecuniary gain. The SEA concluded that respondent had produced no new evidence supporting his purported business dispute with the Firm.

In conclusion, the SEA determined that respondent had failed to establish, by clear and convincing evidence, a business dispute with the Firm. She noted that respondent could not quantify how much money the Firm owed him, had failed to "produce an email, letter, case list, contract, partnership agreement, or an independent witness" regarding such a dispute. Moreover, the SEA noted that, after much equivocation during his criminal plea allocution, respondent had further admitted to having billed personal expenses directly to clients. Next, the SEA emphasized that respondent's knowing misappropriation from the Firm spanned years and that respondent admitted it had ceased only "because we got caught." Finally, the SEA observed that respondent, an experienced, certified civil trial lawyer, claimed, on one hand, to have a genuine business dispute with the Firm, yet, on the other hand, simply claimed to be scared to take legal action against the Firm; stated differently, she noted he had taken no "proactive steps to resolve" his claimed business dispute with the Firm and, to date, has filed no civil action against his former partners, despite his position in this disciplinary

matter.

Accordingly, the SEA concluded that:

> [w]hile it may be true that the respondent made less money in some years than others, there was no evidence presented that he made the firm aware of a business dispute, that he was engaged in ongoing business disputes with his partners, that he was owed money from the firm, that he kept track of monies that were allegedly owed to him, that he was compensating himself for an amount of money that he actually knew that he was owed, or that once he was satisfied that he was made whole that the whole scheme to divert [firm funds] would cease. The respondent did not present a witness that had firsthand knowledge of a business dispute between him and his partners.
>
> [SEARp30.]

Assessing the litigation funding loans that respondent introduced into evidence and emphasized, the SEA was unmoved, noting that he "had every opportunity to terminate the partnership, refuse to execute litigation funding documents, and to mitigate his damages" prior to embarking on a two-year criminal enterprise to divert Firm funds with Cohen as his accomplice. In that vein, the SEA noted that such funding is commonplace in firms handling the types of litigation in which the Firm and respondent specialized – personal injury and class action matters. Accordingly, although acknowledging that the Firm was in "financial peril" while respondent was a partner, the SEA found no

"nexus" between the litigation funding and respondent's purported business dispute with the Firm.

For the above reasons, the SEA concluded that respondent had not overcome our preliminary finding that a violation of Siegel had been established, had not provided any reasonable explanation for his involvement of Cohen in the scheme, and had failed to establish a genuine business dispute with the Firm. Rather, on balance, the SEA found respondent's conduct to be "contrary to establishing the existence of a business dispute" with the Firm.

The Parties' Positions Post Evidentiary Hearing

The OAE relied on its prior submission to us.

Respondent filed a supplemental brief, disagreeing with the SEA's determination that he had failed to establish, by clear and convincing evidence, a genuine business dispute with the Firm. Specifically, respondent described Sacks's February 2013 "guarantee" letter as "central" to his defense. Moreover, respondent asserted that, in 2016 through 2018, he received $52,729, $3,752, and $4,588 from the Firm, respectively. Next, respondent noted that Weston explicitly admitted that the Firm subsequently determined that it could not pay respondent the promised $250,000 salary, and that respondent made it known to Sacks and Weston, from July 2014 onward, that he was dissatisfied with his

Firm compensation. Finally, respondent again asserted that, when he threatened to leave the Firm, Sacks, in turn, threatened to sue respondent, cautioning that litigation funding loans would be called into default, given respondent's personal guarantees of those loans.

Respondent then noted that he did not "begin taking funds from his partners until 2018, well after his partners had decreased his salary well below the guaranteed minimum." In conclusion, in response to the SEA's position that respondent had produced no new evidence to support his defense, respondent cited his own testimony, during the evidentiary hearing, that he felt he was engaging in self-help, recouping salary owed to him by the Firm.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our de novo review of the record, as supplemented via the evidentiary hearing before the SEA, we determine to grant the OAE's motion for final discipline. Considering respondent's guilty pleas and convictions for two counts of felony fraud, we have neither reason nor mandate to await the conclusion of respondent's Pennsylvania disciplinary proceedings, as he previously had requested.

