

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-397

IN THE MATTER OF :
:
MARC S. LAWRENCE :
:
AN ATTORNEY AT LAW :

Decision

Argued: February 13, 2004

Decided: April 13, 2004

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

Respondent failed to appear for oral argument, despite proper notice.¹

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

This matter was before us based on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on respondent's disbarment in New York for, inter alia, misuse of client funds.

Respondent was admitted to the New Jersey bar in 1994, and to the New York bar in 1995. He has no history of discipline in New Jersey. He has been ineligible to practice law in New

¹ The last known address for respondent was 38 Winding Way, West Orange, New Jersey, 07052. According to information received from the OAE, respondent is currently homeless. Notice of this proceeding was, therefore, made by publication in The New Jersey Law Journal, New Jersey Lawyer, and West Orange Chronicle.

Jersey since 1997, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Between March 2000 and August 2001, the New York Departmental Disciplinary Committee for the First Judicial Department received three grievances against respondent. Two, Stearn and Aalmuhammed, alleged neglect, failure to communicate, lack of diligence, and/or misrepresentation. The third, Fish, alleged misappropriation of client funds. Respondent failed to cooperate with the disciplinary investigation, resulting in the committee's filing of a Motion to Suspend, on March 26, 2002. The motion was supported by the Affirmation of First Judicial Department Principal Attorney LaTrisha A. Wilson. Accompanying the temporary suspension motion and Ms. Wilson's Affirmation was a Notice of Motion for Service by Publication, and an Affirmation in Support of that Motion, necessitated by the fact that respondent's whereabouts were unknown.

On October 24, 2002, the Supreme Court of New York, Appellate Division, First Judicial Department, issued an Order and Opinion placing respondent on temporary suspension. After the expiration of six months, the Committee moved, pursuant to 22 N.Y.C.R.R. 603.4(g)², for respondent's disbarment.

² 22 N.Y.C.R.R. 603.4(g) provides that an application for suspension pursuant to Section 603.4(e) may state that an attorney who is suspended and who has not appeared or applied in writing to the Committee or the Court for a hearing or reinstatement for six months from the date of an order of suspension may be disbarred. If an application does state the foregoing, and the respondent does not

On October 2, 2003, the Appellate Division issued an Order and Opinion disbaring respondent.³

The Appellate Division's October 24, 2002 Order of temporary suspension summarizes the three grievances:

Initially, the Committee opened an investigation in March 2000 after receiving a complaint from Dr. Brian Stearn, in which he alleged that respondent had been retained to represent him in four separate actions and that he had failed to explain a court ruling which precluded the introduction of certain evidence in one case; did not return Dr. Stearn's papers in that same case; and failed to inform him of the status of the other cases despite numerous requests. The Committee, by letter dated May 11, 2000, notified respondent that it was referring the matter to the mediation panel of the Association of the Bar of the City of New York, which matter was returned to the Committee on August 4, 2000 due to respondent's failure to file an answer with the mediation panel.

The Committee, by letter dated October 11, 2000, thereafter requested an answer to Dr. Stearn's complaint within 20 days and, after receiving two extensions to file an answer, respondent informed the Committee that he and Dr. Stearn had resolved all the issues raised in the complaint. By letter dated March 14, 2001, Dr. Stearn confirmed the agreement between himself and respondent and in April 2001, the Committee notified respondent that its file would be closed based upon Dr. Stearn's decision to withdraw his complaint. Dr. Stearn subsequently

appear or apply in writing to the Committee or the Court for a hearing or reinstatement within six months of the suspension date, the respondent may be disbarred without further notice.

³ Respondent did not advise the OAE of his New York disbarment, as required by R.1:20-14. That office learned of the matter when notice was provided by Wilson.

advised the Committee, in August 2001, that respondent had not honored their agreement, nor returned his telephone calls or letters. The Committee, by letter dated October 10, 2001, informed respondent that it had reopened the Stearn complaint and requested a written response to questions in order to proceed with the investigation.

In the interim, the Committee received a complaint from Jefri Aalmuhammed on June 22, 2001, alleging that respondent had neglected his civil case. Aalmuhammed maintained that respondent had explained to him that his case was in abeyance pending a ruling on default motions he had filed, and that in April 2000, respondent had informed him that settlement negotiations were taking place. Aalmuhammed averred that beginning in May 2000, he began experiencing difficulty in contacting respondent and, after reviewing his court file in January 2001, he learned that his case had been dismissed with prejudice on July 10, 2000 for failure to prosecute.

The Committee, by letter dated July 23, 2001, requested respondent file a written response to Aalmuhammed's complaint within 20 days and on August 15, 2001, the Committee received a telephone call from an individual identifying herself as respondent's wife, who stated that respondent had been hospitalized a few days prior. Respondent subsequently failed to return telephone calls made by the Committee on September 7, 2001, October 12, 2001, and October 31, 2001.

