

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-479

IN THE MATTER OF
WALTER V. WALTZ
AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)(1)]

Decided: November 18, 1996

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

Pursuant to R. 1:20-4(f)(1), the District XIII Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. Service of the complaint was made by regular and certified mail to respondent's current address. On two occasions, respondent was granted an extension of time to file an answer after contacting the hearing panel chair. Despite this fact, no answer was filed.

The formal complaint charged respondent with violations of RPC 1.5(a) (overreaching); RPC 1.15(a), (c), and (d) (failure to safeguard client properties and recordkeeping deficiencies); 8.1(b) (failure to cooperate with disciplinary authorities); and 8.4(c) (dishonesty, fraud, deceit, and misrepresentation).

The misconduct stems from respondent's representation of Catherine S. Bieg in a real estate

matter. Ms. Bieg was approximately eighty years old at the time of the representation. Upon signing a six-page retainer agreement, Ms. Bieg paid respondent an initial retainer of \$200. The retainer agreement stipulated that respondent would provide monthly billing statements to his client. The retainer also stated that respondent would be paid at the conclusion of the litigation by the trustee appointed by the court, should the court so order.

Thereafter, respondent received proceeds distributed as a result of the sale of the Bieg marital real estate, in the amount of \$145,794.67. Respondent deposited them in a trust account opened for that specific purpose at the Phillipsburg National Bank, in Phillipsburg, New Jersey. During the same period, in January 1990, respondent was asked by Ms. Bieg to appeal the court-ordered distribution. At the same time, on January 10, 1990, Ms. Bieg became a client of the firm of DeMasi & DeMasi, which respondent had only recently joined as an associate.

By July 1990, respondent determined to move to Spokane, Washington. By this point, he had taken funds totalling \$17,950 from the Bieg trust account. On July 10, 1990, he closed out the Phillipsburg bank account and transferred the remaining balance to Chemical Bank, New Jersey, N.A., also located in Phillipsburg, New Jersey. The ethics complaint charges that he did so in order to "temporarily conceal documentation that evidenced his previous unauthorized fee disbursements."

On August 1, 1990, respondent advised Ms. Bieg that he was relocating to Washington. He subsequently transferred her funds to Scott DeMasi, Esq. by issuing a check against the Chemical Bank account, in the amount of \$122,063.37. Respondent also issued another check to the DeMasi firm for fees he owed, in the amount of \$2,340.55. In addition, respondent issued a check to pay for the removal and storage of vehicles from the Bieg marital property.

A year later, DeMasi obtained the appropriate bank records from Phillipsburg National Bank

and discovered respondent's unauthorized disbursements. On July 8, 1991, DeMasi informed Ms. Bieg, who, in turn, contacted respondent and wrote the following:

When you left their law firm to move to Spokane, Washington, I assumed you would send me a bill. Instead, the enclosed escrow accounting shows an entirely different picture!!!

I am appalled you took it upon yourself to act as 'trustee guardian' and wrote checks to yourself in the amount of \$13,000¹ without my knowledge or consent or notifying DeMasi and DeMasi.

Only \$300 of the disbursed money was discussed as payment for transcripts.

Despite many requests, respondent failed to prepare an accounting of any kind until March 13, 1993. The billing reflected that respondent worked on behalf of Ms. Bieg some 332 hours between September 19 and November 2, 1989, 232 hours of which were spent "sorting and reviewing" files, papers or documents. The rate reflected in the accounting was \$65 per hour and the total fees due amounted to \$21,580 (Exhibit 15 to the complaint).

It appears that this billing may be a reconstruction of sorts, since respondent stated that he did not take any billing statements with him. Also, DeMasi was unable to locate any billing statements in the file. Furthermore, Exhibit 11, an August 1990 letter from respondent to Ms. Bieg regarding the DeMasi bill, makes no reference to fees owed to respondent for work performed by him on her file.

During the course of the representation, respondent never furnished Ms. Bieg with a billing statement or an accounting. Between January 23 and August 7, 1990, respondent disbursed a total of \$18,227.71 to himself from funds deposited in the Phillipsburg trust account, without Ms. Bieg's

¹The amount was actually in excess of \$18,000.

knowledge or consent. Finally, respondent gave no explanation for the disparity between the \$18,227.71 taken from the trust account and the \$21,580 supposedly owed to him as fees.

In addition, respondent failed to maintain a client ledger, cash receipts or disbursement journals, bank statements, check stubs or any canceled checks related to the Phillipsburg or Chemical Bank accounts. Respondent also failed to prepare or retain a record of the quarterly reconciliations. Finally, respondent failed to submit information requested by the Office of Attorney Ethics.

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The record contains sufficient evidence of respondent's unethical conduct. This leaves only the issue of appropriate discipline.

Conduct similar to that displayed by respondent has resulted in disbarment. See In re Ort, 134 N.J. 146 (1993) (disbarment for taking unfair and improper advantage of a client by obtaining a home equity loan without the client's authorization and using that loan to pay excessive and unauthorized legal fees).

A five-member majority of the Board determined to recommend disbarment. One member dissented, voting for a two-year suspension, with restoration to practice subject to restitution. Three members did not participate.

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

Dated: 11/13/96

By: 

Lee M. Hymerling
Chair
Disciplinary Review Board