Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 95-128

IN THE MATTER OF :

CLINTON E. CRONIN :

AN ATTORNEY AT LAW :

Decision
of the Disciplinary Review Board

Argued: May 17, 1995

Decided: October 2, 1995

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before the Board on a recommendation for discipline filed by Special Master Peter W. Kenny. Respondent was the subject of a random audit in 1993. Following an initial review, the matter was converted to a select audit by the Office of Attorney Ethics ("OAE"). A complaint, charging respondent with knowing misappropriation, was filed on July 22, 1994. In that four-count complaint, respondent was charged with knowing misappropriation of client funds under In re Wilson, 81 N.J. 451 (1979) and RPC 1.15; knowing misappropriation of escrow funds under In re Hollendonner, 102 N.J. 21 (1985) and RPC 8.4(c); and making false statements to disciplinary authorities, in violation of RPC 8.1(a) and (b). Respondent did not file an answer until after the

pre-trial conference of late September 1994. Despite the suggestion by the Special Master that he retain counsel, respondent determined to proceed pro se and filed an answer in November 1994. Respondent in essence admitted the allegations of the complaint.

Respondent was admitted to the New Jersey bar in 1963 and has not previously been the subject of discipline.

Respondent was charged with knowing misappropriation of funds in four client matters — Tuefel, Meseroll, Jahniq, and Cobisi.

In the Tuefel matter, respondent, as attorney for the estate of John A. Teufel, withheld $10,000 from a real estate settlement in order to pay inheritance taxes and deposited that amount in his trust account on May 28, 1991. From that amount, respondent withdrew $3,000 by way of a trust account check and deposited that check into his business account on May 29, 1991. Thereafter, respondent issued two $4,000 trust account checks to himself, one on June 25, 1991 and the other on July 5, 1991, both as his fee for the Tuefel estate representation. However, at that time, only the above-noted $10,000 had been deposited in his trust account in behalf of the Tuefel estate. Thus, those three checks drafted by respondent to himself, which totaled $11,000, invaded $1,000 of other client funds. In addition, respondent issued a fourth trust account check in the amount of $2,885.83 for partial payment of the Teufel inheritance taxes to the State of New Jersey in November 1991. At that time, as mentioned above, the Tuefel funds on deposit had already been exhausted and this disbursement, too, invaded other client funds.

In addition, although respondent utilized the above Teufel funds to cover his alleged fee, the attorney for the Teufel estate was clearly unaware of respondent's actions. On March 1, 1991, respondent was paid $2,142.92 for fees and costs, which respondent deposited in his business account (Exhibit N to complaint); later, on December 27, 1995, respondent was paid an additional $5,135.83 by that attorney.

At the time of the DEC hearing on this matter, $7,114.17 ($10,000 less payment of $2,885.83 for inheritance taxes) remained missing from the Tuefel estate. Subsequent to testimony of the current attorney for the Tuefel estate, J. Edwin Moore, Esq., respondent admitted directly to Moore that he owed the money in question to the estate.

The Special Master found that respondent had taken the Tuefel funds for "his own use and purposes" with full knowledge and that the monies were still owed to the estate.

In the Meseroll and Jahnig matters, respondent represented Russell Meseroll and Sheryl Jahnig in a personal injury action. On February 13, 1992, respondent received $6,000 in settlement of Meseroll's matter and $7,000 in settlement of Jahnig's matter. Both drafts were forwarded by the Allstate Insurance Company and were deposited into respondent's trust account. Thereafter, Meseroll did not receive any funds from respondent until April 1994, when respondent paid him $1,000 in cash at Meseroll's home. Meseroll testified that, at that time, respondent admitted that he had used the money for himself and, additionally, told him that, if

anyone asked him about the matter, he was to answer that respondent had used the money for funeral expenses. Meseroll was unable to obtain any written agreement from respondent with regard to the payment of monies due to Meseroll. Meseroll did receive a second cash payment from respondent on June 2, 1994, also in the amount of $1,000. At that time, according to Meseroll, respondent agreed to pay Meseroll $1,000 per month.

Following the deposit of the settlement proceeds on February 13, 1992, respondent misappropriated the balance of the funds in both Meseroll and Jahnig. One-third of the $6,000 due to Meseroll belonged to respondent as his fee. Respondent withdrew the remaining balance of approximately $4,000, initially contending that that amount represented his fee in another case — the McKee matter.

With regard to the Jahnig funds, subsequent to the February 13, 1992 deposit of the $7,000 settlement into his trust account, respondent drew a check to himself in the amount of $2,100, characterized as a fee and balance on an old bill, and described in his ledger as a fee and a loan. He thereafter issued a check to himself in the amount of $2,300.80, noting on the check that is was for "F & D." On his ledger, he described the check as "fees and loan." The third and final disbursement of the Jahnig funds was made to Sheryl Jahnig in the amount of $2,037.34. At the DEC hearing, respondent admitted that he took monies that were to be held to pay Jahnig's medical bills, and used those funds for himself.

Subsequent to the withdrawals in Jahnig and Meseroll, respondent issued an additional check to himself on March 6, 1992, in the amount of $2,190.81, which did not bear a reference to any other client matter. As a result of this check, respondent's trust account was overdrawn by $1,158.98. The Special Master noted that the check issued against the Meseroll funds in the amount of $4,000, referenced as McKee, together with the March 6, 1992 check, totalled the exact amount of fees and costs to which respondent would have been entitled in the McKee matter ($6,190.81). However, the $17,500 settlement proceeds for McKee were not received until March 27, 1992. Thus, the funds taken by respondent in Meseroll were, in essence, advance fees on McKee.