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). See also In re Magid, 139 N.J. 449, 451 (1995), and In re Principato, 139 N.J. 456, 460 (1995). Accordingly, the instant matter is ripe for our review and the Court's imposition of final discipline.

Pursuant to RPC 8.4(b), it is misconduct for an attorney to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. Moreover, pursuant to RPC 8.4(c), it is misconduct for an attorney to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Thus, respondent's guilty pleas and convictions for felony mail fraud and wire fraud, in violation of 18 U.S.C. § 1341 and 18 U.S.C. § 1343, respectively, clearly and convincingly establish his violation of RPC 8.4(b) and RPC 8.4(c). Hence, the sole issue remaining for our determination is the proper quantum of discipline for his misconduct. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; Principato, 139 N.J. at 460.

Quantum of Discipline

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the

public in the bar." Principato, 139 N.J. at 460. Fashioning the appropriate penalty involves the 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 . . . prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances, including the details of the offense, the background of respondent, and the pre-sentence report" before reaching a decision as to the sanction to be imposed. In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

As noted above, in 2023, following a preliminary review of this matter, we determined that the record supports the additional conclusion – consistent with both respondent's criminal convictions and his conceded position in connection with this pending disciplinary matter – that he knowingly misappropriated law firm funds, in violation of the principles of Siegel, RPC 8.4(b), and RPC 8.4(c). Accordingly, pursuant to New Jersey disciplinary

precedent, respondent's misconduct mandates disbarment unless he establishes a recognized defense. See R. 1:20-6(c)(2)(B) and (C), and In re Gifis, 156 N.J. 323, 359 n. 8 (1998) (holding that respondent has the "burden of going forward regarding defenses . . . to charges of unethical conduct.").

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.'" Sigman, 220 N.J. at 157 (alteration in original) (quoting In re Greenberg, 155 N.J. 138, 153 (1998)).

By way of background, in Siegel, the Court addressed, for the first time, the question of whether the knowing misappropriation of law firm funds should result in disbarment. Siegel, 133 N.J. at 168. During a three-year period, the attorney, 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 the attorney'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 our majority did not recommend the attorney'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 166-67. The Court concluded that knowing misappropriation from one's partners is 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. 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. Greenberg, 155 N.J. at 158. He 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. a 141. Per the attorney's instructions, the client then issued checks for legal fees directly payable to the attorney. Ibid. Additionally, the attorney falsified disbursement requests and used those proceeds to pay for personal expenses. Id. at 141-42.

In mitigation, the attorney 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 155-157. Additionally, he submitted more than 120 letters from peers and community members, attesting to his reputation for honesty and integrity. Id. at 161.

Determining that that the attorney appreciated the difference between right and wrong, and had "carried out a carefully constructed scheme," the Court rejected his mitigation and disbarred him. Greenberg, 155 N.J. at 158.

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. The associate attorney 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, the associate attorney settled a personal injury case he had originated, earning a contingent fee. Id. at 2. The insurance company issued a check payable to both the attorney and the client. Ibid. The attorney, 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 the attorney's single aberrational act should not require "the death penalty on [his] New Jersey law career." Id. at 22. Those Members were convinced that his character was not permanently flawed. Staropoli, DRB 04-319 at 23.

The four Members who voted for disbarment found that the attorney 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 the attorney. Staropoli, 185 N.J. at 401.

In a more recent default matter, 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 the associate attorney's instructions, twelve law firm clients directly paid her a total of $19,161 toward outstanding legal fees, which the associate attorney 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. The associate attorney did not remit the client payments to the firm, despite the fact that she was neither authorized to settle outstanding fees nor entitled to retain any legal fees paid to the firm. Ibid.

