

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 96-385

IN THE MATTER OF :
 :
MARC E. GROSSMAN :
 :
AN ATTORNEY AT LAW :
 :

Decision

Argued: November 20, 1996

Decided: March 25, 1997

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

Respondent failed to appear despite proper notice.¹

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 in New York for knowing misappropriation.

Respondent has been a member of the New Jersey bar since 1972 and of the New York bar since 1971. On June 17, 1996, respondent submitted an affidavit of resignation with the New York disciplinary authorities, in which he admitted that he could not defend himself against charges of conversion of escrow funds, failure to account for escrow funds, failure to maintain bank records and failure to cooperate with the investigations of the Grievance Committee for the Ninth Judicial District

¹Notice of the Board hearing was sent by certified mail. The return receipt card signed by an individual other than respondent is dated November 5, 1996.

of New York. On July 15, 1996, by Order of the Supreme Court of New York, Appellate Division, Second Judicial Department, respondent was disbarred in the State of New York.

Respondent did not notify the OAE of his New York disbarment, as required by R. 1:20-14(a)(1). Thereafter, by Order dated October 16, 1996, the Supreme Court of New Jersey placed respondent on temporary suspension. That suspension remains in effect to date.

The facts of this matter, as derived from respondent's affidavit of resignation, are as follows:

Sometime prior to 1993, respondent was retained to represent John Hasenflue in a medical malpractice action. In or about May 1993, the case was settled for \$165,000. Upon receipt of the funds, respondent deposited the check into an account with Citibank. Between approximately May 21 and August 5, 1993, respondent issued checks totaling \$148,091.17, of which only \$133,581.50 was related to the Hasenflue matter. Therefore, respondent knowingly misappropriated \$14,509.67 of the Hassenflue funds.

In the second matter, respondent was retained by James and Naomi Phillips in a malpractice action. In or about October 1993, the case was settled for approximately \$175,000. Respondent admits that "to date, [he has] failed to account for any portion of this sum."

The OAE urged the Board to recommend respondent's disbarment.

* * *

Upon review of the full record, the Board determined to grant the OAE's motion for reciprocal discipline. The Board adopted the factual findings of the Supreme Court of New York, Appellate Division, Second Judicial Department. 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. 1:20-14(a), 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 another jurisdiction was predicated that it clearly appears that:

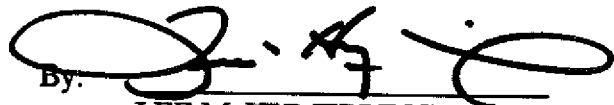
- (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect 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.

There is nothing in the record to indicate the presence of any conditions that would fall within the ambit of subparagraphs (A) through (D). As to subparagraph (E), although respondent was disbarred in New York, that disciplinary system allows disbarred attorneys to petition for reinstatement seven years after the effective date of disbarment. 22 N.Y.C.R. 603.14.

Inasmuch as knowing misappropriation in New Jersey mandates permanent disbarment, In re Wilson, 81 N.J. 451 (1979), the Board unanimously recommends that respondent be disbarred. One member did not participate.

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

Dated: 3/25/97

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board