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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 97-093 and 97-149

IN THE MATTER OF :
PERRY J. HODGE :
AN ATTORNEY AT LAW :

Decision
Default [R. 1:20-4(f)(1)]

Decided: February 17, 1998

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

Pursuant to R. 1:20-4(f)(1), the District VA Ethics Committee ("DEC") and the Office of Attorney Ethics ("OAE") certified the records in these matters directly to the Board for the imposition of discipline, following respondent's failure to file answers to the formal ethics complaints. Service of the complaint in Docket No. DRB 97-093 was attempted on June 17, 1996 by certified and regular mail sent to respondent's office, One Lackawanna Plaza, Suite 310, Montclair, New Jersey 07042. Although the record does not indicate whether the mail was returned, respondent executed an acknowledgment of service during an interview with the OAE on July 18, 1996. On November 15, 1996 the DEC forwarded a letter to respondent advising him that failure to file an answer to the complaint would result in treatment of the matter as a default. The letter was sent by certified mail to an address provided by respondent during the July interview, P.O. Box 25045, Newark, New Jersey

07102. The return receipt card, illegibly signed, was dated December 2, 1996. Finally, a second letter was sent to respondent on January 29, 1997 by both certified and regular mail. The letters were returned marked "return to sender" and "moved, no longer at address."

In Docket No. DRB 97-149, service was made by certified and regular mail. The return receipt card was dated February 18, 1997 and signed by "P. Hodge." On March 4, 1997 a letter was sent to respondent by certified and regular mail, advising respondent of the consequences of his continued failure to file an answer to the complaint. The record does not indicate whether the mail was returned. On March 9, 1997 the OAE attempted to contact respondent by telephone at both his home and office. However, both telephone numbers were temporarily disconnected. Finally, on March 12, 1991 respondent contacted the OAE and requested an extension of time to file an answer.

Respondent was admitted to the New Jersey bar in 1984. He was temporarily suspended following his failure to appear at a demand audit on July 10, 1996. In re Hodge, 144 N.J. 646 (1996). Respondent was also suspended for three months on January 12, 1993 for his misconduct in five matters, including gross neglect, pattern of neglect, failure to communicate, failure to return client property, failure to maintain a bona fide office and failure to cooperate with disciplinary authorities. In re Hodge, 130 N.J. 534 (1993).

The formal ethics complaints charged respondent with violations of RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to communicate); RPC 1.7(b) (conflict of interest); RPC 1.8(a) (conflict of interest); RPC 1.8(h) (making an agreement prospectively limiting liability to a client); RPC 1.15 (knowing misappropriation); RPC 1.16(d) (failure to turn over a client

property); RPC 8.1(b) (failure to cooperate with disciplinary authorities); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Docket No. DRB 97-093

According to the complaint, in June 1991 Christos Simeonidis retained respondent to assist him in obtaining a permit to renovate his restaurant, Midtown Diner. Simeonidis was granted the permit on July 7, 1992. In September 1992 Simeonidis terminated respondent's services due to an unrelated dispute. On or about December 18, 1992 a dispute arose between Simeonidis and his architect, as a result of which the architect resigned and withdrew his plans. Consequently, on January 3, 1993 the municipality issued a penalty notice for Simeonidis' failure to provide a plan. Subsequently, on January 11, 1993, a stop-work notice was issued on the renovations. Simeonidis retained new counsel and requested respondent to return his file. However, respondent failed to do so.

The complaint also alleges that, during Simeonidis' representation, respondent asked Simeonidis and his business partners, Patty and Frank Nasello, to make a loan of $10,000 to a third party. Although respondent failed to disclose the details of the loan, he assured Simeonidis and the Nasellos that it was a "secure business deal," for a three-month period. Respondent also guaranteed personal repayment of the loan for a fifteen percent fee. Respondent did not advise Simeonidis to consult with independent counsel concerning the loan.

On June 21, 1991 Simeonidis delivered $10,000 in cash to respondent at the Midtown Diner in the presence of the Nasellos and another associate. Respondent documented the receipt of the money on a Midtown Diner Guest check with the following handwritten note: "Receipt of $10,000 from Chris Simeonidis of 6/12/92 for third party loan. Perry Hodge, Esq." In September 1992, three months after the loan was made, Simeonidis asked respondent for repayment of the loan. Respondent asked for additional time. Simeonidis refused and demanded repayment immediately. Respondent then told Simeonidis that the money had been given to his secretary, Elizabeth Greenlee, and that Simeonidis should seek repayment from her. When respondent denied guaranteeing the loan, Simeonidis discharged respondent from the representation. Thereafter, Simeonidis filed a civil complaint against respondent as guarantor of the loan. Respondent failed to answer the complaint, resulting in a default judgment against him. Although respondent was ordered to pay $12,610.43 plus interest, he has not satisfied that judgment to date.

In the third event, in September 1992 Simeonidis lent Elizabeth Greenlee an additional $1,300. In October 1992 Greenlee gave Simeonidis a check for $1,300 as repayment of the loan. When Simeonidis deposited the check into his account, the check was returned because Greenlee's account had been closed. Simeonidis then visited respondent's office and asked him for assistance in collecting payment from Greenlee. Although respondent was given the returned check and agreed to undertake collection, he failed to do anything to recover the money. Furthermore, despite repeated requests from Simeonidis, respondent failed to return the check to him.

Finally, respondent failed to reply to the DEC's and the OAE's numerous requests for information about the grievance.

Docket No. DRB 97-149

In early 1992 Gloria D. Jones retained respondent to prepare a will. When Jones retired from the U. S. Postal Service in late 1992, she asked respondent to handle a direct transfer of her Federal Thrift Savings Plan retirement funds to an Individual Retirement Account (IRA). Respondent completed the transfer in or about February 1993.

