

AS

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 97-298 and 98-065

IN THE MATTER OF :
JOSEPH D. SLOBODA :
AN ATTORNEY AT LAW :

Decision

Argued: October 16, 1997

Decided: September 28, 1998

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

Respondent did not appear for oral argument despite proper notice.

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

This decision encompasses two separate matters filed with the Board. The matter under Docket No. DRB 97-298 was before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's disbarment in the state of New York. Respondent was disbarred for violations of the following disciplinary

rules: DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) (four counts); DR 1-102(A)(5) (conduct prejudicial to the administration of justice) (six counts); DR 1-102(A)(8) (conduct that adversely reflects on the lawyer's fitness to practice law) (ten counts); DR 6-101(A)(3) (neglect) (two counts); DR 9-102(A) (commingling of trust funds) (one count) and DR 9-102(B) (conversion of escrow funds) (four counts).

The matter under Docket No. DRB 98-065 was certified to the Board for the imposition of discipline, pursuant to R. 1:20-4(f)(1), following respondent's failure to file an answer to the formal ethics complaint. Service of the complaint was made by publication in the New Jersey Law Journal. The complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.4(a) (failure to communicate); RPC 1.5(a) (unreasonable fee); RPC 8.1(b) (failure to cooperate with an ethics investigation); RPC 5.5(a) (unauthorized practice of law) and R. 1:28 for his failure to update his address with the Lawyers' Fund for Client Protection and to pay the annual assessment to the Fund.

Respondent has been a member of the New Jersey bar since 1990. He has no prior disciplinary history in New Jersey.

* * *

Docket No. DRB 97-298

Respondent was temporarily suspended from the practice of law in New York on September 30, 1996. Thereafter, the New York ethics authorities served a complaint on him, charging him with twenty-two counts of misconduct. After respondent failed to answer the complaint, the charges were deemed established. By Opinion and Order dated March 17, 1997, respondent was disbarred. Respondent failed to advise the New Jersey disciplinary system of his disbarment in New York, in violation of R. 1:20-14(a)(1).

The Fat Lai Fashion Inc. Escrow Account

From April 1992 through August 1993, respondent was a partner in the New York law firm of Semple, Sloboda & Rabin ("the firm"). Prior to joining the firm, respondent was an attorney with the New York Legal Aid Society. The firm represented the owners of a business, Fat Lai Fashion Inc. ("Fat Lai"). Because of disagreements, in December 1991 the owners of Fat Lai agreed that there would be a "silent auction", whereby each owner would submit a written bid for the company. The bids were to be submitted to respondent's partner, Darryl Semple. The owners also agreed that \$9,145 would be placed in an escrow account until the end of 1991 to pay any operating deficit of Fat Lai. In the absence of a deficit, the money was to be distributed to the shareholders.

On December 13, 1991, a checking account was opened in the name of "Semple, Sloboda & Rabin Special Account" ("escrow account"). The \$9,145 was deposited into that

account.¹ None of the money was ever returned to the company or its shareholders.

On numerous occasions, the escrow account was overdrawn because of checks written for expenses unrelated to Fat Lai. Respondent wrote checks against the escrow account to pay for the firm's expenses and to return part of an unearned retainer to a client, Peter Lesicignola. Respondent also wrote three checks to pay for the expenses of another client, Ed Lee, Inc., a corporation owned by respondent's mother.

Respondent maintained that he did not know that the Fat Lai funds were in the escrow account; rather, he believed that the account was to be used solely for investments in and expenses of National Properties Company of New York, Inc. ("NPC"). As explained below, NPC was a corporation in which respondent had an interest. His explanation for paying the firm's expenses from the escrow account was that the expenses related to NPC or that the checks were drawn on the escrow account in error. With respect to the checks written on behalf of Lesicignola and Ed Lee, Inc., respondent claimed that he believed that those clients had sufficient funds in the account to cover those checks. However, no such deposits appeared on the bank records of the escrow account.

The New York disciplinary authorities found that respondent had converted funds that the firm was holding in its fiduciary capacity, in violation of DR 9-102(B). The four

¹ There was no explanation in the record about the discrepancy between respondent's testimony that he did not join the firm until April 1992 and the opening of an account, in December 1991, in the name of Semple, Sloboda & Rabin. Respondent was subpoenaed to testify before the New York disciplinary committee in January 1995. Shortly thereafter, he moved to Florida and stopped cooperating with the committee.

conversion counts were premised on the following facts: (1) on multiple occasions the escrow account had a negative balance; (2) respondent had written numerous checks on the escrow account to pay for the firm's expenses; (3) respondent wrote three checks on the escrow account for expenses of Ed Lee, Inc.; and (4) respondent wrote a \$1,600 check on the escrow account to Lesicignola for the return of an unearned retainer.

National Properties Company of New York, Inc.