To conceal her misconduct, the associate attorney 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 to the associate attorney after the firm's normal business hours; and maintained secret notes concerning potential new clients, some of whom retained the associate attorney to perform work outside the scope of her employment with the firm. Id. at 5, 13. Although the associate attorney collected fees from those potential new clients, she never performed the legal services. Id. at 5.

After discovering the associate attorney's misconduct, the managing partner terminated the associate's employment and filed a criminal complaint, charging her with multiple counts of indictable-level theft. Nicholson, DRB 18-037 at 18. The associate attorney, however, improperly threatened the managing partner, stating that, unless he withdrew the criminal charges and the information he had given to the New Jersey Department of Labor, the associate would report the managing partner to the relevant authorities for purported "'counter allegations' of fraud and crimes." Id. at 18-19.

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

On March 22, 2022, the Court imposed a permanent bar on an 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). In that matter, the attorney admitted that he had engaged in an illegal, decade-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 the attorney 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 position of trust from the partners and, thus, was not subject to significant supervision in his daily work. Ibid. Nevertheless, the attorney 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, the attorney would systematically 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 had fraudulently referred the matters to the outside attorneys. Ibid. Following the resolution of the client matters, the outside attorneys would pay the attorney a referral fee and reimburse him for the costs incurred by the firm before he had referred the cases. Id. at 6.

In recommending the attorney's permanent bar from future plenary or pro hac vice admissions, we found that the attorney's knowing misappropriation of law firm funds did not arise out of a business dispute over fees, as in Sigman. Rather, the attorney embarked on a criminal scheme to steal nearly $4 million in fees to which the firm was entitled. Mittin, DRB 20-334 at 16.

As noted above, the misappropriation of law firm funds is not always met with disbarment. Lesser sanctions have been imposed where attorneys have been engaged in business disputes with their law firms or where compelling mitigation justifies a lesser sanction.

In In re Bromberg, 152 N.J. 382 (1998), the attorney entered into an employment agreement with two other attorneys, in February 1994. In the Matter of Arthur D. Bromberg, DRB 97-129 (December 16, 1997) at 3. Although the parties later disagreed over whether the agreement created a partnership, Bromberg reasonably believed that he was a partner in the firm. Id. at 3-4. Compensation problems surfaced almost immediately, due to the dissatisfaction with the amount of fees Bromberg generated. Id. at 5-6. In September 1994, the attorney in control of the firm's finances informed Bromberg that he would no longer receive his $8,000 monthly salary, despite the fact that the executed agreement provided that he would receive that sum through the end of 1994. Id. at 6-7.

By September 1994, Bromberg was receiving no income from the firm. Id. at 9-10. In late October or early November 1994, he requested that one of his corporate clients send its legal fee checks directly to him. Ibid. The client did not reply to the request and Bromberg did not pursue it. Ibid. Subsequently, however, Bromberg asked the firm's accounts receivables clerk to permit Bromberg to examine the firm's mail, and misrepresented that he was expecting mail from his prior law firm. Id. at 7-8. On November 13 or 14, 1994, Bromberg intercepted an envelope from his client, containing two checks payable to the firm, in the amounts of $3,260.18 and $3,355.38. Ibid. He endorsed those checks by signing the firm's name and his own name, and deposited them in his own business account, which he had maintained because he was still receiving fees from his prior law practice. Ibid.

In late November or early December 1994, he told his "partner" that he had taken the checks. Id. at 9. It was eventually agreed that Bromberg would remain with the firm until the end of December 1994, because he was to begin selecting a jury for matters in New York. Ibid.

Although the OAE argued that Bromberg should be disbarred for knowing misappropriation of law firm funds, he received only a reprimand. Id. at 18. We found that Bromberg:

> reasonably believed that he was a partner with that firm. Even if [Bromberg's] belief was mistaken, that belief

> led him to understand that he was entitled to receive the checks from [the client]. [Bromberg] had not been paid any salary for October or November. He was experiencing cash flow problems and he felt that [his partner] had unilaterally breached the letter-agreement. Thus, he resorted to 'self-help.' That is not to say that [Bromberg] acted correctly. . . [but he] did not have the mens rea to steal. In his mind, he was advancing to himself funds to which he was absolutely entitled. He acted out of self-righteousness. It is the manner in which [Bromberg] chose to make things right that is reproachable.
>
> [Id. at 19-20.]

