SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-250

IN THE MATTER OF :
:
LEONARD J. KEILP, :
:
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 20, 1993

Decided: August 31, 1994

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

Respondent waived appearance for oral argument.

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

This matter is before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics (OAE). R. 1:20-7. The motion was based on respondent's sixty-day suspension from the practice of law in the Commonwealth of Virginia, on October 8, 1990. In addition to that suspension, respondent was publicly reprimanded in Virginia on August 20, 1992. Respondent failed to advise either the New Jersey Supreme Court or the OAE of these disciplinary sanctions. The Virginia State Bar Disciplinary Board (Virginia Board) ordered the sixty-day suspension following its

determination that respondent had violated Disciplinary Rules 1-102(A)(4), 9-102(A)and 9-102(B) of the Revised Virginia Code of Professional Responsibility. The Virginia Board related the underlying facts as follows:

> On or about April, 1986, Margie Liebrich, Charles D. Fredricksen and Mary Wadsworth entered into an oral agreement with the Respondent to bring suit against Gilbert Myers to eject Mr. Myers from residential property which the clients had inherited from their deceased mother, and to clear the title to the property. The agreement with the Respondent provided for compensation for the Respondent at the rate of $200.00 per hour.
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> The Respondent received $500.00 from the defendant in the Myers suit as court-ordered punitive damages; the Respondent failed to deposit said funds into his trust account, failed to inform his clients of his receipt of the funds, failed to disburse said funds to the plaintiffs and, without notice, paid the funds to himself as fees. He did, however, credit the $500.00 against what was eventually determined by the Court to be owed him.
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> On October 7, 1987, the Respondent wrote to Charles Fredricksen claiming that Mr. Fredricksen was in breach of his fee agreement with the Respondent. At that time, Mr. Fredricksen owed the Respondent $2,730.00 in hourly charges. The Respondent stated in the October 7th letter that he was rescinding his fee agreement. The Respondent then claimed that he was due one-third of the Complainant's interest in the subject property, which would have increased the fee to approximately $14,400.00. Thus Respondent, after the case was won, and risk of loss to attorney and client no longer extant, unilaterally declared the hourly fee agreement 'rescinded' and a proper fee to be one-third of the recovery - i.e., one-third of the value of the heirs' house and declared Mr. Fredricksen in default.

The Virginia Board determined that respondent did not intentionally convert the $500.00 in question, but that the check was inadvertently deposited by respondent's secretary into his personal account. Thus, the violations of DR 9-102(A) and (B) were

minimal. However, his "unilateral decision to change his fee from an hourly rate to a contingent fee" constituted conduct involving dishonesty, fraud or deceit, in violation of DR 1-102(A)(4). The sixty-day suspension was, therefore, ordered. Although the Virginia Board's Order is dated October 8, 1990, respondent advised that the suspension in fact became effective on November 15, 1990 and ended on January 15, 1991.

Respondent's August 1992 public reprimand resulted from the Virginia Board's determination that respondent, in his representation of Orangetta Laevelle and her son, Brandon Laevelle, in their medical malpractice claim, had violated DR 1-102(A)(3) (a lawyer shall not commit a . . .deliberately wrongful act that reflects adversely on the lawyer's fitness to practice law) and DR 6-101(B) (a lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client).

Disciplinary authorities in the District of Columbia, to which bar respondent was also admitted, became aware of the Virginia disciplinary actions in late 1992. Respondent was thereafter suspended from the practice of law in the District of Columbia, effective March 6, 1991. That suspension was lifted on June 5, 1991. The District of Columbia Court of Appeals thereafter concurred with the finding of the District of Columbia Board on Professional Responsibility that any discipline imposed would not exceed the ninety-day suspension already served, and closed its file.

The OAE was not aware of either Virginia discipline until notified by the District of Columbia of its action against respondent. This Motion for Reciprocal Discipline followed. The OAE has requested that a prospective sixty-day suspension be imposed, in light of respondent's failure to notify the New Jersey authorities of the disciplinary actions taken against him in Virginia.

In his brief to this Board, respondent contended that his "exoneration" in the District of Columbia on a similar motion requires that no discipline be imposed in New Jersey.

CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board recommends that the OAE's Motion for Reciprocal Discipline be granted.

Reciprocal disciplinary proceeding 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:
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> (1) the disciplinary order of the foreign jurisdiction was not entered;
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> (2) the disciplinary order of the foreign jurisdiction does not apply to the respondent;
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> (3) the disciplinary order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (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 warrants substantially different discipline.

In this case, the record does not demonstrate any of the conditions enumerated in R. 1:20-7(d) that would require a recommendation for discipline different from that imposed in Virginia. Unless good reason to the contrary exists, the disciplinary actions of New Jersey will customarily comport with that imposed in the other jurisdiction. In re Kaufman, 81 N.J. 300, 303 (1979).

Respondent's unilateral "rescission" of his fee agreement with his client, after the case was won, in favor of a contingent fee of one-third the recovery, equates to overreaching. In New Jersey, while resolution of overreaching cases are truly fact-sensitive, discipline ranging from public reprimand to disbarment has been imposed for this type of misconduct. See In re Hinnant, 121 N.J. 395(1990)(public reprimand for overreaching and conflict of interest); In re Mezzacca, 120 N.J. 162(1990)(public reprimand for pattern of overreaching clients in personal injury cases); In re Hurd, 69 N.J. 316(1976)(three-month suspension for overreaching in a real estate transaction whereby property was transferred to the attorney's sister for approximately twenty percent of its value); In re Hecker, 109 N.J. 539(1988)(six-month suspension for overreaching, filing meritless appeals and acquiring tax sale certificates while serving as municipal attorney without filing disclosure); and In re Ort, 134 N.J. 146(1993)(attorney disbarred

for, inter alia, overreaching elderly widow by charging outrageous fees in estate matter and fabricating time sheets to justify fee, which he then presented to the DEC and the Board to justify his actions).

Had respondent's conduct been limited to the change of the fee agreement, a public reprimand might have been sufficient discipline. Respondent, however, compounded his transgression by failing to notify the OAE and the Supreme Court of the Virginia disciplinary actions, in violation of R. 1:20-7(a), a factor that aggravates his misconduct.

Accordingly, the Board unanimously recommends that the respondent be suspended from the practice of law in New Jersey for a period of sixty days and that the suspension be prospective. Three members did not participate.

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

DATED: August 31, 1994

RAYMOND R. TROMBADORE, ESQ.
Chair
Disciplinary Review Board