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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-218

IN THE MATTER OF :
EDWARD J. MANGOLD, :
AN ATTORNEY AT LAW :

Decision

Argued: September 18, 1996

Decided: November 20, 1996

Robert A. Ballou, Jr. appeared on behalf of the District IIIA Ethics Committee.

Respondent waived appearance for oral argument before the Board.

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 the District IIIA Ethics Committee (DEC). The facts were stipulated during the DEC hearing.

The complaint charged respondent with misconduct in connection with an estate matter. Specifically, he was charged with violation of RPC 1.1 (presumably section (a), gross neglect), RPC 1.8 (conflict of interest: prohibited transactions), RPC 1.15 (safeguarding property) and RPC 4.1 (truthfulness in statements to others). The hearing panel stated that it considered only the alleged violation of RPC 1.8(a)(1) "to have sufficient factual basis to [pursue]."

Although the hearing panel report referred to an answer filed by respondent's counsel, none was included in the record.¹

Respondent was admitted to the practice of law in New Jersey in 1975. During the time relevant to the within allegations, he maintained an office in Brick, Ocean County. Respondent no longer practices law in New Jersey. He currently operates a bed-and-breakfast facility in Vermont.

Respondent has no history of discipline.

As noted above, the presenter and respondent's counsel entered into a stipulation of facts. The stipulation is set forth in the DEC transcript, as follows:

Respondent was the attorney and co-executor of the estate of Margaret Hackett, who passed away in January 1991. Respondent drafted and Ms. Hackett executed a will on February 25, 1988 and a codicil on May 24, 1990. The grievant in this matter is a beneficiary of Ms. Hackett's estate. The record is silent about the specific allegations of the grievance.

Respondent prepared the required releases and refunding bonds, which were executed and returned by the beneficiaries. Indeed, there are no allegations of misconduct in connection with respondent's handling of the estate.

Ms. Hackett's estate included fifty-four pieces of furniture. At undisclosed times, Ms. Hackett prepared a series of lists naming the recipients of certain furniture. Not all pieces of furniture were mentioned on the lists.

¹ The exhibits admitted into evidence during the DEC hearing, R-1 through R-8, were lost before the matter was transmitted to the Board. The record does not explain why no copies were available or sought.

After Ms. Hackett passed away, respondent took for his own benefit nine pieces of furniture that were not on the lists. The remaining undesignated items were auctioned off among the beneficiaries. Respondent transported the furniture to his bed-and-breakfast establishment in Vermont, removing the items "from this jurisdiction prior to the final accounting or Court approval in regards to the administration of the estate." According to respondent, Ms. Hackett had verbally given him the nine pieces of furniture. He conceded that he had "no specific written authority by decedent" to take the furniture.

In addition to furniture, Ms. Hackett's estate included a stamp collection, which was not the subject of a specific bequest in her will. After Ms. Hackett passed away, respondent took three stamps, contending that Ms. Hackett had verbally made a gift of the stamps to him. Again, there was nothing in writing confirming the gift. Respondent took the stamps before they had been appraised.

There was discussion at the DEC hearing concerning respondent's view of the gifts from Ms. Hackett:

[Panel Member]: The other thing was that I understand that the respondent believed that this was an inter vivos gift or a gift during [Ms. Hackett's] lifetime, the decedent's lifetime.

[Respondent's Counsel]: Correct.

[Panel Member]: He thought that she had given these items during her life, so that it would not necessarily be part of the estate. Do I understand that correctly?

[Respondent's Counsel]: That is correct.

[Panel Chair]: [Respondent] is present in the room, for the record, so you can answer either through your attorney or directly. Did you believe it to be an inter

vivos gift or did you believe her to be giving you a verbal bequest to be acted on after her death?

* * *

[Respondent's Counsel]: I'm sure it was an intent that there was an oral bequest to be taken. He wasn't going to take the furniture out of the house that's for sure.

[Respondent]: During her lifetime.

[Respondent's Counsel]: But she says that, [respondent], you like this piece, this is a nice piece and you can have it when I die.

