

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-430

IN THE MATTER OF :
 :
HOWARD S. TEITELBAUM, :
 :
AN ATTORNEY AT LAW :

Decision

Argued: July 17, 1996

Decided: November 18, 1996

John P. McDonald appeared on behalf of the District XIII Ethics Committee.

Respondent waived appearance.

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

This matter was before the Board based on a recommendation for the imposition of an admonition filed by the District XIII Ethics Committee ("DEC"), which the Board determined to bring on for a hearing. The formal complaint charged respondent with a violation of RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1975. He has no prior disciplinary history.

In or about 1982, respondent formed a law partnership with Eugene Lynch. In or about 1988, Lynch was diagnosed with cancer and became seriously ill. In anticipation of his death, on March 13, 1989 Lynch and respondent entered into a written partnership

agreement that essentially sold the practice to the surviving partner. Exhibit P-1. Respondent himself prepared the partnership agreement. In lieu of a sum paid for the purchase of the business, the agreement required the surviving partner to pay to the decedent partner's children a certain weekly sum until the child reached twenty-one years of age. In the case of Lynch's children, that sum was \$150 each per week.

On or about July 21, 1990, Lynch died, leaving three minor children born to different mothers. Miriam Lynch, the grievant herein, was Lynch's second wife and the mother of Tyrone Lynch. Tyrone was sixteen years old at the time of his father's death. Miriam and Eugene Lynch had divorced several years prior to Lynch's death. At the time of his death, Lynch was married to Laura Lynch, with whom his eldest son, E.J., resided. Lynch's youngest child, Courtney Lynch Kensik, lived with her mother, Lynch's former companion.

Approximately seven weeks after Lynch's death (on or about September 14, 1990), respondent sent a letter to grievant, Miriam Lynch, enclosing a check in the amount of \$50, instead of \$150 as provided in the agreement. That letter, which formed the basis of the formal ethics complaint, read:

I am enclosing a check for \$50.00. You will receive a check for this sum in trust for your child every week until the child is 21 years of age. Gene and I had an agreement that we were to pay money to each other's child in the event of our demise, until that child's 21st birthday. This sum of money will cease being sent, pursuant to our agreement, if I am sick, disabled, or semi and/or fully retired. This sum of money takes into account credits to

which I am entitled in the partnership when Gene was alive.

[Exhibit P-7]

Miriam Lynch was unable to recall whether it was this letter or Lynch's will that first alerted her to the existence of a partnership agreement between respondent and Lynch. (The partnership agreement had been referenced in Lynch's Last Will and Testament. Exhibit R-2.) She testified, however, that she had received respondent's letter and a copy of Lynch's will within days of one another.

Immediately upon receipt of respondent's letter, Miriam Lynch became suspicious. She wondered why such a "wealthy" man would have left such a small sum for his son's support. Therefore, on October 26, 1990, she wrote to respondent:

I am in receipt of your brief note dated September 14, 1990, and the fifty dollar check. Since Tyrone is part of the agreement between you and Gene, he is entitled to a copy of it. I requested that you send me a copy of this agreement on October 16, 1990 and have not received a reply to date.

I will not hesitate to have a court order issued forcing you to comply with my request if this is what it will take to have you send me, as Tyrone's legal guardian, a document that you know we are entitled to.

[Exhibit P-13]

Although Miriam Lynch had made reference in her letter to an October 16, 1990 request for a copy of the agreement, she could not recall having any conversation with respondent on that date.

respondent, on the other hand, insisted that he and Miriam Lynch discussed the agreement over the telephone on that date and that he had disclosed to her the fact that the partnership agreement had required him to make weekly payments in the amount of \$150, instead of \$50, as he had stated in his September 14, 1990 letter. Respondent claimed, however, that the reduced amount reflected certain credits to which he was entitled, as indicated in his initial correspondence to her. There is no documentary evidence in the record to support respondent's assertions.

Miriam Lynch vehemently denied that respondent had ever advised her that the agreement called for \$150 weekly payments to her son. In fact, Miriam testified, that is precisely why she continued to pursue respondent for a copy of the partnership agreement.

On November 2, 1990, respondent wrote to Miriam Lynch, inviting her to set up an appointment to meet with him so that they might "resolve her concerns." Exhibit R-14. In response to that letter, she again wrote to respondent:

Until I get to see what is in the agreement I will not know if I have reason for concern. Perhaps then we can meet and talk, but not before I get a copy of the agreement. If I do not receive it by next week I will seek a Court Order to obtain it.

[Exhibit P-15]

On or about December 14, 1990, Miriam Lynch was appointed guardian ad litem for her son, Tyrone, in the will probate action. She was contesting the probate of the will as she questioned its

authenticity. In addition, she was seeking overdue child support payments from the estate.)

Shortly thereafter, on or about January 4, 1991, Miriam Lynch finally received a copy of the partnership agreement from either Lynch's matrimonial attorney or the attorney for Lynch's estate. She testified that it was then that she learned for the first time that respondent had been paying her son only a fraction of the amount required by the partnership agreement. Angry at respondent's actions, which she considered deceptive, Mariam telephoned respondent's office and left a message indicating that she had learned the true amount of the payments respondent was obligated to make and, that if respondent did not promptly correct the deficiency, she would seek to have him indicted for fraud.