Similarly, in In re Glick, 172 N.J. 319 (2002), the attorney entered into an agreement with a law firm, whereby he would receive a base annual salary, plus benefits, reimbursement of expenses, and profit-sharing. In the Matter of Adam H. Glick, DRB 01-151 (January 29, 2002) at 2. Glick was responsible for supervising a unit concentrating on personal injury cases and PIP medical arbitration work. Ibid. Because Glick had a prior solo practice, he continued to maintain his attorney business account to deposit fees earned from that practice. Ibid. Almost from the inception of his association with the law firm, Glick and the firm disagreed about his unit's productivity and about Glick's share of the firm's profits. Id. at 2-3.

Between 1994 and 1997, Glick deposited checks totaling $12,747.50 in his own attorney business account. Id. at 4. The checks had been made payable to him and the majority of the fees were for his services as an arbitrator on

insurance matters that he had originated. Ibid. However, Glick admitted that the fees were due to the firm, and that he had taken them without the firm's knowledge or consent. Ibid. He stated that he had retained the fees as a form of self-help to compensate him for the firm's failure, in his view, to properly remit his profit share. Ibid. Glick, too, received a reprimand. See also In re Spector, 178 N.J. 261 (2004) (reprimand for an attorney who remained at a firm while in the process of forming his own firm; he was under the impression that the prior firm had failed to comply with its employment agreement and that it intended to cheat him; he, therefore, retained fees that he had earned while still at the prior firm, intending to hold them in escrow but, through a miscommunication with his new partner, some of the fees were deposited in the business account and were spent), and In re Nelson, 181 N.J. 323 (2004) (reprimand for an attorney who took funds from his law firm while in the midst of a partnership dispute; the attorney had learned that legal malpractice lawsuits had been filed against the firm and had been concealed from him; that attorneys in the firm had made improper payments of referral fees to other attorneys; that one of his partners had been trying to "steal" his clients so that the partner would receive credit for generating the fees paid by those clients; and that, contrary to his expressed position, law firm funds had been expended for such items as payment of

sanctions imposed on individual attorneys in the firm or payment to an accountant to reconcile an individual attorney's accounts).

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. Sigman, 220 N.J. at 145. The associate 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 the associate's employment, but prior to the imposition of discipline in Pennsylvania, the associate 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, the associate 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 the associate for thirty months. Ibid.

In New Jersey, the Court imposed a thirty-month suspension, noting the presence of compelling mitigating factors, including the associate'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. In re Sigman, 220 N.J. at 161.

Recently, in In re Kelly, 260 N.J. 123 (2025), the Court imposed a two-year suspension on a salaried partner found to have misappropriated law firm funds by directly billing several clients for legal services. In the Matter of William C. Kelly, DRB 24-140 (December 11, 2024) at 27. Although Kelly had no business dispute with his firm, we found that compelling mitigation warranted discipline short of disbarment, including (1) the lack of evidence that his misconduct had a negative effect on either his known clients or his clients for whom he performed outside legal services; (2) the fact that his firm did not seek to recover any funds from him; (3) his status as a non-equity partner in which he did not share in his firm's profits; (4) the lack of evidence that he took existing clients from the firm or that the firm would have taken the clients for whom he performed outside legal work; (5) his remorse, contrition, and cooperation with disciplinary authorities; and (6) his lack of prior discipline in his lengthy career at the bar. Id. at 33. We recommended the imposition of a

three-year suspension. Id. at 38. However, the Court, citing Sigman, imposed a two-year suspension, noting that "knowing misappropriation of law firm funds may warrant disbarment," though mitigating factors may justify a lesser sanction.