[T10/6/94 21-22]

Ms. Hackett's estate became the subject of protracted litigation regarding the distribution of the estate assets. By court order, respondent was directed to return the furniture and stamps to the estate. Respondent ultimately purchased the three stamps from the estate for their appraised value, \$1,900. Respondent returned the furniture, which was auctioned off for the heirs' benefit.

Respondent's counsel pointed to a number of mitigating factors: (1) the issues raised before the DEC were considered by the court over three days of hearings, at the end of which the court "approved everything that was done" and awarded respondent fees as executor and attorney; (2) respondent did not dispute the court's order that he pay for the stamps and return the furniture; (3) this was a complex estate with thirty-two beneficiaries, "inter-family dispute" and complicated distribution; respondent wrote 132 letters in connection with the administration of the

estate; (4) respondent has a "new life" in Vermont and has no intention of returning to New Jersey to live or work; (5) respondent acknowledged that he exercised bad judgment in removing the items in question from the estate prior to the final adjudication, but he did so based on the decedent's representations to him; (6) after the final court order, grievant signed a refunding bond, discharging and releasing both the co-executor and respondent from any responsibility; and (7) respondent removed the furniture from Ms. Hackett's house in full view of the beneficiaries of the estate; respondent did not take the items "secretly" or with "dishonest intent."

The parties stipulated that a reprimand would be appropriate discipline.

* * *

The DEC found that respondent violated RPC 1.8(a)(1), reasoning that the other allegations in the complaint were not supported by the evidence. The DEC did not find "that the Respondent acted with malice or with the intent to secretly or illegally remove items from the Estate to the detriment of named beneficiaries," noting that respondent removed the property in plain view of at least one of the beneficiaries. The DEC went on to state that

. . . if the Respondent were not an Attorney at Law, the standard of conduct which we as a society apply to laymen would not have subjected the Respondent to criticism, much less prosecution. It is reasonable to

believe that the decedent verbally bequeathed certain items to the Respondent, however the standards imposed upon practitioners of law mandate that a writing establishing the decedent's intent should have been prepared to support a practitioner's [sic] actions, such as the Respondent's actions in this case.

The Respondent chose to place himself in a position where he acted in a fiduciary capacity as well as allowing himself to benefit personally from the Estate, and therefore a higher standard must be adhered to.

The DEC determined that a reprimand was appropriate, based on the recommendation of the presenter and respondent's acceptance of this form of discipline.

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. The Board, however, disagrees with the DEC's finding that respondent violated RPC 1.8(a)(1), the rule governing business transactions with clients. RPC 1.8(c) is more on point. That subsection provides that an attorney who drafts a will cannot be a beneficiary unless he or she is related to the testator. Here, it is true that there was no writing memorializing the bequest to respondent. Thus, while the letter of the rule was not violated, its spirit was. The purpose of the rule is to avoid any appearance of coercion or undue influence on the part of the attorney. Clearly, respondent's actions raise that appearance.

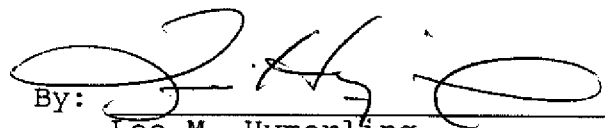
The Board unanimously determined that a reprimand is sufficient discipline in this matter. Indeed, it seems that

respondent, who had a standing friendship with Ms. Hackett, showed monumental bad judgment, rather than venality. See In re Polis, 136 N.J. 421 (1994) (public reprimand imposed where an attorney prepared a will for an elderly client, giving the bulk of her \$500,000 estate to the attorney's sister, creating a conflict of interest).

One other point warrants mention. In his rather impassioned correspondence with the Board, respondent has expressed his unhappiness with the excessive delay in the DEC's disposition of this matter. Indeed, although the hearing was held on October 6, 1994, the panel report was not issued until March 1, 1996.² In light of this unreasonable and unexplained delay, respondent's level of frustration with the system is easily understandable.

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

Dated: 11/22/96

By: 
Lee M. Hymerling
Chair
Disciplinary Review Board

² According to the investigative report, Exhibit C-2, the DEC delayed its investigation in this matter, pending the final court order in connection with the estate. The order was entered in June 1993. That fact, however, does not explain the delay in connection with the hearing panel report.