Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-391

IN THE MATTER OF

LLOYD J. MANNING

AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 18, 1992

Decided: July 6, 1993

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

Respondent did not appear for oral argument[1].

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

This matter is before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics ("OAE"). R.1:20-7. The Motion is based on respondent's disbarment from the practice of law in the State of New York for the knowing misappropriation of client funds for his own use and benefit, and for failure to comply with the lawful requests of the Grievance Committee for the Second and Eleventh Judicial Districts, during the course of it's investigation.

[1] Respondent submitted an oral argument form, dated October 21, 1993, waiving his right to appear before Board due to a heart condition.

Respondent was admitted to the practice of law in New Jersey in 1986 and of New York in 1984. Respondent's disbarment originated from his representation of Mamie White and Ruth Anderson on the sale of their home. Pursuant to the contract sale, he was required to hold the buyer's $10,000 down payment in an escrow account until the closing. Instead, on, or about November 20, 1989, respondent deposited the $10,000 into his non-escrow business account at Manufacturer's Hanover Trust Company. The average balance on this account continually plummetted. In seven days time, the balance dipped to $3,747.63, and by February 1, 1990 the account had no more than $53.31. The withdrawals were all unrelated to the sale of the house.

A month later, on February 14, 1990, the closing was held. From his escrow account at another bank, Norstar Bank, respondent issued a check in the amount of $7,750 to his client. (The check amount represented the buyer's down payment of $10,000 minus respondent's $750 legal fee and $1,500 he was required to retain to insure that the house would be properly vacated.) The check was returned for insufficient funds, as respondent's escrow account never demostrated an average balance of more than $47,00 at any given time between November 17, 1989 and December 15, 1990.

Subsequently, by letter dated June 14, 1990, respondent was requested to appear before the Grievance Committee with all bank statements for his escrow account up to said date beginning January 1989. Additionally, he was asked to produce all other escrow account records as required by § 691.12 (c) of the Rules Governing

the Conduct of Attorneys of the Appellate Division, Second Judicial Department. On July 11, 1990, however, he appeared before the Committee with what amounted to a single escrow account statement, for the period between May 18, 1990 and June 18, 1990. When asked about the whereabouts of the other outstanding records, he agreed to provide the documents the following week. Although respondent was sent a reminder by the Grievance Committee by certified mail, dated August 6, 1990, respondent never forwarded any of the other bank statements requested.

Hence, on November 26, 1990, the Grievance Committee filed a Petition with the Supreme Court of the State of New York Appellate Division, Second Judicial Department, requesting that respondent be disciplined, upon finding him guilty of professional misconduct pursuant to § 691.2 of the Rules of the New York court. The charges were based on the uncontroverted evidence that he wrongfully converted client funds entrusted to him, and that he failed to comply with the lawful demands of the Grievance Committee.

Consequently, on November 27, 1990, the New York court entered an Order to Show Cause on December 11, 1990 why an Order pursuant to § 691.4 (1)(1)(i) and (iii) of the Rules of the court should not be issued, seeking respondent's suspension from the practice of law.

On April 23, 1991, respondent was temporarily suspended pending the outcome of the disciplinary proceedings based on the aforementioned charges. Soon thereafter, on June 6, 1991,

respondent freely and voluntarily executed an Affidavit of Resignation. Inasmuch as he acknowledged the charges brought against him, both of conversion of client funds and of failure to cooperate with attorney disciplinary authorities, he stated his inability to defend himself successfully on the merits of those charges.

Ultimately, on September 23, 1991 the Order of Disbarment was entered. Furthermore, violation of R.1:20-7(a), respondent failed to advise the OAE of his disbarment in New York. The OAE requests that reciprocal discipline issue and that respondent be disbarred.

CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board recommends the granting of the OAE's motion, although the result should follow more closely to the discipline imposed by the New York authorities. Respondent has not disputed the factual findings of the New York Supreme Court, Appellate Division. Hence, the Board adopts those findings. 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 face 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 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.]

Traditionally, unless a good reason exists to the contrary, the disciplinary actions of New Jersey will customarily comport with that imposed in the other jurisdiction. In re Kaufman, supra, 81 N.J. at 303.

Respondent was disbarred in New York. Contrary to the practice in New Jersey, however, where disbarment is permanent, an attorney in that jurisdiction may seek reinstatement seven years after the effective date of disbarment. 22 N.Y.C.R. § 603.14. See also In re Stier, 112 N.J. 22, 28 (1988). Hence, the OAE requested that respondent be permanently disbarred under R. 1:20-7(d)(5), as a knowing misappropriation of client funds, invariably results in permanent disbarment in New Jersey. In re Wilson, 81 N.J. 451 (1979). In essence, seeking to impose a greater quantum of discipline from that imposed in New York.

In this instance, however, the Board majority did not find that the proceedings of the New York court demonstrated any of the predicates set forth in R. 1:20-7(d), to recommend that a different form of discipline be imposed from that imposed in New York. Accordingly, as respondent may seek reinstatement in New York, the Board recommends that similar discipline issue in New Jersey, namely, respondent be suspended from the practice of law for seven years and until such time respondent has gained reinstatement in

New York, In re Pavilonis, supra, 98 N.J. at 37. Furthermore, if respondent applies for reinstatement in New York, the Board recommends consideration of a future application for restoration in New Jersey. In re Stier, supra, 112 N.J. at 28. In mitigation, the Board majority noted respondent's misconduct related to a life saving medical treatment for himself.

Two members of the Board recommended that respondent be permanently disbarred, in accordance with the OAE's recommendation under R. 1:20-7(d)(5), requesting substantially different discipline. The minority believed that respondent's misconduct was indistinguishable from other attorney discipline cases where there has been a knowing misappropriation of client funds and permanent disbarment has issued. Moreover, the minority made no allowances for mitigating circumstances. In re Wilson, supra, 81 N.J. at 457; In re Hein, 104 N.J. 297 (1986); In re Ryle, 105 N.J. 10 (1987). On of the members did not participate.

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

Dated: 7/6/1993 By: Raymond R. Trombadore
Chair
Disciplinary Review Board