SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-035

IN THE MATTER OF	:
JAMES E. LYNCH	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 20, 1996 and April 17, 1996

Decided: September 16, 1996

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

Respondent appeared pro se on March 20, 1996. Respondent did not appear on April 17, 1996, despite proper notice of the hearing.

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

This matter was before the Board based on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14, following respondent's disbarment in the State of Pennsylvania.

At the hearing of March 20, 1996, respondent requested an opportunity to submit a brief to the Board. Respondent explained that, due to a flood that destroyed his home, he had misplaced his copy of the file and, as a result, was not aware of the hearing until one week before. After considering the arguments of both

parties on this issue, the Board allowed respondent to submit a brief within two weeks of March 20, 1996. The Board carried the matter to April 17, 1996. Respondent did not file a brief or appear at the April hearing.

Respondent has been a member of the New Jersey bar since 1987 and the Pennsylvania bar since 1978. On October 30, 1995, the Supreme Court of Pennsylvania issued an Order accepting respondent's disbarment by consent (Exhibit A-2 to OAE's letter-brief). The order was based on respondent's resignation as well as the Statement of Facts in Support of the Resignation of James E. Lynch (Exhibit A to OAE's letter-brief).

Respondent failed to notify the OAE of his Pennsylvania disbarment, in violation of R. 1:20-14(a)(1).

In the Statement of Facts in Support of the Resignation, respondent admitted that he practiced law while suspended in Pennsylvania and violated Pennsylvania's rules governing suspended attorneys. Pa.R.D.E. 217 required respondent to notify all clients of his suspension. Although respondent was suspended from the practice of law in Pennsylvania for a period of three months on November 10, 1993, he continued his professional relationship with and/or failed to notify clients Stephnowski, Knight, Hedquest, Templeman, Haulton, and Muson of his suspension. Also, respondent did not notify the adverse party in the case of Asare V. Georgianna that he had been suspended.

More serious was respondent's conduct in the Hardigree matter. On September 23, 1992, respondent settled an uninsured motorist

claim for Hardigree for $21,000. On October 2, 1992, respondent received a check for the settlement and deposited it in the United Jersey Bank, violating the requirement to maintain those funds in a Pennsylvania bank. After fees and costs were deducted, the amount of $12,731 should have been held in trust for Mr. Hardigree. However, on December 31, 1992, the account balance was only $1,474.49, or $11,256.51 below the amount due to Mr. Hardigree. When the account balance rose above $12,731, between January 19 and May 3, 1993, it was only because of deposits of funds belonging to other clients. Nine months after his receipt of the settlement check, respondent finally paid Mr. Hardigree from an account at the Pennsylvania Corestates Bank. The funds used to pay Mr. Hardigree were those held in behalf of another client, Ms. Willer.

Respondent admitted that he accepted a settlement check in Ms. Willer's case, on July 7, 1993, for $14,000. The next day, July 8, 1993, respondent transferred $5,000 to his business account from the trust account, with no specific designation or notation. The funds ostensibly represented fees and costs. After this transfer, the balance remaining in the trust account was $9,010, $8,278.98 of which had been calculated to be Ms. Willer's money. Two weeks later, on July 19, 1993, respondent wrote two checks to Mr. Hardigree totalling $12,731, leaving the balance in Ms. Willer's account at a negative $3,721. On July 20, 1993, respondent deposited $4,000 in the account, bringing the balance to $279. Respondent never distributed to Ms. Willer any portion of the $8,228.98 that was to be held in her behalf because he did not have

sufficient funds in the trust account between on or about July 7, 1993 and February 5, 1994 (except for a five-day period between October 8, 1993 and October 13, 1993).

Finally, respondent issued checks from the trust account to individuals (Brown and Hamilton) for whom he was not holding trust funds. Respondent did not obtain permission for these withdrawals from any person for whom he held funds and offered no defense or explanation for his misuse of client funds.

The OAE urged the Board to recommend respondent's disbarment for his knowing misappropriation of client funds. Alternatively, the OAE contended that, if it was found that respondent's conduct did not amount to knowing misappropriation, disbarment was still appropriate because of respondent's other serious ethics infractions and his past disciplinary history. The OAE's mention of past discipline related to In re Lynch, 132 N.J. 269 (1993). In that case, the Court suspended respondent for three months after he created a conflict of interest in a real estate case; grossly neglected the matter; failed to deposit cash received in a trust account; and failed to disclose to a judge that a closing had already taken place, allowing the judge to proceed on mistaken assumptions.

* * *

Upon a review of the full record, the Board recommends that the OAE's motion be granted. The Board adopted the factual findings of the Pennsylvania Supreme Court. In re Pavilonis, 98 N.J. 36, 40 (1984); In re Tumini, 95 N.J. 18, 21 (1979); and In re Kaufman, 81 N.J. 300, 302 (1979). Respondent's misuse of client funds violated RPC 1.15 and RPC 8.4(c).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which directs that:

> ... 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:
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> (A) the disciplinary... order of the foreign jurisdiction was not entered;
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> (B) the disciplinary... order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary... order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) 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
>
> (E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D).

As to paragraph (E), although respondent was disbarred in Pennsylvania, a disbarred Pennsylvania attorney may seek

reinstatement five years after the effective date of disbarment. See Pa.R.D.E. 218(b) and In re Pavilonis, supra, 98 N.J. 36. A five-year suspension, however, does not sufficiently address respondent's misconduct, which involved knowing misappropriation and other serious ethics violations. Knowing misappropriation is sufficient in and of itself to mandate disbarment. In re Wilson, 81 N.J. 451 (1979). Since the record supports the conclusion that respondent knowingly misappropriated more than $8,000 from client Willer and more than $11,000 from client Hardigree, the Board unanimously recommends that he be disbarred. Obviously, in light of the required application of the Wilson rule, the Board need not reach the issue of discipline for the balance of respondent's ethics offenses.

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

Dated: 9/16/96

LEE M. HYMERLING
Chair
Disciplinary Review Board