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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-492

IN THE MATTER OF

MICHAEL A. CHASAN

AN ATTORNEY AT LAW

Decision

Argued: April 16, 1998

Decided: September 28, 1998

Michael J. Posnik appeared on behalf of the District VIII Ethics Committee.

Respondent waived appearance before the Board.

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

This matter was before the Board based on a recommendation for discipline filed by the District XIII Ethics Committee ("DEC"). Respondent was admitted to the New Jersey bar in 1975 and maintains a law office in Green Brook, Somerset County.

In 1982 respondent received a public reprimand for unilaterally deducting a fee from funds designated to pay his client's hospital bills and for endorsing the check in the name of the hospital, despite having no authority to do so. In re Chasan, 91 N.J. 381(1982).

In June 1998 respondent was suspended for three months for violations of RPC 3.3(a)(1) (lack of candor to a judge); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 1.15(b) and R. 1:21-6 (recordkeeping violations). In a dispute over the fee in a personal injury action claimed by both respondent and his former law firm, respondent misled a judge with regard to the whereabouts of the disputed fee. Respondent misrepresented to the defendant's attorney that he had paid all existing liens from the settlement proceeds and that he had placed the disputed fees in a separate account pending the final resolution of the fee dispute. In fact, respondent disbursed fees to himself from the settlement proceeds. In addition, a demand audit revealed serious recordkeeping violations. In re Chasan, 154 N.J. 008 (1998).

This three-count amended complaint, covering three separate matters, alleged violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect); RPC 1.3 (lack of diligence); RPC 3.3 (lack of candor toward a tribunal); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The Ritter Matter

Count one of the amended complaint alleged violations stemming from respondent's representation of a medical doctor in a matrimonial matter. The doctor was the sole witness scheduled to testify before the DEC. He continually failed to appear at the scheduled DEC

hearings, citing a variety of excuses. After repeated attempts to secure his testimony proved unsuccessful, the DEC dismissed the matter.

The Alevras Matter

In or about December 1991 respondent was introduced to Gerald Long, an attorney interested in selling his legal practice. It is uncontested that respondent, seeking work at the time, began to work on Long's files at Long's office beginning in late 1991 or early 1992. On March 23, 1992 respondent purchased the practice, pursuant to a "bill of sale" between respondent and Long.[1] Respondent purchased what could only be described as a "turnkey" operation, complete with active cases, a secretarial staff and a paralegal named Chris Alevras. Alevras had obtained a law degree from Seton Hall University, but was not admitted to practice law in any jurisdiction. Alevras also had extensive accounting experience and, apparently, an impressive criminal background. Alevras had spent over two years in a penitentiary in Connecticut and eight years in a state penitentiary in New Jersey for felony convictions involving fraud, forgery and embezzlement. Respondent knew of Alevras' checkered past when he bought Long's law practice.

The grievant in this matter, Raymond Lisk, a real estate appraiser, testified that in early 1992 he became aware that he was about to be sued regarding a real estate appraisal he had completed for a client. According to Lisk, his secretary at the time referred him to

[1]The bill of sale is a woefully inadequate document. For instance, there is no mention of what was being sold/purchased. Exhibit P-8.

"Alevras and Chasan," an entity that he believed to be a law firm.[2] According to Lisk, on April 4, 1992 he met Alevras at respondent's office to discuss his case. Alevras told him that the firm would take the case and that he would be "handling" the matter. Lisk gave Alevras a $2,500 retainer, believing that Alevras was an attorney and that he would personally represent Lisk.

According to Lisk, in October 1992 he learned that his real estate client had no intention to sue him after all. He immediately called Alevras at respondent's office to reclaim his retainer. He was told that Alevras no longer worked at the firm.

Lisk testified that shortly thereafter he met with respondent at respondent's office to discuss the case. At that time respondent told him that Alevras was a paralegal, not an attorney and that, although Alevras had worked for respondent, unbeknownst to him Alevras had met potential clients at his office, had represented himself to be an attorney and had stolen their retainers. According to Lisk, respondent told him that he had terminated Alevras employment when he learned of his activities and that he, respondent, would refund Lisk's retainer, subject to a deduction for any work already performed on the file. Lisk added that respondent promised to find out what work had been done on the file and to report back to him with his findings.

