

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-300

: IN THE MATTER OF :
: :
: JEFFREY H. FRANKEL :
: :
: AN ATTORNEY AT LAW :
: _____ :

Decision

Argued: October 17, 1996

Decided: April 8, 1997

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

Respondent appeared pro se.

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

This matter was before the Board based on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R.1:20-14, following respondent's disbarment in the State of Pennsylvania.

Respondent was admitted to the New Jersey bar in 1985 and the Pennsylvania bar in 1981. On April 17, 1996, the Supreme Court of Pennsylvania issued an Order accepting respondent's disbarment by consent (Exhibit B to OAE's letter-brief). The Order was based on respondent's resignation as well as respondent's acknowledgment that the material facts contained in a letter of

inquiry from the Pennsylvania disciplinary authorities dated March 31, 1995 and a Petition for Discipline dated July 11, 1995 were true.

Respondent failed to notify the OAE of his Pennsylvania disbarment, in violation of R.1:20-14(a)(1).

Respondent admitted that he was retained by Penn-Del Management Company, Inc. ("Penn-Del") to represent it in a landlord/tenant negotiation with Tanurb, a general partnership. Thereafter, respondent settled the dispute with Tanurb for \$10,000, but misrepresented to Penn-Del that the settlement amount due to Tanurb was \$15,000. Respondent forged documentation to disguise the true settlement amount from his own client and misappropriated the \$5,000 difference, converting the funds to his own personal use.

In February 1994, respondent was retained by Gigolos Inc. ("Gigolos") to represent it in a landlord/tenant negotiation with South-Whit Shopping Center Associates ("South-Whit"). Respondent settled the matter with South-Whit for \$15,000 but, here too, lied to his own client, Gigolos, that the settlement amount due to South-Whit was \$17,500. As in Penn-Del, respondent forged documents to disguise the true settlement amount and misappropriated the \$2,500 difference, converting the funds for his own personal use.

The OAE urged the Board to recommend respondent's disbarment for his knowing misappropriation of client funds.

* * *

Upon a review of the full record, the Board recommends that the OAE's motion be granted. The Board adopted the factual findings of the Pennsylvania Supreme Court. In re Pavilionis, 98 N.J. 36, 40 (1984); In re Tumini, 95 N.J. 18, 21 (1979); In re Kaufman, 81 N.J. 300, 302 (1979). Respondent's knowing misuse of client funds violated RPC 1.15 and RPC 8.4(c).

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which directs that:

[t]he 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 an other jurisdiction was predicated that it clearly appears that:

- (a) the disciplinary... order of the foreign jurisdiction was not entered;
- (b) the disciplinary... order of the foreign jurisdiction does not apply to the respondent;
- (c) the disciplinary... order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (d) 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
- (e) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). As to paragraph (E), although respondent was disbarred in Pennsylvania, a disbarred Pennsylvania attorney may seek reinstatement five years after the effective date of disbarment. Pa.R.D.E. 218 (b). A five-year suspension, however, does not sufficiently address respondent's misconduct, which involved knowing misappropriation of client funds and other serious ethics violations. Knowing misappropriation of client funds is sufficient in and of itself

to mandate disbarment. In re Wilson, 81 N.J. 451 (1979). Since the record supports the conclusion that respondent knowingly misappropriated \$7,500 from clients Penn-Del and Gigolos, the Board unanimously recommends that he be disbarred.

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

Dated: 4/8/91



LEE M. HYMERLING
Chair
Disciplinary Review Board