

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-433

IN THE MATTER OF :
: KATHRYN A. SCHINDELAR, :
: AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: February 10, 1994
Decided: March 10, 1995

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 was before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics ("OAE") based on respondent's disbarment by the Supreme Court of Colorado on February 1, 1993.¹ The facts are set forth in the OAE's motion, as follows:

[i]n late 1984 respondent was retained by a 78 year old widow, unsophisticated in business matters, to act as the widow's attorney and as attorney for the estate of the widow's late husband. Shortly after being retained, in a series of transactions, respondent borrowed or otherwise obtained from the widow more than \$73,000. The Supreme Court of Colorado found that:

¹ Rule 241.7(1) of the Colorado Rules of Civil Procedure provides that "[d]isbarment is the revocation by the Supreme Court of a lawyer's license to practice law in this state, subject to readmission as provided by C.R.C.P. 241.22 (a). Disbarment shall be for at least eight years."

(w)hen the respondent obtained the loans in question, she failed to disclose to Debenham that the likelihood of repayment was remote at best. The respondent also failed to disclose, with respect to at least some of the transactions, the basis for her need for the funds, the use that would be made of the funds, the terms of repayment to be included in the promissory notes, the adequacy of the security purportedly given to secure the loans, and the adequacy of the legal documentation to protect Debenham's rights. The respondent at no time suggested that independent counsel review the terms of the loans, she did not disclose the possible conflict of interest inherent in such transactions with her client, and Debenham did not consent to the possible conflicts of interest. (Exhibit A, pp.6-7).

Respondent only made one payment on the loan, in the amount of \$334 in July 1985. She was fired in October 1986 and, in May 1987, the widow's new counsel filed a civil action against respondent, charging non-payment of indebtedness, breach of fiduciary duty, fraud and attorney malpractice. Respondent countered the civil suit by filing for bankruptcy and, in January 1990, all loans made by the widow to respondent were discharged in the bankruptcy proceeding.

The Colorado Supreme Court found respondent guilty of violations of DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation) and DR 5-104(A) (a lawyer shall not enter into a business transaction with a client if they have differing interests and if the client expects the lawyer to exercise professional judgment for the protection of the client, unless the client has consented after full disclosure).

The OAE was notified of respondent's disbarment in Colorado by means of a computer printout from the American Bar Association's National Discipline Databank indicating that respondent had been

disbarred in Colorado. Remarking that New Jersey matters involving similar misconduct normally result in either permanent disbarment (citing in In re Wolk, 82 N.J. 326 (1980)), or a lengthy suspension (citing In re Humen, 123 N.J. 289 (1991)), the OAE elected not to avail itself of the opportunity offered by R. 1:20-7(d)(5) to argue that respondent's misconduct justifies greater discipline in New Jersey than that imposed in Colorado. The OAE requested that the Board recommend to the Court that respondent be suspended in New Jersey for a period of eight years, on the condition that she not be reinstated in New Jersey until she is readmitted to practice in Colorado.

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 Colorado Supreme Court that (1) respondent's failure to disclose the inadequacy of the security for the loans and the failure to provide her client with the appropriate legal documents to insure repayment of the loans constituted a violation of DR 1-102(A)(4) (New Jersey RPC 8.4(c)) and that (2) respondent entered into a prohibited business transaction with her client without discussing the inherent conflicts of interests and suggesting that her client consult with independent counsel, in violation of DR 5-104(A) (New Jersey RPC 1.8). The Board also agrees with the Colorado Supreme Court's finding that respondent intentionally prejudiced or damaged her client during the course of the professional relationship and

that, because of the special vulnerability of the victim in this case, respondent's conduct adversely reflected on her fitness to practice law. 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 fact 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 the 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 Colorado, a disbarred attorney may seek reinstatement eight years after the effective date of disbarment. C.R.C.P. 241.7(1).

In New Jersey, however, disbarment is permanent, a "substantially

different discipline" from Colorado's.

As found by the Colorado Supreme Court, respondent's conduct was "predatory and wholly reprehensible." It also evidenced a dishonest and selfish motive; a pattern of misconduct; multiple offenses; bad faith obstruction of the disciplinary proceedings, and refusal to acknowledge the wrongful nature of the conduct. The Colorado Supreme Court added to those aggravating factors both the vulnerability of the victim and respondent's substantial experience in the practice of law. (Respondent had been admitted to the Colorado bar in 1976 and the misconduct occurred in 1985).

As noted above, the OAE declined to utilize the opportunity offered by R. 1:20-7(d)(5) to contend that respondent's misconduct requires stronger discipline than that imposed in Colorado. On that basis, the OAE is seeking to reciprocally suspend respondent in New Jersey for a period of eight years. The Board, however, cannot agree. Respondent's pattern of egregious behavior is more analogous to cases resulting in disbarment than those that culminated in periods of suspension. See, e.g., In re Smyzer, 108 N.J. 47 (1987) (attorney disbarred for encouraging several clients to advance monies to financially troubled companies in which he held an interest, without disclosing to his clients his interest in the companies and without keeping them informed of the nature of the investments); In re Wolk, 82 N.J. 326 (1980) (attorney disbarred for deceiving and exploiting a helpless widow by counseling her to make a hopeless investment in a building in which the attorney had an interest; in a second matter, the attorney

submitted a grossly exaggerated counsel fee affidavit to the court in an attempt to enrich himself at the expense of a paralyzed eight-year old client).

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 an initiating state. See In re Tumini, 95 N.J. supra at 18 (1983).

In light of the foregoing, the Board unanimously recommends that respondent be disbarred. One member did not participate.

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

Dated: _____

3/10/95

By: _____



Raymond R. Trombadore
Chair
Disciplinary Review Board