In the absence of compelling mitigation or a legitimate business dispute over fees, the Court invariably has disbarred attorneys for knowing misappropriation of law firm funds.

The sole question remaining for our consideration in this matter is whether respondent has established, by clear and convincing evidence, that his misappropriation of Firm funds arose out of a legitimate business dispute. We conclude that, despite being given the opportunity to do so, respondent has failed to meet his burden.

Although respondent was not limited by the EDP in his presentation of evidence of a business dispute with the Firm, such a business dispute does not serve as an affirmative defense to the federal crimes of mail and wire fraud, to which respondent pleaded guilty. Regardless, respondent clearly asserted that business dispute as a mitigating factor for consideration in crafting his appropriate criminal sentence. Moreover, in reply to the instant motion for final discipline, respondent expressly maintained that he could mount such an affirmative defense.

As detailed above, there is limited case law in our jurisdiction regarding what facts or circumstances would satisfy a respondent's burden concerning the proffered defense of a genuine, ongoing business dispute between an attorney and their firm. Although we would not hold every attorney asserting such a defense to the facts of the most recent such case, Sigman – where the attorney successfully sued his prior firm and won a monetary judgment – we conclude that, in this matter, respondent has not established a genuine, ongoing business dispute with the Firm.

First, during his guilty plea in federal court, respondent, through counsel, initially asserted that his crimes were "a big partnership dispute and [respondent] took a short cut and that's why he's here." Despite that assertion, in connection with the evidentiary hearing which preceded his sentencing, respondent and the government stipulated that respondent, in addition to his other thefts directly from his partners, also had submitted false invoices and other documents to the Firm "in order to get payment on his personal expenses that were then billed to client files" and, ultimately, constituted expenses directly borne by clients. Included in this aspect of respondent's fraud were personal expenses disguised as legitimate litigation expenses, including, for example, $500 for condominium insurance and $1,495 for preparation of personal tax returns. Ultimately, respondent paid these funds back to the affected

clients, in addition to the restitution he paid directly to the Firm. In our view, these facts are the first aspect of respondent's misconduct that undermine his claimed defense that his prolonged defalcations from his partners were directly tied to a business dispute over his compensation.

Next, there remains the question of whether respondent truly was guaranteed a salary by the Firm or is now seeking to leverage a letter guaranteeing a certain salary that his partners claimed he had requested from them solely in order to qualify for a mortgage. Assuming, for the sake of argument, that the letter did set forth respondent's agreed upon business arrangement with the Firm, as early as 2014, the Firm openly was not honoring the arrangement. Nevertheless, the only evidence of a claimed dispute was respondent's 2014 confrontation of Sacks regarding the Firm's alleged breach of his guaranteed salary.

As respondent admitted, Sacks responded to the confrontation by telling respondent he would "be paid when the next big case hit." In fact, respondent testified that, despite his complaints, "Sacks said he wasn't . . . paying me because he did not want to put any more money into the firm, especially just to pay me, and he wouldn't budge, he wouldn't pay me." As Weston testified, from his perspective, as of 2014, respondent could have sued the Firm based on the letter, or could have departed the Firm, but chose not to do so. Weston stated

that respondent "was always dissatisfied" with his compensation and had threatened to leave the Firm before engaging in his scheme, which did not commence until 2018.

Rather than leave the Firm, respondent acknowledged that he remained in place as a partner. He maintained, without any corroborating documents or testimony, that he "constantly" asked when he was being paid, but that Sacks had threatened to "bury him in lawsuits if he left," and that, despite being a certified civil trial attorney, he could not afford to hire a "decent lawyer" to file an action against the Firm. As respondent summarized the situation, he "said, all right, I'll hang on a little bit, but I need to get paid." As of the date of the limited evidentiary hearing, respondent had not commenced a civil action against the Firm. Moreover, respondent admitted that, despite his intimate knowledge of the Firm's financial troubles, he had recruited both Cohen and another attorney to the Firm. Arguably, respondent's dispute was solely with Sacks, not the Firm, further distancing him from a recognized defense to Siegel. Regardless, he took no action against either to establish a genuine, ongoing business dispute.

