

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-400

IN THE MATTER OF :
: :
JAMES S. WEBB, JR. :
: :
AN ATTORNEY AT LAW :
:

Decision of the
Disciplinary Review Board

Argued: January 31, 1996

Decided: July 15, 1996

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Respondent failed to appear, despite notice by publication.

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 discipline filed by Special Master David Dugan. The formal complaint charged respondent with four instances of knowing misappropriation of client funds, in violation of RPC 1.15 and RPC 8.4 (c). In addition, respondent was charged with abandonment of his law practice (RPC 1.16 (d)); lack of diligence (RPC 1.3); failure to communicate (RPC 1.4) and failure to cooperate with the disciplinary authorities (RPC 8.1(b)).

Respondent was admitted to the New Jersey bar in 1975. He has been temporarily suspended since February 22, 1995 on the basis of these pending misappropriation matters, his apparent abandonment of his practice, his continuing failure to cooperate with the pending disciplinary investigation and his failure to pay a fee arbitration award. He has no other disciplinary history. Respondent's current whereabouts are unknown. He did not appear at the hearing before the special master.

The facts are as set forth in the special master's report. Essentially, respondent was charged with knowing misappropriation of client funds in four different matters totalling almost \$21,000, all occurring between 1991 and 1994.

In one matter (Scollon), respondent deposited his clients' mortgage payments into his business account, instead of his trust account, at a time when his business account was overdrawn. He then almost completely exhausted those funds, within three months, for personal expenses and expenses unrelated to the clients' matter. The Scollons ultimately lost their condominium to foreclosure and eventually filed suit against respondent for the return of their funds. However, respondent never filed an answer to that suit and judgment by default in the amount of over \$16,000 was entered against him. That judgment remains unsatisfied.

Another matter (Murphy) was originally before the Board in February 1995 based on a recommendation for discipline filed by the District I Ethics Committee ("DEC") for violations of RPC 1.1 (a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4 (failure to keep his client advised) and RPC 8.1 (b) (failure to cooperate with

the disciplinary authorities). Respondent participated in that hearing. The Board determined to remand the case for consolidation with various other pending misappropriation matters. There, respondent deposited his client's settlement proceeds into his business account and then completely exhausted those proceeds, within seven days, for personal expenses or expenses unrelated to Ms. Murphy's case. When respondent appeared before the DEC, he testified that he did not know what had occurred with Ms. Murphy's settlement proceeds, but that he would look into the matter. This testimony occurred over three years after respondent had already converted those funds to his own use.

In another matter (Cape May County), respondent deposited settlement proceeds into his trust account, without his client's endorsement, and then proceeded to substantially deplete the settlement proceeds one month before the release was even signed. Again, respondent used these client funds for personal expenses and for expenses unrelated to that client's matter.

Finally, in the fourth matter (Easterly), a divorce matter, respondent deposited the proceeds of the sale of his client's residence into his trust account and properly disbursed a small portion of those proceeds to his client's wife. He did so, however, only after many repeated demands by the wife's attorney and only after he deposited in his trust account \$6,000 he had borrowed from his father. Respondent substantially depleted the balance of those funds for personal expenses and expenses unrelated to the Easterly's matter.

The Office of Attorney Ethics' ("OAE") auditor testified that the improper disbursements from respondent's trust account took the form of checks written to respondent's secretary for payment of her salary; to himself with notations such as "for kitchen cabinets;" to cash and, finally, to various other entities to cover respondent's golf trips. Moreover, the OAE auditor indicated that respondent had made several deposits to his trust account from non-client sources, ostensibly to attempt to replace what he had already improperly converted. These sources included a deposit from his father's checking account, transfers from respondent's business account and cash deposits. Respondent has made none of his clients whole.

The complaint also charged respondent with abandonment of his practice, in violation of RPC 1.16. Essentially, respondent "disappeared" in or about the Fall of 1994. Thereafter, on December 16, 1994, as a result of various complaints from clients, other attorneys and DEC representatives, assignment Judge Richard J. Williams entered an order appointing an attorney trustee to take possession and control of respondent's client files and bank accounts. The attorney trustee has not heard from respondent. The OAE's exhaustive efforts to locate respondent have proved unsuccessful. The OAE has been in touch with respondent's father, who apparently promised to make respondent aware of the charges pending against him. It should be noted, however, that there was some mention of these charges during the DEC hearing in the Murphy matter, in which respondent participated.

* * *

The Special Master found respondent guilty of knowing misappropriation in all four client matters as well as abandonment and of failure to cooperate with the disciplinary authorities. The Special Master recommended that respondent be disbarred.

* * *

Upon a de novo review, the Board is satisfied that the special master's findings that respondent was guilty of unethical conduct is clearly and convincingly supported by the record.

This is one of those cases where knowing misappropriation could not be clearer. This is not a deficient-recordkeeping case. There is no suggestion that respondent's records were in disarray or that his records had to be reconstructed in order to analyze their activity. On their face, the records established that respondent converted client funds to his own use and that he was aware of his misappropriation at all relevant times. Moreover, respondent obviously chose to misappropriate the funds of only those clients who would have little opportunity or reason to question the status of their funds. Murphy was a native and resident of Ireland. It was unlikely that she would telephone respondent on a regular basis. Cape May County, a public entity, did not even realize the funds had not been turned over until four years after the case had been settled. The Scollons were involved

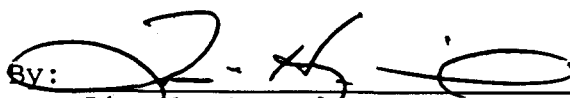
in a mortgage dispute that they obviously expected would take at least several months to resolve (they had given respondent checks to cover mortgage payments for at least four months). Finally, the Easterlys expected that the sale proceeds from their residence would have to remain in trust for a fairly long period of time until they could marshal all their assets and debts in order to fully and finally distribute the sale proceeds.

Respondent's misconduct warrants nothing short of disbarment, pursuant to In re Wilson, 81 N.J. 451 (1979). See also In re Cassidy, 122 N.J. 1 (1990) (attorney disbarred for abandonment of practice and knowing misappropriation). The Board so unanimously voted. One member did not participate.

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

Dated: _____

7/15/86

BY:  _____

Lee M. Hymerling
Chair
Disciplinary Review Board

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