According to respondent, in or about December 1991 he was retained by Wai Kee Cheung to negotiate an agreement with the government of the Marshall Islands. Allegedly, the president of the Marshall Islands was interested in obtaining "investment money" by granting citizenship to foreign nationals. Cheung and his investors were to pay for the establishment of a Marshall Islands consulate in Hong Kong, where people could apply for Marshall Islands citizenship and obtain a Marshall Islands passport. In return, Cheung was to receive a portion of the "investment money" paid by the new citizens. The minimum investment for citizenship was to be \$100,000. According to respondent, one of the benefits of a Marshall Islands citizenship and passport was that it permitted entry to the United States without a visa.

Respondent testified that the agreement ultimately worked out with the government of the Marshall Islands did not involve Cheung; the agreement was between the Marshall Islands and NPC. NPC was to receive \$4,000 for each person who obtained Marshall Islands

citizenship. Respondent's law firm did the incorporation work for and was a shareholder of NPC. According to respondent, he personally invested \$45,000 in NPC. His firm held thirty percent of the shares of NPC; an associate of Cheung, E.D. Conrad, held forty percent and the remaining thirty percent of the shares was available for purchase by outside investors.

Respondent's firm maintained the financial records for NPC. However, the firm did not set up a separate bank account for NPC. Instead, the Fat Lai escrow account was used for NPC business.

The New York committee found that respondent violated DR 9-102(A) by commingling NPC funds including funds obtained by respondent for investment in the NPC/Marshall Islands venture and the Fat Lai escrow money.

The Miller Matter

Respondent solicited a \$15,000 loan from Joan Miller, telling her it was to post bail for a person who was incarcerated in New Jersey. He subsequently told Miller that the bail had been forfeited because the person had fled the area. He assured Miller that he would reimburse her. Respondent never repaid Miller, although he testified that he had.

In fact, the money was not needed for bail; the story was a fabrication to induce Miller to lend money to respondent. Indeed, respondent told the New York committee that he had borrowed the money from Miller for the NPC/Marshall Islands venture. The Miller money was deposited into the escrow account

The New York committee found that respondent violated DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) and DR 1-102(A)(8) (conduct that reflects adversely on an attorney's fitness to practice law) for his misconduct in the Miller matter.

The Caruso Matter

After respondent's law firm was dissolved in August 1993, respondent became a sole practitioner. In August 1994 Paula and Vincent Caruso retained respondent to file a Chapter 11 bankruptcy petition on behalf of their company and paid him \$1,600 toward fees and costs. In September 1994 respondent provided the Carusos with a copy of a "Notice of Automatic Stay" from the bankruptcy court. The notice included a docket number. In fact, respondent never filed a bankruptcy petition on behalf of the Carusos' company and the docket number was fraudulent.

The New York disciplinary authorities found that respondent had engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in the Caruso matter, in violation of DR 1-102(A)(4).

The Ortiz Matter

Respondent was retained by Angelina Ortiz to defend her son against felony charges. She paid him \$8,000 toward a \$15,000 fee. Respondent failed to attend numerous court

proceedings. Furthermore, after he relocated to Florida in 1995, respondent advised Ortiz that she would have to pay for his travel expenses to return to New York to continue representing her son.

The New York committee found that respondent neglected the Ortiz matter, in violation of DR 6-101(A)(3).

The White Matter

In November 1994 respondent sent a mortgage for recording to the Westchester County clerk's office. He enclosed a check for \$725 for the mortgage recording tax. Elinor White, the mortgage tax deputy for the clerk's office, filed a grievance after the check was returned because respondent's account had been closed. White contacted respondent, who promised, on several occasions, to provide a replacement check. Respondent never provided the replacement check. As of June 18, 1996 the property continued to carry a lien against it in the amount of the mortgage recording tax.

The New York committee found that respondent violated DR 6-101(A)(3) (neglect) and DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) for his conduct in regard to the check and the statements to White.

The Employment Application for the Dade County Public Defender's Office

In January 1995 respondent sought employment with the office of the Dade County

Public Defender. On the application for employment, respondent was asked whether he had ever been the subject of a bar complaint, investigation or disciplinary action. Respondent answered "no" to the question, even though he had already submitted an answer to one ethics grievance in New York.

The New York committee concluded that respondent violated DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) and DR 1-102(A)(8) (conduct that reflects adversely on an attorney's fitness to practice law) for the false statement on the employment application.

* * *

In the New York disciplinary proceeding, respondent was charged with multiple violations of DR 1-102(A)(5) (conduct prejudicial to the administration of justice) and DR 1-102(A)(8) (conduct that reflects adversely on the lawyer's fitness to practice law) for his failure to cooperate with the committee's requests for information and documents, failure to reply to grievances, failure to maintain his attorney registration with the New York Office of Court Administration ("OCA"), failure to pay the biennial registration fee and failure to advise the OCA of his change of address.

The OAE urged the Board to disbar respondent. Although an attorney who is disbarred in New York may apply for reinstatement after seven years, it was the position of

the OAE that respondent's misconduct warranted permanent disbarment under New Jersey law.

Docket No. DRB 98-065

In January 1993 respondent was retained by Salvatore Vasile to represent his son, Philip Vasile, in connection with criminal charges pending against Philip in Bergen County. Respondent charged Vasile \$20,000 for the representation; thereafter, respondent failed to take any action on Philip's behalf.

