

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 97-335

IN THE MATTER OF
THEODORE J. SEGAL,
AN ATTORNEY AT LAW

Decision

Argued : October 16, 1997

Decided: August 18, 1998

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent failed to appear, despite notice by publication in the *Arizona Business Gazette*, the *New Jersey Law Journal* and the *New Jersey Lawyer*.

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

This matter was before the Board on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14, following respondent's disbarment in the State of Arizona for knowing misappropriation of \$419,320.09 in clients'

funds.

On July 3, 1996, the Supreme Court of Arizona placed respondent on temporary suspension as a result of numerous allegations of misappropriation of client funds, a pattern of severe neglect of cases, as well as failure to cooperate with the State Bar of Arizona in its disciplinary investigation. On July 30, 1996, the Office of Attorney Ethics filed a motion with the New Jersey Supreme Court, seeking respondent's immediate temporary suspension in New Jersey. Respondent was placed on temporary suspension on August 19, 1996. In re Segal, 146 N.J. 173.

According to the allegations in the State Bar of Arizona's motion for interim suspension, respondent was retained by Gregg Foley for representation in a personal injury action arising out of an automobile accident. Respondent settled the case for \$15,000 without his client's knowledge or consent. Although the case was settled in or about February 1995, as of November 1995 respondent had not provided Mr. Foley with his portion of the settlement proceeds.

Additionally, the allegations in a second matter state that respondent was retained by Patricia Monahan for representation in a personal injury action stemming from an automobile accident. Once again, respondent settled the case for \$15,000 without Ms. Monahan's knowledge or consent. Respondent forged Ms. Monahan's name to the settlement check and cashed it. After the settlement, respondent misrepresented to Ms. Monahan that the case had not settled. Finally, respondent sent Ms. Monahan a check for less than \$7,000, which

bounced. These are just two of many matters and are illustrative of respondent's knowing misappropriations of over \$400,000.¹ Consequently, on May 22, 1997, respondent signed a consent to disbarment affidavit in Arizona, admitting to a series of misappropriations and agreeing to repay \$419,320.09.

The OAE urged the Board to disbar respondent .

* * *

Upon a review of the full record, the Board determined to grant the OAE's motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of a disciplinary proceeding), the Board adopted the findings of the Arizona Supreme Court.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a), which directs that

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

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

¹ For the balance of these matters see attachments 1 and 3 to the OAE's motion for reciprocal discipline.

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

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

(E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). As to subparagraph (E), although respondent was disbarred in Arizona, a disbarred Arizona attorney may seek reinstatement five years after the effective date of disbarment. Az. St. S. Ct. Rule 71(e). A five-year suspension, however, does not sufficiently address respondent's misconduct, given that respondent knowingly misused client funds. In New Jersey, attorneys who are guilty of knowing misappropriation must be disbarred. See In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client trust funds mandates disbarment); In re Noonan, 102 N.J. 157 (1986) (misappropriation of funds triggers automatic disbarment); and In re Hein, 104 N.J. 297 (1986) (misappropriation of clients' funds warrants disbarment). The Board unanimously determined to recommend that respondent be disbarred.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 8/18/98

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board