Lisk testified that approximately six to eight months went by with no response from respondent regarding the matter. Lisk stated that, when he called respondent about the case,

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[2]Apparently, Lisk's secretary believed that Alevras was an attorney, based on information given to her by her husband, an ex-convict and friend of Alevras.

respondent told him that he had again tried to locate the file, unsuccessfully. Lisk asserted that, in or about October 1993, one full year after he first met with respondent, respondent told him that the file had been lost.

Thereafter, on October 20, 1993, respondent sent a letter to Lisk acknowledging that the office had received the $2,500 retainer. The letter did not, however, indicate that respondent intended to return the retainer. In fact, respondent never returned any portion of the retainer to Lisk.

For his own part, respondent testified about an extraordinarily strange set of events that culminated in Lisk's grievance. According to respondent, he met Gerald Long in late 1991 after Long had suffered a stroke and was unable to continue to handle his law practice. Respondent arranged to work on Long's files, at Long's office, on a per diem basis. By early 1992 it appeared to respondent that Long would not be resuming the practice of law. Respondent then executed an agreement to purchase the law practice, which consisted primarily of personal injury, bankruptcy and post-conviction criminal cases. According to respondent, he officially took over Long's practice on March 23, 1992; Long's employees became his own, including Alevras. As noted earlier, respondent knew about Alevras' past criminal history at the time that he purchased the practice. He knew that Alevras had spent more than eleven years in prison for forgery and embezzlement. Respondent asserted that, prior to taking over Long's practice, he had extracted a promise from Alevras that he would not engage in any criminal activities at the office. Respondent explained that he continued

certain existing practices on a "trial" basis after he bought the law firm. Foremost among those was Alevras' management of the entire office and the established practice of depositing all funds generated by the firm in Alevras' personal bank account. In fact, the office did not have a business account.[3]

Respondent acknowledged that, when he took over the firm, he allowed Alevras' continued control over the firm's finances, requiring only that Alevras report to him, on a monthly basis, what activity had taken place in Alevras' personal account over the previous thirty-day period. A further indication of Alevras' total control of the firm's finances was Alevras' responsibility for paying the staff's and respondent's salaries out of his personal account. Respondent testified that, in addition to Alevras' desire to keep the then current system in place, "he brought in a lot of work and a lot of money to the office. In fact, most of the money that came into Long's practice was brought in by Alevras. [] He was a big money maker."

Respondent was adamant, however, that Alevras was not permitted to handle trust funds and did not have access to the trust account.[4] According to respondent, he had told Alevras early on that only respondent could accept retainers from the firm's clients. Finally,

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[3]Respondent was unsure if Long's trust funds were also handled by Alevras. Long was apparently the subject of an ethics investigation in this regard. Respondent was the chief witness in that matter, as evidenced by over 260 pages of respondent's testimony, made a part of this record. Respondent's version of events in this matter is consistent with his testimony in Long's ethics proceeding.

[4]In the matter in which respondent received a three-month suspension, the Office of Attorney Ethics ("OAE") conducted a demand audit of respondent's books and records on January 25, 1993. The OAE investigator found respondent's recordkeeping so horrendous that the ethics authorities could not tell if trust funds had been misappropriated.

respondent admitted that he had agreed to pay Alevras one-half of the fees generated by the firm.

Respondent testified that in May or June 1992 he learned, for the first time, that Alevras might have been accepting retainers from clients. Suspecting that Alevras may have been stealing the retainers, respondent finally dismissed Alevras on July 6, 1992 and also contacted the Somerset County Prosecutor's Office. Alevras' final day at respondent's office was July 13, 1992. When asked why he had not dismissed Alevras sooner, respondent gave the following explanation:

> The reason I did not fire him immediately and believed that I could not fire him immediately is he had two bodyguards working with him in the office, George Pepe (phonetic) who had done federal time and Michael Katz (phonetic), who was a gopher and a runner for him.
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> I was told by numerous clients that he had a gun in his desk and had threatened to shoot me. There were numerous criminal clients in the office. I was afraid that if I removed him, so merely told him to get out, that frankly, he either would have shot me or he would have broken both of my legs. I honestly believe that.
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> And, therefore, I did not reasonably believe I could one morning in the office or one afternoon in the office tell him that he was fired. I had to be very, very, careful about how it was approached for my own physical safety.

