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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-259

IN THE MATTER OF :
A. LOWEN HANKIN :
AN ATTORNEY AT LAW :
_____ :

Decision of the
Disciplinary Review Board

Argued: January 31, 1996
Decided: June 19, 1996

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Marc A. Citron appeared on behalf of respondent.

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

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

Respondent was admitted to the New Jersey bar on December 22, 1992. He has no prior ethics history.

Respondent admitted the facts charged in the complaint. Essentially, on or about December 15, 1992, respondent was a managing partner in Bay Properties Company ("Bay Properties"), a real estate ownership and development company. That entity had

earlier acquired title to a boat that had been abandoned in a marina also owned and/or operated by Bay Properties. Following Bay Properties' acquisition of the title to the boat, its dockmaster negotiated the sale of the vessel to a third party for \$35,000. The purchaser wanted a receipt reflecting a purchase price lower than that actually paid. It is not clear whether that was made a condition of the purchase.

On or about December 15, 1992, the purchaser issued a check payable to "Hankin and Shield Attorneys at Law." Apparently, in anticipation of his impending admission to the bar, respondent had earlier set up an attorney trust account. Because respondent viewed the sale proceeds as client money — or money that did not belong to the law firm — he deposited the check into his trust account. Exhibit C. On that same date — seven days before respondent was sworn into the New Jersey bar (but after he was notified that he had passed the bar exam) — respondent issued a receipt to Mr. Hoffman showing a purchase price of \$15,000 (\$20,000 less than the actual purchase price). That receipt bore the letterhead of respondent's business and not of his law firm. While respondent denied that Mr. Hoffman had articulated any particular reason why he wanted the sale receipt to reflect a lower purchase price, he admitted that he could "imagine two or three reasons as to why" and that he "had [his] suspicions." T19-20.¹ During examination by the hearing panel members, respondent acknowledged

¹ T denotes the transcript of the DEC hearing on April 6, 1995.

that the State of New Jersey was a third-party-in-interest to the transaction, presumably because it would have collected more sales tax on the actual purchase price.

Although respondent maintained that his issuance of the fraudulent receipt was a common practice in the boat sale business, he expressed remorse for his lapse in judgment and recognized his responsibility to act honestly in all transactions, regardless of whether he was acting in a representative capacity. He attributed his poor judgment to his misperception of the higher ethical standards imposed upon attorneys. Respondent testified:

I was a lawyer, but I was -- my primary focus at that point was operating a business, and the danger of that is that what may be right and wrong in the business place or in the marketplace is a different set of standards than lawyers are supposed to uphold, and I've learned the importance of that distinction very well here.

[T24]

Respondent further testified that he did not personally benefit from his misconduct (aside from sharing any incidental profit Bay Properties may have derived from the sale). There is no evidence to suggest that respondent took advantage of the falsified receipt to claim less income on any personal or corporate tax returns he may have filed. Similarly, the record does not reveal whether the boat purchaser actually used that receipt to evade sales tax.

Both the OAE and respondent urged the imposition of an admonition for respondent's conduct. In support of that particular

discipline, the OAE cited In re Kasdan, 115 N.J. 472 (1989) and In re Lewis, 138 N.J. 33 (1994).

* * *

The DEC found respondent guilty of a violation of RPC 8.4 (c) for his issuance of the falsified receipt. Because respondent was an applicant to the New Jersey bar on the date of misconduct (and because he had been scheduled to be sworn-in only days later), the DEC found that the disciplinary system had jurisdiction to proceed against him. The DEC recommended that respondent be admonished for his misconduct.

* * *

Initially, the Board agrees with the DEC's determination of disciplinary jurisdiction over respondent, who was scheduled to be admitted to the bar seven days after the date of his misconduct. See In re Scott, 105 N.J. 457 (1987) (public reprimand of an appellate division law secretary, who was scheduled to be admitted to the bar nine days after she had been arrested for possession cocaine). After making this initial determination, and upon 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. Indeed, respondent admitted that, in his capacity as a businessman, he issued a falsified

receipt to the boat purchaser suspecting that the purchaser would use that receipt to evade the payment of sales tax to the State of New Jersey. The fact that respondent may not have been acting in a representative capacity at the time of his misconduct did not relieve him of his responsibility to act honestly in all transactions. "A member of the bar should not act dishonorably in a business venture, even if such conduct comports with prevailing practices of the business world." Moreover, "that standard obtains even in the absence of an attorney-client relationship." In re Urbanick, 117 N.J. 300,306 (1989), citing In re Silverman, 113 N.J. 193,210 (1988).

Particularly troublesome is the fact that respondent issued the falsified receipt suspecting that the purchaser would use it to defraud the State of New Jersey by evading sales tax. That the purchaser might not have actually used the receipt to defraud the State (perhaps the purchaser even reconsidered and paid sales tax on the actual purchase price) is of little consequence. Indeed, respondent's issuance of the falsified receipt alone constituted, at least, an attempt to violate the Rules of Professional Conduct as well as the criminal law. The lack of a criminal conviction, however, does not preclude a finding of ethics impropriety.

In In re Lewis, 138 N.J. 33 (1994), cited by the OAE, the Court admonished an attorney who, as a party in a municipal court proceeding, offered into evidence a falsified receipt that bore a suspicious date of alleged repairs made to a building he owned.

In mitigation, the Court considered that the municipal court

judge had not been actually deceived by respondent's conduct, that no one had suffered any injury and that respondent enjoyed an unblemished disciplinary record since his admission to the bar twenty-eight years earlier.

More serious discipline has been imposed in other cases. See, e.g., In re Poreda, 139 N.J. 435 (1995) (three-month suspension for an attorney who forged an insurance identification card and then presented that card to a police officer and to a municipal court judge when he appeared in municipal court to answer charges that he had driven an uninsured vehicle); in In re Franklin, 71 N.J. 425 (1976) (one-year suspension for an attorney who, in his capacity as president of a corporation, submitted fraudulent expenses on his weekly reports over a seven-month period.) and In re Gassaro, 124 N.J. 395 (1991) (two-year suspension for an attorney who had been convicted of conspiring to defraud the Internal Revenue Service ("IRS") and of making false statements to the IRS. The attorney submitted two letters to the IRS falsely representing that his client had not collected any portion of a bad debt).

Although respondent's misconduct takes on certain characteristics of all of these cases, the facts of this matter more closely parallel those in Franklin, Supra, 71 N.J. 425 (1976), in that both matters involved the falsification of documentation by attorneys acting in their capacity as businessmen and not attorneys. Respondent's misconduct, however, was not as pervasive as Franklin's, which continued over a period of several months. Moreover, Franklin's conduct was motivated by substantial self-


benefit. Although it is true that respondent profited from the sale of the boat by virtue of his partnership interest, there is no evidence to suggest either that the sale was contingent upon respondent's issuance of the false receipt or that respondent benefitted to any greater extent by his issuance of that receipt.

The Board is convinced that respondent's misconduct was aberrational and the product of a misunderstanding of his ethical obligations as an attorney. Moreover, he committed his misconduct at the outset of his legal career, without the benefit of professional experience or ethics guidance. In addition, respondent exhibited a genuine remorse for his conduct, while simultaneously recognizing the higher ethical standards imposed on members of the bar. He made no attempt to justify his misconduct. Finally, respondent was completely forthright with both the OAE during its investigation and the DEC during hearing on the matter.

Under the totality of the circumstances, the Board unanimously determined to reprimand respondent for his violation of RPC 8.4(c). The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for appropriate costs.

Date:

6/19/96



Lee M. Hymerling
Chair
Disciplinary Review Board