In October 1992 respondent told Jones that he knew of an investment that would yield her a higher rate of return than the IRA. Respondent asked Jones to give him $10,000 for the investment. On October 29, 1992 Jones gave respondent a cashier's check in the amount of $10,000. Pursuant to respondent's instructions, Jones endorsed the back of the check with the following notation: "Pay to the order of Perry J. Hodge for discretionary investment purposes." Respondent informed Jones that her money would be invested in Simeonidis, Inc., d/b/a/ Midtown Diner, whose owner was also respondent's client.

Respondent drafted a Contract and Consent to Dual Representation form, which set forth the terms of the investment. Included in the form was a clause that required all parties to the transaction to "forego, waive, and forebear [sic] against any Ethics, Arbitration or Malpractice Claims against [respondent]." Jones initialed the agreement on October 29, 1992. Although respondent received Jones' consent to the dual representation, he failed to recommend that she seek the advice of independent counsel before entering into this

agreement.

Respondent deposited the check into a First Fidelity Bank escrow bookkeeper account on November 2, 1992. In January 1993 respondent called Jones and informed her that the investment "did not materialize." Jones asked respondent to return her money. Despite numerous requests from Jones from January 1993 through September 1993, respondent failed to return the money or to give Jones any further information. In fact, respondent was unable to return the money since, on February 6, 1993, he had issued a check from the escrow account to himself in the amount of $9,750. The note on the check read "Jones Loan/Investment/ To Clear." Respondent cashed the check on February 9, 1993.

In September 1993 respondent visited Jones at her home and asked her if he could borrow the $10,000, without revealing that he had already spent most of the funds seven months earlier. Respondent explained to Jones that he needed the money to pay for legal fees in a pending criminal matter against him. He also stated that the loan was for a short term, until he was able to liquidate his mutual fund assets. When Jones agreed to the loan, respondent gave her an escrow account statement in order to document the loan. At respondent's instruction Jones wrote the following note on the statement: "Approved for personal loan to Perry Hodge/promissory note secured per Mutuals. GDJ." Unbeknownst to Jones, who noticed that the balance on the account was $10,036.84, the statement was dated December 31, 1992, some nine months before. Again, respondent failed to advise Jones to consult with independent counsel before entering into the deal.

In late 1993 Jones attempted to contact respondent to determine the status of the loan.

Respondent refused to accept or return any of her calls. Jones wrote to respondent on January 24, 1994, informing him that she wished to terminate the agreement and that she wanted her money by March 1, 1994. When respondent did not reply, Jones attempted to contact him on numerous occasions, to no avail. On March 9, 1994 Jones again wrote to respondent requesting information and the return of her money. On July 7, 1995 Jones again wrote to respondent demanding the return of the funds. On July 11, 1995 respondent finally called Jones and told her that he would meet with her "one day this week." He failed to do so. On September 20, 1995 Jones called respondent directing him to forward her money immediately. Finally, on October 25, 1995 respondent called Jones, advising her "I don't know when I'll have your money, so do what you have to do." Thereafter, Jones filed a grievance against respondent. Respondent contacted Jones on November 8, 1996, after the filing of the grievance, and asked her to settle her claim outside the disciplinary system. Jones refused and directed respondent to the OAE.

Once again respondent failed to comply with the OAE's requests for information or to file an answer to the complaint.

On July 18, 1996 respondent went to the OAE's office to submit to an interview regarding the two cases. During the tape-recorded interview, respondent denied guaranteeing the loan between Simeonidis and Greenlee or approaching Simeonidis about the loan. He further stated that Greenlee was not his secretary. As to the allegations regarding the Jones matter, respondent lied to the OAE that it was only after he procured Jones' consent to the $10,000 loan that he used the funds for personal expenditures.

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. R. 1:20(f)(1). The record contains sufficient evidence of respondent's unethical conduct. Respondent induced a client, Simeonidis, to make a $10,000 loan to respondent's secretary, which loan respondent guaranteed, and failed to either satisfy the loan or to take appropriate action to seek its repayment. Respondent also failed to return client property upon the termination of his professional relationship and engaged in conflict of interest situations without complying with the safeguards of RPC 1.7 and RPC 1.8.

The most serious ethics offense that respondent committed was the knowing misappropriation of $10,000 from Jones. Respondent withdrew the money entrusted to him for the purpose of investment and used the funds for his own personal purposes, all without his client's consent. Furthermore, respondent attempted to conceal his wrongdoing by having his client draft an agreement to a personal loan some seven months after he had already used the money. Finally, respondent lied to the OAE when he stated that he had used the funds only after he had obtained his client's consent to the loan.

This leaves only the issue of appropriate discipline. "[M]aintenance of public confidence in this Court and in the bar as a whole requires the strictest discipline in misappropriation cases." Disbarment is the only appropriate result in knowing misappropriation cases. In re Wilson, 81 N.J. 451, 461 (1979). See also In re Bonds, 148

N.J. 580 (1997) (disbarment for knowing misappropriation of $38,000); In re Metz, 148 N.J. 431 (1997) (disbarment for knowing misappropriation in excess of $10,000).

Here, respondent not only exhibited extreme disregard for the disciplinary system, as evidenced by his defaults and misrepresentations to the OAE, but he also knowingly misappropriated $10,000 in the Jones matter. For this latter offense alone, respondent must be disbarred. The Board unanimously so recommends.

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

Dated: 2/17/98

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD VOTING RECORD

In the Matter of Perry Hodge
Docket Nos. DRB 97-093 & DRB 97-149

Decided: February 17, 1998

Disposition: Disbar

Members	Disbar	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:	9						

Robyn M. Hill 3/5/98
Robyn M. Hill
Chief Counsel