Respondent recalled that the Lisk problem first surfaced in October 1992, when Lisk called the office looking for Alevras and the return of his retainer. Respondent claimed that he had told Lisk about problems with Alevras' handling of other matters and had suggested

a meeting at respondent's office. Respondent contended that, at that meeting, he had told Lisk that Alevras was not an attorney, that Alevras had no authority to accept retainers from clients, and that Alevras had not informed respondent that he had done so in Lisk's case as well as in others. Respondent denied any liability for Lisk's retainer and further denied having made any promises to Lisk to return the $2,500. Respondent testified that he was completely unaware of the events surrounding the alleged representation and that Alevras had acted on his own.

Respondent acknowledged that Lisk had contacted him periodically after their October 1992 meeting to obtain information about his case. Respondent admitted that, despite his promises to Lisk, he never once looked for Lisk's file because the entire Alevras matter was "a nightmare" that he could not face squarely.

Respondent further testified that, in June 1992, one month before he dismissed Alevras, he discontinued the use of Alevras' personal bank account as an attorney business account, replacing it with a business account that he had used in his previous law practice. Respondent reiterated that he maintained his own trust account at all times, without any interference from Alevras, and that client funds were never in jeopardy.

With respect to the potential for misappropriation of client funds deposited into Alevras' personal account, respondent contended that Alevras only deposited retainers into that account. When asked if he thought that Alevras' handling of the business account was unethical, respondent answered:

> I knew it was highly unusual, but I was confronted with a highly unusual situation for a short period of time. I was not aware - I knew funds could not be commingled, trust account funds, there was no commingling of trust account funds.
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> I was not aware and I am still not aware of any specific rule that an office has to be maintained or runned [sic] with an attorney business amount.
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> I am familiar with the rule that says an attorney business account should be in existence. Was I aware that it was unethical? I was aware that it was highly unusual, but it was done for a short period of time.

* * *

The panel report noted that on March 19, 1997 Alevras pleaded guilty in federal court to various crimes, including bank fraud, filing false tax returns to obtain an unwarranted refund and possession of a firearm by a felon. According to the panel report, Alevras faced forty-five years in prison for those convictions. It is unknown if sentencing has taken place or if any of the convictions relate to Alevras' conduct in this matter.

The Paffrath Matter

The grievant, Lisa Paffrath, retained respondent in or about 1988 to represent her in an action for injuries sustained in an automobile accident. The matter settled in 1989 for $7,000. Apparently, Paffrath would be requiring further medical treatment that, obviously, she wanted her insurance carrier to pay. At that time, Paffrath was still undergoing therapy for her injuries and needed an MRI examination. According to Paffrath, respondent told her

that she could reopen her case at any time. She alleged that, based on that representation, she discontinued her therapy in 1990, when she became pregnant. Likewise, she decided against having the MRI conducted while pregnant, for fear of harming her unborn child.

Paffrath alleged, that, after the birth of her son in late 1991, she contacted respondent about reopening the case. She testified that her numerous calls to respondent over the ensuing months went unreturned. Finally, Paffrath was able to reach respondent and to discuss her matter. According to Paffrath, respondent told her that he was in the midst of a move and that her file could not be located; he promised, however, to look for the file. Thereafter, some months passed with no word from respondent. Paffrath stated that, in her next conversation with respondent, he told her that the file was "either lost or ruined because he had problems with moisture in his new office." Paffrath testified that, having maintained a meticulous copy of the file, she offered to send it to respondent; respondent agreed to review that copy, in the absence of the original. Paffrath testified that more time passed before her next telephone conversation with respondent, at which time he denied ever receiving Paffrath's copy of the file. Paffrath testified as follows:

> The second file, my file. And now I was absolutely - I was crazy about that. And in the long run, I hung up on the man because I couldn't believe that here I wasted a whole year and it wouldn't have been my choice to go back to Mr. Chasan to reopen. It was Prudential. They had asked, which was the insurance company that I had.
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> I was going to seek counsel right here in Pennsylvania. Prudential said I had to - they had preferred that I stay with the same attorney.