Third, respondent did not begin misappropriating from the Firm until 2018 when, as he described it, Cohen suggested the scheme, which leveraged only matters that Cohen originated. Notably, respondent admitted that, pursuant to

their criminal scheme, Cohen was being paid half of the Firm's entitlement to settlement funds, versus the lower percentage Cohen was entitled to based on his unique business arrangement with the Firm, which respondent had helped negotiate. Consequently, respondent acknowledged that a portion of Cohen's share of the criminal proceeds would have gone to the Firm.

Given respondent's lack of any documentary evidence of a genuine business dispute between him and the Firm, Cohen was the one witness with direct knowledge to potentially support respondent's defense. However, during the evidentiary hearing, Cohen admitted that, with the exception of the occasional dispute over the percentage assigned to a particular case, the Firm honored his employment arrangement – thus, Cohen engaged in the scheme simply for his pecuniary benefit.

Cohen further testified that he and respondent generally split the proceeds of the criminal scheme evenly, but never had a conversation about an upper limit or a cap on funds they would steal from the Firm. Thus, Cohen, whom respondent previously had regarded as a friend and colleague, provided no testimony supporting an ongoing business dispute between respondent and the Firm, besides generally stating that he and respondent regularly spoke about their unhappiness with their compensation by the Firm.

Further eroding respondent's claimed ongoing business dispute with the Firm were his actions in 2018 and 2019 when, as a partner of the Firm, he voluntarily and personally guaranteed significant litigation-funding loans that the Firm secured, totaling more than $15 million. Respondent's counsel, during the federal criminal proceedings, asserted that when the Firm began taking out loans and asking respondent to personally guarantee them, "he was getting very, very nervous about . . . his ability to support himself. He became angry. He became resentful about what was happening . . . ." Respondent, thus, "convinced himself that [his scheme] was justified," and began to take "what he felt in his mind he was owed by [the Firm]." In his own words, respondent stated that he apologized for "taking partnership money without their permission . . . I have no excuse . . . I know I betrayed their confidence, their trust in me." Respondent continued, "I thought I was owed money and I did the wrong thing . . . ."

Although respondent claimed that, at some point, he maintained a ledger reflecting what the Firm owed him in terms of compensation, he also admitted that, over the years, rather than pay him according to their agreement, the other partners at the Firm (Sacks and Weston) repeatedly and openly voted to deny paying respondent the agreed upon $250,000 salary. Indeed, during the evidentiary hearing, on cross-examination, respondent agreed that what he

should have done in this case is resign from the Firm, stating "[t]hat's what I should have done, that's what I would do next time."

Based on the record, we reach the same conclusion as the SEA – that respondent has established no proof of a business dispute with the Firm besides the fact that he had complained to his partners regarding his compensation, likely repeatedly. In a similar vein, respondent has failed to answer the express challenge we posed in the detailed remand letter for an evidentiary hearing. Specifically, we invited respondent to directly address the effect of his admitted scheme with Cohen on the application of the established Siegel case law regarding business disputes. Respondent, however, failed to provide any compelling reason to spare him from the sanction of disbarment, pursuant to Siegel, on these facts.

Based on the facts now in the record, we adopt the SEA's rationale in determining that respondent has not met his burden in proffering his business dispute defense. First, no attorney has defeated the disbarment mandate of Siegel while engaging an associate attorney in defalcations from a law firm, let alone over the course of multiple years or where the associate admitted that the law firm was honoring that associate's specific compensation agreement. Stated differently, respondent can offer no justification for his decision to conspire with Cohen in a scheme that he now claims related to a business dispute between him

and his partners at the Firm. In our view, that conclusion is cemented by respondent's concession that it was Cohen who initially suggested the commencement of the criminal scheme.