On January 8, 1991, respondent wrote to Miriam, in response to her telephone message:

I have your message. Do not dare threaten me again. I think I will stop making payments to you. The partnership owes me about \$150,000 and I do not intend to make payments to anyone pursuant to the agreement until I get my credits.

The next time you make any threats to me or to any staff members, it will mean that I will be contacting the prosecutor's office.

[Exhibit P-25]

Although the record is not entirely clear, it appears that respondent stopped making any payments to Miriam Lynch in Tyrone's behalf around this time. He continued, however, to make payments to Lynch's other two children - a daughter and the eldest son.

On or about January 18, 1991, Miriam Lynch filed an ethics grievance against respondent. In addition, on or about January 28, 1991, she filed a civil action alleging fraud against respondent and seeking both compensatory and punitive damages. That suit was ultimately settled in April 1991 for \$27,500, approximately \$7,500 less than the full amount of payments required under the partnership agreement.

Respondent testified that, although he felt justified in paying Miriam only \$50 per week, as opposed to \$150, he ultimately settled with Miriam to be rid of her, as they did not share a pleasant relationship. Respondent denied that he had attempted to wrongfully deprive Tyrone of money to which he was entitled. Rather, respondent had felt completely justified in paying only one-third of the amount required by the partnership agreement. That was so, he maintained, because he believed he was entitled to several credits against those payments.

Specifically, respondent learned after Lynch's death that, if he made the payments set forth in the partnership agreement, he would suffer significant tax consequences — a circumstance allegedly not anticipated either by respondent or Lynch when they executed the agreement. In addition, respondent testified that he had learned from an unidentified client, at some undisclosed point, that Lynch had essentially conspired with that client to keep the entire legal fee (in an unidentified amount) from a personal injury case. Although respondent became concerned that this might have occurred in other matters, he neither offered any proof to support

his suspicions nor filed a claim against Lynch's estate for the fee Lynch had allegedly appropriated for himself. Moreover, the very first time respondent ever mentioned this incident was during his testimony before the DEC. He had not raised the matter in his answer to the ethics complaint, nor had he earlier apprised his own attorney of this circumstance. Finally, respondent contended that the partnership owed him thousands of dollars in the form of mortgage payments (he owned the building that housed the practice) and as "reimbursement" for the disproportionate share of work he performed for the partnership during Lynch's illness.

All this notwithstanding, respondent never attempted to have the partnership agreement set aside, despite his claims of lack of full disclosure and other alleged misconduct on Lynch's part. That was so, he testified, because he did not wish to tarnish Lynch's reputation.

According to respondent, although he did not attempt to quantify the dollar amount of the offsets he claimed, he believed he was entitled to keep all of the payments required by the partnership agreement. This was so in spite of his admission that the partnership agreement superseded all other agreements and that its terms barred all other claims, including his claim for an offset. Respondent went on to say that nevertheless he wanted to pay the children something. He paid E.J. (Lynch's eldest son and the child with whom respondent shared a good relationship) the entire amount required by the agreement, in a lump sum. Similarly, he paid Lynch's daughter, in a lump sum, a substantial portion of

the amount required by the agreement and then continued to pay her \$50 on a weekly basis — all totalling substantially the entire amount of the payment required by the partnership agreement. However, respondent finally paid Lynch's daughter the sum due her only after he threatened the child's mother that he would discontinue any payment to her as punishment if she continued to align herself with Miriam Lynch in her claims against respondent. See Exhibit R-39.

As previously mentioned, respondent steadfastly maintained that he had advised Miriam during their October 16, 1990 conversation that the agreement called for weekly support payments to her son in the amount of \$150, as opposed to \$50. However, nowhere in his answer did respondent raise that defense and nowhere in the flurry of correspondence the two exchanged did that assertion appear. When asked why he had not provided Miriam Lynch with a copy of the agreement, respondent replied that he believed that she would receive a copy from one of the many other people to whom he had allegedly given a copy (none of whom shared a particularly good relationship with Miriam). Moreover, respondent testified, after Miriam Lynch threatened court action, he essentially made a conscious decision not to succumb to her bidding.

While respondent regretted the poor judgment he had admittedly exercised in making his dealings with Miriam Lynch so confrontational, he denied any attempt to deceive her and maintained that, given her allegedly difficult personality, any

approach on his part would have landed the same result.

* * *

The DEC found respondent guilty of unethical conduct. Specifically, the DEC found that respondent had intentionally misrepresented both the amount of the payment required by the partnership agreement and the entitlement to credits against the required payments, in violation of RPC 8.4(c). In that regard, the DEC noted that respondent had offered no proof or accounting of any alleged credits.