So now here that file was missing. I had nothing. . .

Paffrath further testified that she resumed treatment, which included an MRI, in March 1994 and submitted those bills to Prudential, her insurance carrier. On June 21, 1994 Prudential sent a letter to Paffrath informing her that her claim was time-barred by a two-year statute of limitations. Paffrath testified about her anger at having to pay for medical bills because of respondent's failure to give her proper legal advice.

Respondent had an entirely different version of events. According to respondent, Paffrath's case was settled in 1989 for approximately $7,000, when all medical bills that were outstanding at the time were paid. As to the treatment after the settlement, respondent remembered telling Paffrath at least twice that her claim had been time-barred.

Respondent further testified that he had known Paffrath for many years and had written a letter to Prudential asking it to pay a $150 chiropractor bill. According to respondent, that was the only post-settlement bill that Paffrath had brought to his attention. Respondent claimed that he was unaware of the Paffrath's 1994 treatments, for which he had never received bills. Indeed, Paffrath admitted never sending those bills to respondent.

When asked about Paffrath's assertion that she had sent him her file, respondent suggested that she was not telling the truth.

* * *

In Lisk, the DEC found two violations that were not alleged in the complaint: RPC 5.3(a)(b) and (c) (responsibilities regarding nonlawyer assistants) for respondent's failure to

properly supervise Alevras, and RPC 5.4(a) (sharing legal fees with a nonlawyer). The DEC also found a violation of RPC 1.15(a) and R. 1:21-6 for respondent's failure to maintain attorney trust and business accounts and for respondent's failure to "deposit retainer fees into said Trustee Account and for failure to safeguard the property of a client."

In Paffrath, the DEC found violations of RPC 1.3 and RPC 1.4 for respondent's failure to respond to Paffrath's inquiries about the case and RPC 1.15 for failure to safeguard the file.

* * *

Upon a de novo review of the record, the Board was satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The Alevras matter is fraught with improprieties. First, by his own admission, respondent did not maintain a proper business account at the time that he purchased the law practice from Long. R. 1:21-6(a)(2) requires that every practicing attorney maintain a business account into which all funds received for professional services must be deposited. From March 23, 1992 and until respondent activated the business account from his prior law practice sometime later, respondent was in violation of that rule and RPC 1.15(d).

More serious was respondent's failure to supervise a nonlawyer employee, Alevras. Incredibly, respondent permitted Alevras, whom he knew to have an extensive criminal record, not only to manage the firm's receipt of retainers from clients, but also to use his own personal bank account as the firm's business account. It is of little consequence that respondent may have permitted that arrangement only a short period of time. After all, respondent knew before he purchased the practice in 1992 that Alevras had been convicted of serious crimes, including fraud, forgery and embezzlement. Respondent was also aware that Alevras had spent a considerable portion of his life in jail for those convictions. Therefore, respondent was responsible, under RPC 5.3(c) (2) and (3), for any improprieties committed by Alevras during Alevras' employment with him. The inquiry turns then to the specific nature of Alevras' misconduct.

It is clear that, in at least the Lisk matter, Alevras stole the retainer. Because, however, Alevras was not an attorney, he cannot be found guilty of knowing misappropriation. As to whether respondent may have committed an ethics impropriety for not depositing the retainer in his trust account, there is no requirement under the rules that retainers be deposited in an attorney's trust account. Only in cases where the client mandates that a retainer be held in trust may the theft of those funds constitute knowing misappropriation. In re Stern, 92 N.J. 611, 619(1983). There is no suggestion in this record that Lisk required that his retainer be held in trust.