The District IIB Ethics Committee ("DEC") charged respondent with violations of the following Rules of Professional Conduct: RPC 1.1(a) (gross neglect); RPC 1.4(a) (failure to communicate); RPC 1.5(a) (unreasonable fee) and RPC 8.1(b) (failure to cooperate with an ethics investigation). The DEC also charged respondent with violations of R. 1:28 and RPC 5.5(a) (unauthorized practice of law) for his failure to update his address with the Lawyers' Fund for Client Protection and to pay the annual assessment to the Fund.

* * *

Upon a de novo review of the full record, the Board determined to grant the OAE's Motion for Reciprocal Discipline in Docket No. DRB 97-298. 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 Supreme Court of New York, Appellate Division.

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;
- (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.

The Board agreed with the OAE that subsection (E) was applicable here; namely, that respondent's misconduct warrants substantially different discipline in New Jersey. In New York, a disbarred attorney may apply for reinstatement after seven years. In New Jersey, however, respondent's misconduct warrants permanent disbarment.

From 1992 to 1995 respondent engaged in a course of deceitful and dishonest conduct

in several unrelated matters.² He repeatedly wrote checks against an escrow account for purposes unrelated to the funds in the account. Even if it were true that respondent believed that the account had been established for NPC, not Fat Lai, the fact remains that he repeatedly wrote checks against the account for expenses unrelated to NPC and the account was frequently overdrawn. Furthermore, respondent obtained \$15,000 for NPC from an acquaintance by lying to her that the money was needed to post bail for a client; he told the ethics authorities that he had repaid the \$15,000, when he had not; he created a fraudulent court document with a false docket number in order to convince a client that he had filed a bankruptcy petition, when he had not done so; after answering an ethics complaint in New York, he lied on his employment application to the Dade County Public Defender's office; he wrote a \$725 attorney business account check against a closed account to pay for the recording of a client's mortgage; and, although he promised the clerk on several occasions that he would make good on the check, he never did, leaving an outstanding lien against the client's property.

In addition, respondent neglected other client matters after taking sizeable retainers. He did not even file a bankruptcy petition for the Carusos' company after receiving a \$1,600 retainer. He received \$8,000 from Ortiz then failed to attend numerous court proceedings

² Although the NPC/Marshall Islands venture may have attempted to circumvent United States immigration laws, the New York ethics authorities made no findings in this regard. Similarly, the OAE has not argued that there was any illegality involved in the deal. Furthermore, the record indicates that no one obtained Marshall Islands citizenship in the venture. Therefore, the Board made no findings as to respondent's involvement in the NPC/Marshall Islands transaction.

and finally refused to continue the representation unless Ortiz paid for his travel expenses from Florida.

In the default matter (DRB 98-065), respondent received \$20,000 to represent a client in a criminal matter, then failed to take any action on behalf of the client.³

In summary, respondent's treatment of his clients was appalling. He lied to them, created a false court document to deceive them and abandoned them after taking substantial retainers. Respondent also obtained money under false pretenses and converted escrow funds by using an escrow account as if it were the firm's business account. Although the record does not establish by clear and convincing evidence that respondent knowingly misappropriated escrow funds, his handling of the account showed, at a minimum, reckless disregard for the integrity of the escrow funds.

Also disturbing was respondent's complete disregard for his obligations to the ethics systems in two states. Although respondent appeared before the New York authorities pursuant to a subpoena early in its investigation, he thereafter did not reply to grievances, to the petition for his temporary suspension or the New York ethics complaint. He also failed to reply to the OAE's motion for reciprocal discipline, the Vasile grievance and the DEC's

³ Pursuant to R. 1:20-4(f), the allegations contained in the complaint are deemed admitted because of respondent's failure to answer the complaint. However, the complaint does not contain facts to support a violation of RPC 5.5(a) (unauthorized practice of law) since the complaint charged that respondent last updated his registration with the Lawyers' Fund in July 1992 and agreed to represent Vasile in January 1993. The complaint does not allege that respondent practiced law in New Jersey after July 1993, when his annual registration would have had to be renewed.

complaint. For the totality of this conduct respondent should be disbarred.

Similar misconduct has resulted in disbarment. See In re Moore, 143 N.J. 415 (1996) (disbarment for failing to protect the interests of two clients after receiving sizeable retainers and failure to cooperate with the disciplinary investigation) and In re Clark, 134 N.J. 522 (1993) (disbarment for neglect of several client matters, abandonment of his practice and failure to cooperate with the ethics authorities). The Board unanimously recommended that respondent be disbarred.

The Board also directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 9/28/98

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Joseph D. Sloboda
Docket Nos. DRB 97-265 & DRB 98-065**

Argued: October 16, 1997 (As To DRB 97-265)

Decided: September 28, 1998

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling	x						
Zazzali	x						
Brody	x						
Cole	x						
Lolla	x						
Maudsley	x						
Peterson	x						
Schwartz	x						
Thompson	x						
Total:	9						

Robyn M. Hill 10/16/98
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Chief Counsel