Respondent testified that he believed he should have had the settlement check in McKee at an earlier point in time and blamed the failure to receive the funds on a clerk from the insurance company. The Special Master nonetheless concluded that respondent knew, at the time that he withdrew the funds from Meseroll and Jahnig, that he did not have the McKee funds available for disbursement. The Special Master further concluded that respondent knew that the Meseroll and Jahnig funds were the only funds then in his account and nonetheless paid himself from these funds. In addition to the misappropriation aspect of the Meseroll matter, respondent compounded his misconduct while the audit process was continuing by creating a settlement sheet and forging Meseroll's signature on that document. He then presented that document to OAE investigators during a November 8, 1993 meeting. At that time, he

advised the OAE that he had not been able to find the statement during the prior audit review in September, but had subsequently found the document in a "separate file from Motor Vehicle." However, on June 15, 1994, during a meeting with representatives of the OAE at respondent's office, respondent admitted that his comments regarding the document were untrue. He specifically admitted that he did not tell the truth during the November meeting with the OAE representatives. On this point, the Special Master concluded that not only had respondent lied to the OAE when he stated that Meseroll had signed the settlement statement in his presence, but also that Meseroll had never given respondent permission to sign the statement, either verbally or in writing.

In the fourth matter, Cobisis, respondent was retained to represent the Cobisis in a real estate transaction. A check in the amount of $10,600 was deposited with respondent to be held in trust until the closing, which actually took place on March 16, 1993. Respondent deposited the $10,600 escrow in his trust account on November 6, 1992. One week later, respondent wrote a check in the amount of $4,000 to himself and deposited that check in his business account to cover a negative balance. Thereafter, as reflected in respondent's trust account statement, from November 1992 through February 1993 respondent's trust account fell below the amount required to cover the deposit on five separate occasions. At the closing in March 1993, respondent did pay over the $10,600 to the sellers, as required.

The Special Master concluded in Cobisis that, as with the

other three matters, respondent had knowingly misappropriated trust funds — here, escrow funds — and that the charges of the complaint had been sustained by clear and convincing evidence.

The Special Master determined that this matter warranted discipline based on his finding of clear and convincing evidence of knowing misappropriation of trust and escrow funds, and the lie to the OAE. The Special Master also noted that respondent has suffered from severe physical problems over the past twenty years. Respondent's deteriorating health has drained respondent financially, physically and emotionally. Despite the nature of respondent's problems, the Special Master stated, "I cannot excuse the knowing misappropriation and in effect stealing of funds from his clients." The Special Master recommended public discipline.

* * *

Following a de novo review of the record, the Board is satisfied that the Special Master's conclusion that respondent's conduct was unethical is supported by clear and convincing evidence.

As noted, the Special Master found that respondent had knowingly misappropriated client funds and made material misrepresentations to disciplinary authorities regarding the Meseroll settlement statement. RPC 1.15, RPC 8.1 (a) and (b) and RPC 8.4(c) are all implicated.

Respondent admitted the vast majority of the charges by the conclusion of the ethics hearing. While many of these admissions were contained in his answer to the ethics complaint, additional

admissions were made during the DEC hearing. Specifically, with regard to Meseroll and the advance fee in McKee, respondent conceded the following:

> A. I needed the money, I either went to the bank and borrowed it and paid interest or read through all of the paperwork, or I got that check and used it as income, things get tight on the outside.
>
> Q. O.K.
>
> A. And it got tight then as I recall....
>
> [T2/27/1995 126]

During that same testimony, respondent also admitted several charges in the complaint that he had denied in his answer — specifically, paragraphs 5B and C to count two. Contrary to his denial in his answer to count four, paragraph 6 of the complaint, respondent further admitted that he had lied to the OAE. T2/27/1995 133.

It is unquestionable that respondent violated RPC 8.4(c) and RPC 1.15 by knowingly misappropriating client and escrow funds for his personal use. In addition, it is clear that respondent created a false settlement sheet and forged his client's signature in order to cover up his misappropriation of funds and to mislead the OAE. His conduct violated RPC 8.4(c), as well as RPC 1.15 and 8.1(a) and (b), as charged. Knowing misappropriation of client trust funds, alone, requires respondent's disbarment. In re Wilson, 81 N.J. 455 (1979). Similarly, knowing misappropriation of escrow funds mandates disbarment. In re Hollendonner, 102 N.J. 21 (1985). The

taking of advance fees, too, is grounds for disbarment under Wilson. In re Warhaftig, 106 N.J. 529 (1987).

Respondent's conduct was egregious. While it may be true that he was involved in a long struggle with diabetes and related ailments and complications, it is also true that respondent was fully aware, at the time that he misappropriated the funds in Teufel, Meseroll, Jahnig and Cobisis, as well as at the time that he created the false document for presentation to the OAE, that these were improper actions, that the document was false, and that the funds were not his to use. Mitigation under these facts is irrelevant. In re Noonan, 102 N.J. 157, 160 (1986). Disbarment is, thus, the only appropriate resolution under Wilson, Hollendonner and Warhaftig. A requisite majority of the Board has, therefore, determined that respondent must be disbarred. One member dissented, noting that he would prefer an alternative, non-disciplinary resolution of this case, such as resignation without prejudice, in light of respondent's long and distinguished career.

Respondent is to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 10/2/95

Lee M. Hymerling
Chair
Disciplinary Review Board