Having determined that Alevras' theft of the retainer was not a knowing misappropriation, the Board turned its attention to what responsibility, if any, respondent had to return the retainer to Lisk under the circumstances. RPC 1.16(d) requires that an attorney refund any unearned portion of a retainer upon the termination of the representation. Although that rule ordinarily addresses an attorney's conduct after the termination of the representation, it is also applicable to this situation, where Lisk automatically signified his intention to discharge Alevras (whom he thought was an attorney), and respondent, when he requested the return of the $2,500 retainer. Bearing responsibility for Alevras' wrongful actions, respondent had to make all of his clients whole by refunding their stolen retainers, to the extent that the retainers were unearned. Here, Lisk's retainer had not been earned; no work had been done on his file. Respondent's failure to refund the $2,500 to Lisk was all the more troubling because he promised to reimburse Lisk.

There remains the issue of respondent's fee sharing arrangement with Alevras. Respondent admitted that, under that arrangement, Alevras received fifty percent of all fees generated by the firm. That practice is strictly prohibited. In a line of cases dating to the 1950s, the Court has consistently held that sharing legal fees with nonattorneys is forbidden. In some cases, where a hardened disregard for ethics standards is present, a long-term suspension is warranted. See In re Introcaso, 26 N.J. 353 (1958) (where the attorney received a three-year suspension for fee sharing with a nonattorney runner); and In re Frankel, 20 N.J. 588 (1958) (where the attorney received a two-year suspension for fee sharing with a

nonattorney investigator who acted as a runner). The elements of total disregard for the ethics system that warranted long-term suspensions in Introcaso and Frankel are not present in the within matter. Respondent's misconduct was more analogous to that in In re Bregg, 61 N.J. (1972), where the attorney received a three-month suspension for sharing fees with an attorney who was admitted to practice in Cuba, but not New Jersey. The Cuban attorney advertised himself in local Spanish-speaking newspapers as an attorney and referred cases to Bregg, who then shared the fee with the Cuban attorney. In imposing a three-month suspension, the Court took into consideration significant mitigating circumstances, including Bregg's sincere contrition and ill-health.

With regard to the Paffrath matter, the Board found that respondent failed to communicate with his client for months at a time, after she requested that he reopen her case. Moreover, despite the fact that the case was settled in 1989, respondent drafted a letter to Prudential years later, as Paffrath's lawyer. Respondent put forth no credible evidence to refute the allegations in this matter. On this score, the Board found Paffrath more credible than respondent. It is unquestionable, therefore, that respondent failed to communicate with Paffrath, in violation of RPC 1.4(a).

With respect to the charge that respondent lost Paffrath's file, the same credibility test applies. On balance the Board found Paffrath more credible than respondent in this regard. It is unlikely that Paffrath tried to ensnare respondent in misconduct by

pretending to send him her own file, after having been twice told by respondent that he could not locate the original file. Although the DEC found a violation of RPC 1.3 for this misconduct, RPC 1.1(a) more properly addresses respondent's loss of the file.

In sum, the most serious violations in this case stemmed from respondent's relationship with Alevras. Respondent failed to supervise a convicted felon, to whom he gave "the run of the playground." The resultant misconduct was both foreseeable, and (if not) preventable. In addition, respondent improperly shared fees with Alevras because he was "a big money-maker for the firm." When viewed against the backdrop of respondent's previous encounters with the disciplinary system, respondent's conduct merits a term of suspension. The Board unanimously determined to suspend him for a period of six months, consecutive to the three-month suspension imposed in June 1998. The Board also required that respondent return the $2,500 retainer to Lisk. One member did not participate.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 9/28/98

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael A. Chasan
Docket No. DRB 97-492

Argued: April 16, 1998

Decided: September 28, 1998

Disposition: Six-Month Suspension

Members	Disbar	Six-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz							x
Thompson		x					
Total:		8					1

Robyn M. Hill 10/28/98
Robyn M. Hill
Chief Counsel