

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-300

IN THE MATTER OF :
:
GARY M. KAMINSKY, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 20, 1993

Decided: July 1, 1994

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

Respondent did not appear for oral argument, despite proper notice of the hearing.

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

This matter was before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics (OAE), based upon respondent's disbarment from the practice of law in the State of New York for violations of DR 1-102(A) (4) and DR 9-102 (conversion of client funds), DR 1-102(A) (7) and DR 9-102 (improper use of his escrow account), DR 1-102(A) (4) (5), and (7), and DR 9-102 (A) (commingling of client escrow funds with his own personal funds), and DR 1-102(A) (4) and (7) (conduct involving dishonesty and deceit which adversely affects his fitness to practice law). Matter of Kaminsky, 190 A.D. 2d 225, 600 N.Y.S. 2d 92 (App. Div. 2d Dep't 1993).

Respondent was admitted to the practice of law in both New Jersey and New York in 1983. The facts established in the Supreme Court of New York's Opinion and Order show that respondent agreed to represent Vakil A. Ansari in a matrimonial matter. As part of a negotiated amendment to a prior divorce settlement, Mr. Ansari entrusted respondent with \$15,000 to be held in escrow and disbursed to Mrs. Ansari no later than January 16, 1991. Respondent deposited the \$15,000 in his escrow account at Crossland Savings Bank on October 25, 1990, then made numerous withdrawals to pay his own personal expenses. By November 8, 1990, the balance in the account had been depleted to \$4,326.82. On several subsequent occasions, the balance in respondent's account was below the \$15,000 escrow. (Exhibit B to OAE's brief).

Mrs. Ansari was represented by Jose A. Muniz. Mr. Muniz prepared an amended stipulation of settlement, which was signed by his client on November 15, 1990, and forwarded to respondent for his client's signature. The stipulation provided for the payment of \$15,000 by the husband to the wife no later than January 16, 1991. On January 16, 1991, respondent did not have enough money in his escrow account to disburse the required \$15,000 to Mrs. Ansari. Without the knowledge or consent of Mrs. Ansari or her attorney, respondent altered the stipulation to provide for payment in three installments of \$5,000 each, due on January 22, February 5, and February 19, 1991. When Mr. Muniz received the first check for \$5,000, dated January 22, 1991, he returned it to respondent and demanded the entire \$15,000, as originally agreed upon.

Thereafter, respondent turned over two checks, one for \$5000 (the check that had been returned by Mr. Muniz) and a check for \$10,000, dated February 1, 1991. Both checks were cashed by Mrs. Ansari.

At the hearing before the Special Referee, respondent belatedly claimed that his client had loaned him the \$15,000, to be repaid by the January 16, 1991 deadline. The Supreme Court of the State of New York, Appellate Division, Second Judicial Department, unanimously rejected respondent's "loan defense" as an attempt by respondent to "avoid responsibility for his actions which, in essence, constitute conversion." The New York Court disbarred respondent on June 21, 1993 (Exhibit A to OAE's brief).

On July 13, 1993, the New York disciplinary authorities notified the OAE of respondent's disbarment. On July 21, 1993, the Court temporarily suspended respondent from the practice of law in New Jersey. That suspension remains in effect.

The OAE requested that reciprocal discipline be imposed and that respondent be disbarred.

CONCLUSION AND RECOMMENDATION

Upon review of the full record, the Board recommends that the OAE's motion be granted. The Board adopts the findings of the New York Supreme Court, Appellate Division, that respondent knowingly converted client funds, improperly drew upon his escrow account for personal use and business expenses, commingled escrow funds with personal funds, and altered a stipulation of settlement without

knowledge or consent of the opposing party or the opposing party's attorney. In re Pavilonis, 98 N.J. 36, 40 (1984); In re Tumini, 95 N.J. 18, 21 (1979); In re Kaufman, 81 N.J. 300, 302 (1979).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-7(d), which directs that:

- (d) 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 upon which the discipline in another jurisdiction was predicated that it clearly appears that:
- (1) the disciplinary order of the foreign jurisdiction was not entered;
 - (2) the disciplinary order of the foreign jurisdiction does not apply to the respondent;
 - (3) the disciplinary order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
 - (4) 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
 - (5) the misconduct established warrants substantially different discipline
[Emphasis added.]

In New York, a disbarred attorney may seek reinstatement seven years after the effective date of disbarment. 22 N.Y.C.R. §603.14. Disbarment in New Jersey, however, is permanent, a "substantially different discipline" from New York's.

According to the New York Court, respondent was guilty of violating both DR 9-102 (conversion), and DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation). When

an attorney has committed both violations, the conduct is considered a knowing conversion/misappropriation in New York.

The OAE requested permanent disbarment under R. 1:20-7(d)(5) because the facts of this case demonstrate a knowing misappropriation of client funds, which requires permanent disbarment in New Jersey. In re Wilson, 81 N.J. 451 (1979).

In reciprocal discipline cases, the Court has not hesitated to hold a New Jersey attorney to the strict standards applied in this state, even where lesser discipline has been imposed by the initiating state. See In re Tumini, 95 N.J. 18 (1983); In re Keesal, 76 N.J. 227 (1978). "[M]aintenance of public confidence in this Court and in the bar as a whole requires the strictest discipline in misappropriation cases". In re Wilson, supra, 81 N.J. at 461.


The Board, therefore, unanimously recommends that respondent be disbarred for his knowing misappropriation of client funds. Three members did not participate.

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

Dated: _____

7/1/94

By: _____


Raymond R. Trombadore
Chair
Disciplinary Review Board