As emphasized by the SEA, despite being given the opportunity via the limited evidentiary hearing, respondent has failed to "produce an email, letter, case list, contract, partnership agreement, or an independent witness" regarding a business dispute. Moreover, as the SEA noted, after much equivocation during his criminal matter, respondent also admitted to having billed personal expenses directly to clients. Indeed, during the criminal proceeding, he admitted to having submitted false invoices and other documents to the Firm "in order to get payment on his personal expenses that were then billed to client files" and, ultimately, constituted expenses directly borne by clients.

Next, the SEA emphasized that respondent's knowing misappropriation from the Firm spanned years and that respondent admitted it had ceased only "because we got caught." Finally, the SEA observed that respondent, an experienced, certified civil trial lawyer, claimed, on one hand, to have a genuine business dispute with the Firm, yet, on the other hand, simply claimed to be scared to take legal action against the Firm. Stated differently, the SEA noted that he had taken no "proactive steps to resolve" his claimed business dispute with the Firm and, to date, has filed no civil action against his former partners,

despite his position in this disciplinary matter.

There remains for our consideration a second basis for disbarment in this matter, especially given respondent's cooperation with Cohen in the criminal scheme. As noted above, in addition to asserting that disbarment was appropriate for respondent's knowing misappropriation of law firm funds, the OAE further charged that, pursuant to In re Goldberg, respondent's crimes of mail and wire fraud warrant his disbarment. 142 N.J. 557 (1995) (disbarment for an attorney who pleaded guilty, in separate jurisdictions, to three counts of mail fraud, in violation of 18 U.S.C. §§ 2, 1341 and 1343; and conspiracy to defraud the United States, in violation of 18 U.S.C. § 371).

Given our determination to recommend respondent's disbarment pursuant to the principles of Siegel, we only briefly will address respondent's crimes under Goldberg and its progeny.

In its 1995 Goldberg Opinion, the Court enumerated the aggravating factors that normally lead to the disbarment of attorneys convicted of crimes:

> Criminal convictions for conspiracy to commit a variety of crimes, such as bribery and official misconduct, as well as an assortment of crimes related to **theft by deception and fraud**, ordinarily result in disbarment. We have emphasized that when a criminal conspiracy evidences 'continuing and prolonged rather than episodic, involvement in crime,' is 'motivated by personal greed,' and **involved the use of the lawyer's skills 'to assist in the engineering of the criminal scheme,' the offense merits disbarment**. (citations

omitted).

[In re Goldberg, 142 N.J. at 567 (emphasis added).]

Indeed, the Court has found that attorneys who commit crimes that are serious or that evidence a total lack of "moral fiber" must be disbarred to protect the public, the integrity of the bar, and the confidence of the public in the legal profession. See, e.g., In re Quatrella, 237 N.J. 402 (2019) (the attorney was convicted of conspiracy to commit wire fraud after taking part in a scheme to defraud life insurance providers via three stranger-originated life insurance policies; the victims affected by the crimes lost $2.7 million and the intended loss to the insurance providers would have been more than $14 million); In re Klein, 231 N.J. 123 (2017) (the attorney was convicted of wire fraud for engaging in an advanced fee scheme that lasted eight years and defrauded twenty-one victims of more than $819,000; the attorney and his co-conspirator used bogus companies to dupe clients into paying thousands of dollars in advanced fees, in exchange for a promise of collateral that could be used to borrow much larger sums of money from well-known financial institutions; the clients, however, never received legitimate financial instruments that were acceptable to banks as collateral for financing; the attorney leveraged his status as a lawyer to provide a "veneer of respectability and legality" to the criminal scheme, including the use of his attorney escrow account); In re Bultmeyer, 224