The Committee received a third complaint concerning respondent on August 6, 2001 from Stacey Fish, in which she claimed that she and respondent were long-time friends, that respondent had volunteered to assist her in the sale and purchase of two apartments, and that respondent used her escrow money for his own personal reasons. On or about December 19, 2001, a Committee investigator subpoenaed respondent's bank records and discovered that on June 18, 2001

and June 27, 2001, his attorney escrow account was overdrawn and that a check in the amount of \$88,876.63,⁴ written on June 13, 2001 on behalf of Fish to the seller was returned by the bank for insufficient funds

[Exhibit E to the OAE's brief at 2-5.]

The Affirmation Principal Attorney Wilson filed on March 26, 2002, provides a more detailed account of the three matters, including the Fish grievance:

. . . In response to Staff's [sic] Counsel's November 19, 2001 letter, Ms. Fish stated that respondent was given \$20,000 and \$80,000 respectively, to place in his attorney's escrow account. Ms. Fish also stated that during the course of the real estate transactions, respondent used a portion of those funds for his personal expenses without their permission or knowledge.⁵

. . . Respondent also issued two checks to the Fishs' to reimburse them for a portion of their monies that he used from his attorney escrow account.

In response to the Committee's request, Investigator Martin Schwinger ("Schwinger") reviewed respondent's bank records for his attorney escrow account. Schwinger determined that respondent's bank records reflects [sic] two deposits into his attorney escrow account on June 12, 2001 totaling \$94,356.61. The escrow account was overdrawn on June 18, 2001 for \$6,899.48 and again of [sic] June 27, 2001 for \$8,997.99 respectively.

⁴ A review of the exhibits reveals that the check to the seller was actually drawn in the amount of \$88,878.63.

⁵ In response to a question from the Committee, which asked how Ms. Fish knew that respondent used the escrow monies for his personal use, she replied "Mr. Lawrence admitted to my husband that he used the escrow money for his own personal use".

In the meantime, the Committee learned that on June 13, 2001, respondent wrote check number 174 in the amount of \$88,876.63 [sic] from his attorney escrow account on behalf of the Fishs' to the seller, Monroe Schreck. That check was returned by the bank on June 19, 2001 for insufficient funds.

[Exhibit B to the OAE's brief at 11-13.]

Respondent was disbarred in New York after failing to reply to grievances charging him with the knowing misuse of client funds, misrepresentation to clients, failure to communicate, lack of diligence, and neglect. This conduct violates New Jersey RPC 1.1, RPC 1.3, RPC 1.4, RPC 1.15, and RPC 8.4(c).

A disbarred New York attorney may seek reinstatement seven years after the effective date of disbarment. See 22 N.Y.C.R.R. 603.14. The OAE asserted that the law and facts of this case require the imposition of greater discipline than that imposed in New York, and utilized the exception offered by R.1:20-14(a)(4)(E) to argue that permanent disbarment, rather than a seven-year suspension, is appropriate here. In support of its claim, the OAE cited, among other cases, In re Wilson, 81 N.J. 451 (1979) (attorney's use of client's money as if it were attorney's own warrants disbarment); and In re Noonan, 102 N.J. 157 (1986)(misappropriation that will trigger automatic disbarment consists of lawyer's taking money entrusted to him, knowing it is the client's money and client has not authorized the taking).

Following a review of the full record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which directs that:

. . . The 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 on 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.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). The OAE's reliance on section (E), however, is well placed. Setting aside for a moment the Stearn and Aalmuhammed matters, respondent's knowing misuse of client funds in Fish is an act that serves to destroy public confidence in the integrity and trustworthiness of the legal profession, and mandates permanent

disbarment, rather than the seven-year suspension imposed in New York. When that misconduct is combined with respondent's neglect and deceit in Stearn and Aalmuhammed, disbarment is all the more clearly indicated as the appropriate discipline. Accordingly, we unanimously recommend that respondent be disbarred. Two members did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

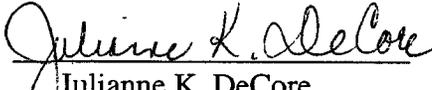
In the Matter of Marc S. Lawrence
Docket No. DRB 03-397

Argued: February 13, 2004

Decided: April 13, 2004

Disposition: Disbar

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>	X						
<i>O'Shaughnessy</i>	X						
<i>Boylan</i>	X						
<i>Holmes</i>	X						
<i>Lolla</i>							X
<i>Pashman</i>							X
<i>Schwartz</i>	X						
<i>Stanton</i>	X						
<i>Wissinger</i>	X						
Total:	7						2


Julianne K. DeCore
Chief Counsel