The DEC declined to find respondent guilty of a violation of RPC 8.4(c) for his refusal to give Miriam Lynch a copy of the partnership agreement. The DEC concluded that respondent had no duty to provide the agreement until such time as Miriam Lynch was appointed guardian ad litem for Tyrone. However, the DEC found that respondent's refusal to give Miriam Lynch a copy of the agreement "supports the finding that he intended to deceive and misrepresent the facts when he wrote the September 14, 1990 letter." Hearing panel report at 4.

The DEC recommended that respondent receive an admonition for his misconduct.

* * *

Upon a de novo review, the Board is satisfied that the DEC's finding that respondent was guilty of unethical conduct is clearly

and convincingly supported by the record. As found by the DEC, respondent misrepresented the amount of the payments required by the partnership agreement and the existence of credits against those payments. The latter misrepresentation was prompted by respondent's intent to reduce the amounts he was legally obligated to pay. The net effect of respondent's conduct was to defraud Lynch's minor son of sums rightfully due him.

Respondent retained money that rightfully belonged to a minor, knowing that the partnership agreement provided for no mechanism whatsoever for any such offsets or credits. Respondent's claim of entitlement to offsets is unworthy of belief. To this day, five years after the fact, respondent has made no attempt to document or quantify his alleged right to offsets and has offered no explanation for his failure to do so. The only logical inference is that respondent's claim of entitlement to offsets was nothing more than an after-the-fact justification for his unilateral decision to withhold payments to his partner's minor son. Indeed, the fact that he voluntarily and promptly paid the eldest son the total sum to which he was entitled further belies respondent's claim of entitlement to credits. The most likely reason for his decision to retain Tyrone's money was the unanticipated tax consequences of the partnership agreement or perhaps even a cash flow problem.

The DEC aptly characterized respondent's refusal to give Miriam Lynch a copy of the partnership agreement as evidence of an intent to deceive. Respondent essentially bought himself

additional time by his refusal to give Miriam Lynch a copy of the agreement. Also, by respondent's own testimony, he gained some sense of satisfaction by not "succumbing" to the demands of a woman whom he considered "difficult." That notwithstanding, respondent's conduct was inexcusable. He not only misrepresented the true facts to Miriam Lynch, but he also took his misrepresentations one step further by using them to deprive Lynch's minor son of funds, which respondent knew he was entitled to receive. Simply put, respondent perpetrated a fraud upon Tyrone.

Respondent's misconduct in this case can best be analogized to that of the attorney in In re Delventhal, 124 N.J. 266(1991). In that case, the attorney represented to his adversary that he would not use an order dismissing his adversary's complaint for failure to answer interrogatories in order to obtain the release of escrow funds. Following that representation, however, at the urging of his client, who was in dire financial straits, and after writing to his adversary in somewhat cryptic terms, the attorney presented the order to the title company holding the escrow. He then misrepresented that the order was a final order on which the title company could legally rely to release the escrow funds to him. Thereafter, five days after his adversary served him with a motion to vacate the order of dismissal, the attorney disbursed all of the funds to his client, with the exception of his fee. He did not inform his adversary that he had already used the order to obtain the release of the escrow until approximately two weeks after the adversary filed his motion to vacate the order of dismissal.

Thereafter, the adversary filed an emergent application to recover the funds. The attorney and the adversary entered into a consent order requiring a full accounting of the monies disbursed and the return of any recoverable funds. By then, however, the client had completely dissipated the funds disbursed to him. The attorney then returned to escrow his entire fee. The Court found that the attorney had engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c). The Court imposed a three-month suspension.

There are several factors that aggravated respondent's misconduct in this matter. First, respondent's conduct was motivated by sheer self-enrichment, unlike Delventhal's, whose actions were precipitated by his client's dire financial situation. Indeed, Delventhal returned to escrow his entire fee. Thus, Delventhal realized no financial gain whatever from his actions. In addition, respondent's greed acted to deprive a child of his father's bounty. Even more distasteful was the manner in which respondent chose to enrich himself. As the presenter aptly established, at the time respondent and Eugene Lynch entered into the partnership agreement, respondent was well aware of the financial situation in the office, of the mortgage payments he had made (allegedly in behalf of the partnership) and of the disparity between the amount of business respondent conducted and the amount of business Lynch was able to conduct on a day-to-day basis following the onset of his illness. Yet, he made no provision in the partnership agreement for any offset of these "expenses."

Instead, he waited until his partner died — a partner who undoubtedly reposed in respondent a great deal of trust by entering into such an agreement. To compound matters, to make his actions appear noble, respondent told the DEC a tale of reluctance to tarnish Lynch's name, when it is obvious that respondent purposefully waited for Lynch's death before taking any credits to preclude any possibility of challenge on Lynch's part. Finally, by his own admission, respondent's overall conduct vis-à-vis Miriam Lynch was calculated to annoy her. Unfortunately, the rights of a child were detrimentally affected in the process.

Based on the totality of the circumstances, the Board unanimously determined to suspend respondent for a period of three months. One member did not participate.

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

Dated: 11/18/96

By: 

Lee M. Hymerling
Chair
Disciplinary Review Board