N.J. 145 (2016) (the attorney knowingly and intentionally participated in a fraud that resulted in a loss of more than $7 million to 179 victims; the attorney and a co-conspirator owned Ameripay, LLC, a payroll company that handled payroll and tax withholding services for numerous public and private entities; the attorney and his co-conspirator also owned Sherbourne Capital Management, Ltd., which purported to be an investment company, and Sherbourne Financial, Ltd.; the attorney and his co-conspirator misappropriated monies entrusted to them by Ameripay's clients, as well as by Sherbourne investors, to conceal the shortfalls in Ameripay's payroll and tax withholding accounts; the attorney and his co-conspirator agreed to divert millions of dollars to satisfy the payroll obligations of other payroll clients or to make unrelated tax payments on behalf of other clients); In re Marino, 217 N.J. 351 (2014) (the attorney participated in a fraud that resulted in a loss of more than $309 million to 288 investors; the attorney assisted his brother and another co-conspirator in the fraud, which involved the creation of a false financial history for a failing hedge fund used to persuade contributions from potential investors; the attorney also administered a fraudulent accounting firm that concealed the fund's true financial information; the attorney further prepared a phony purchase and sale agreement for the non-existent accounting firm).

Not every attorney found guilty of egregious fraud has been disbarred,

however. In In re Campos, 241 N.J. 544 (2020), the Court imposed a three-year prospective suspension for such misconduct. The attorney in Campos was tried and convicted of wire fraud, bank fraud, and conspiracy to commit wire and bank fraud, in connection with a scheme involving the use of straw purchasers to illegally purchase new vehicles for a livery taxi business. In the Matter of Christopher Campos, DRB 19-262 (March 3, 2020) at 1-2. He had no ethics history. Ibid. His conviction and sentence, thirty months in prison plus $533,669.12 in restitution, were affirmed on appeal. Id. at 12. Campos's role was to solicit straw buyers, and his misconduct involved false statements used to defraud banks, his friends, and his family. Id. at 6, 26. In total, the loss amount was between $250,000 and $550,000, and more than ten victims were impacted. Id. at 12. Moreover, Campos perjured himself at trial, lacked remorse, and failed to accept responsibility for his crimes. Id. at 11-12, 26. We concluded that, considering the Goldberg factors, disbarment was the appropriate quantum of discipline. Id. at 27. The Court disagreed, however, and determined that a three-year prospective suspension was the appropriate quantum of discipline.

In our view, respondent's misconduct is akin to that of the attorneys the Court has disbarred for their extensive involvement in crime, whereby they used their legal skills in furtherance of the criminal enterprise, for their pecuniary gain. His commission of fraud and theft to benefit himself and Cohen was part

of a prolonged scheme. He acted as the principal and recruited an associate, over whom he had supervisory authority, to participate in a scheme of fraud that spanned multiple years. Moreover, he operated an independent scheme, unbeknownst to Cohen, to funnel even more Firm funds to himself. He deleted and fabricated Firm records to conceal his diversion of the Firm's profits.

Although we acknowledge respondent's lack of prior discipline, his expression of remorse and contrition during the sentencing hearing, and his demonstrated history of service to the community, that mitigation, in light of these facts, cannot preserve his law license in New Jersey. To the contrary, as we and the Court have emphasized in other disbarment matters, respondent's training and career as a successful attorney illustrates his ability to make sound, lawful choices, juxtaposed against his willful decision to throw away a once good reputation and engage in federal crimes. As the Court has stated, "[s]ome criminal conduct is so utterly incompatible with the standard of honesty and integrity that we require of attorneys that the most severe discipline is justified by the seriousness of the offense alone." In re Hasbrouck, 152 N.J. at 371-72.

Consequently, we additionally determine that disbarment – for respondent's federal convictions alone – is required to protect the public and to preserve confidence in the bar.

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. Moreover, disbarment– for respondent's federal convictions alone – is required to protect the public and to preserve confidence in the bar.

We, thus, recommend to the Court that respondent be disbarred.

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 Scott Eric Diamond
Docket No. DRB 23-137

Argued: March 20, 2025

Decided: May 21, 2025

Disposition: Disbar

Members	Disbar
Cuff	X
Boyer	X
Campelo	X
Hoberman	X
Menaker	X
Modu	X
Petrou	X
Rodriguez	X
Spencer	X
Total:	9

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