BarC

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-051

IN THE MATTER OF	:
TIMOTHY WEEKS,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: May 18, 1994

Decided: October 3, 1994

Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear.

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

This matter was before the Board based upon a recommendation for public discipline filed by Special Master Thomas V. Manahan. The complaint charged respondent with violations of RPC 1.15(a) and RPC 8.4(c), arising out of his misappropriation of escrow funds.

Respondent did not appear at the District Ethics Committee ("DEC") hearing. Notice by mail was attempted by the DEC at his last known office address. Those letters were returned; one indicated that the addressee was deceased. Notice of the DEC hearing was made by publication in the New Jersey Law Journal and The Bergen Record. Notice of the Board hearing was made by publication in both the New Jersey Law Journal and The Bergen Record. As noted above, respondent failed to appear.

Respondent was admitted to the New Jersey bar in 1972. At all times relevant to the allegations of the complaint, he maintained an office in Newark, Essex County. Respondent was indefinitely suspended by Supreme Court Order dated February 21, 1989 for failure to answer an ethics complaint, failure to appear before the DEC and the Board and, further, failure to comply with the Court's Orders to Show Cause. In re Weeks, 114 N.J. 622 (1989). Respondent had been temporarily suspended by Order dated November 28, 1988. His suspension was continued by Order dated January 10, 1989. On January 24, 1989, a trustee was appointed to take control of respondent's law practice, which had been deemed abandoned.

In or about March 1987, respondent undertook the representation of Jose and Yone DeLima, in connection with the sale of real property and a commercial business to Elmar Cerva and Luis Monteiro (The Buyers). The buyers, who were represented by Lawrence Latore, Esq., turned over a $7,500 deposit for the real property and a $5,000 deposit for the business. Those funds were to be held in escrow by respondent until title was closed. In addition, $1,600 for an environmental review, which was to be forwarded to the Department of Environmental Protection, was also given to respondent.

Subsequently, the buyers learned that the total of the liens and judgments against the sellers exceeded the contract purchase price and would have prevented the sellers from conveying clear title to the property. Consequently, the buyers canceled the purchase of both properties and sought the return of their deposit

monies from respondent. After the buyers retained new counsel, Richard Gomes, Esq., the latter made numerous requests – by telephone and in writing – for the return of the money. Respondent ignored those requests. (The record indicates that the sellers had moved to Brazil and could not be located).

The buyers submitted claims to the Lawyers' Fund for Client Protection (then Clients' Security Fund), in January 1990, and have been reimbursed $14,100 for their losses.

The buyers also contacted the Essex County Prosecutor's office. On October 10, 1991, respondent was indicted by the Essex County Grand Jury and charged with a violation of N.J.S. 2C:20-9, the third degree crime of theft by failure to make required disposition of property received, in connection with his failure to return the buyers' funds. Respondent failed to answer the indictment. There is an outstanding bench warrant for his arrest.

An investigation by the office of Attorney Ethics ("OAE") revealed that respondent closed his attorney business account on July 27, 1988 and his trust account, on September 22, 1988. Exhibits C-15 through C-17 illustrate the OAE's efforts to communicate with respondent. It was the presenter's belief that those letters, which were sent via regular mail, were returned to the OAE. Exhibits C-23 through C-26 are letters from the OAE, enclosing copies of the complaint and requesting an answer thereto. These were sent to respondent via certified mail at his home and business addresses. Each letter was returned to the OAE. Two of those letters indicated that the addressee was deceased. The OAE's

efforts to confirm that information, including contact with the Bureau of Vital Statistics and respondent's ex-wife, were not conclusive. Respondent's ex-wife, through her secretary, indicated that she had no current contact with respondent, but believed that he was still alive. Respondent's whereabouts are currently unknown.

The Special Master found that respondent was guilty of knowing misappropriation of trust funds belonging to third parties, in violation of RPC 1.15(a) and RPC 8.4(c).

CONCLUSION AND RECOMMENDATION

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

Respondent failed to answer the ethics complaint or appear at the hearing below. The charges against him are, thus, deemed admitted. The only issue is, therefore, the appropriate quantum of discipline.

There is no doubt that respondent misappropriated $14,000 in escrow funds. In In re Hollendonner, 102 N.J. 21 (1985), the Court issued a warning to the bar concerning the misuse of escrow monies. There, the attorney personally used $2,000 of escrow funds held pursuant to a real estate contract, after obtaining the consent of his client but not of his adversary or the latter's client. The attorney was suspended for one year for that violation as well as

for improper recordkeeping. Noting that an attorney receiving escrow monies receives them as the agent for both parties, the Court held that "[t]he parallel between escrow funds and client trust funds is obvious. So akin is the one to the other that henceforth an attorney found to have knowingly misused escrow funds will confront the disbarment rule of In re Wilson (citation omitted)." In re Hollendonner, supra, 102 N.J. at 28-29. Here, respondent's misconduct occurred in 1987, after the Court's warning in Hollendonner. Therefore, he should face the Wilson disbarment rule. The Board unanimously so recommends. Two members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 10/3/94 By: Elizabeth L. Buff

Elizabeth L. Buff
Vice-Chair
Disciplinary Review Board