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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-400

IN THE MATTER OF

JOHN W. MORRIS

AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)(1)]

Decided: September 2,1997

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

Pursuant to R. 1:20-4(f)(1), the District IIIB Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. Service of the complaint was made by certified mail and regular mail at his address listed in the New Jersey Lawyers' Diary and Manual. The return receipt card indicated acceptance on August 15, 1996. The regular mail was not returned. The complaint was again served upon respondent by certified mail and regular mail at his home address. The return receipt card indicated delivery on August 23, 1996. The signature on the return receipt card is not fully legible, but appears to be that of respondent. Again, the regular mail was not returned.

Respondent was admitted to the New Jersey bar in 1981. On March 21, 1995, respondent was temporarily suspended by Order of the Supreme Court upon the petition of the OAE, based on information regarding count one of the complaint.

The formal complaint charged respondent with violations of RPC 1.15 (knowing misappropriation), RPC 8.4(c) (conduct involving dishonesty, deceit or misrepresentation) and In re Wilson, 81 N.J. 451 (1979) in the following four matters.

Count One- Arline Matter

Respondent represented Myrtise Arline in several Chapter 13 bankruptcy actions filed in the U.S. Bankruptcy Court for the District of Camden. In March 1994, respondent contacted Arline and requested that she provide him with "as much money as possible" for payment of the mortgage loan on her residence, inasmuch as he had "worked out a deal" with the mortgage company. In compliance with the request, Arline gave respondent a certified check in the amount of $5,700. Upon receipt of the funds, respondent neither deposited the check into his trust account, nor rendered payment to the mortgage company. As a result, Arline's house was sold at a sheriff's sale on December 2, 1994.

On March 10, 1995, during an interview with a representative of the OAE, respondent admitted that he had taken the $5,700 and deposited it into an account separate from his attorney trust account. He claimed that he was entitled to a fee of $4,100 from that account and admitted that he had converted the balance of $1,600 to his own use, without his client's knowledge or authorization. He subsequently refunded $4,600 of the $5,700 to Arline.

Count Two- Merlino Matter

Sherry Merlino retained respondent to represent her in connection with an impending sheriff's sale of her residence. Respondent advised Merlino that a minimum payment of $10,000 was required in order to halt the foreclosure process. As requested, on December 23, 1993, Merlino gave respondent a treasurer's check in the amount of $10,000, made payable to respondent. On December 27, 1993, respondent deposited the check into his personal checking account. Thereafter, on January 4, 1994, respondent issued a $10,000 check to himself against his personal checking account. Respondent never made payment to the mortgage company. Instead, he used the funds for his own purposes.

Count Three- Bryant Matter

Respondent represented Sandra Bryant in connection with a pending foreclosure action against her home. Respondent advised Bryant that she would need to pay $43,000 in order to forestall the foreclosure. On May 24, 1993, Bryant gave respondent a check in that amount, which respondent deposited into his attorney trust account. In June 1993, respondent issued two checks against the trust account, payable to cash, in the amounts of $5,209 and $34,836.98, which he then used for personal purposes. Thereafter, on July 29, 1993, respondent issued trust account check #1001 payable to himself in the amount of $3,500, which he again used for personal purposes. The mortgage company never received any payment for Bryant's mortgage.

Count Four- Gaskill Matter

Respondent represented Philomena Gaskill in connection with a pending foreclosure action against her home. Between September 17, 1993 and May 2, 1995, Gaskill gave respondent a total of $19,000, which was to be paid to the mortgage company to avoid foreclosure. Respondent never made any payments to the mortgage company. Instead, he converted all funds for his own use without Gaskill's consent or knowledge. The last payment made by Gaskill – a check for $7,000 dated May 2, 1995 – was received and cashed by respondent subsequent to his temporary suspension on March 28, 1995 in connection with the Arline matter.

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The record contains sufficient evidence of respondent's unethical conduct.

This leaves only the issue of appropriate discipline. "[M]aintenance of public confidence in this Court and in the bar as a whole requires the strictest discipline in misappropriation cases." In re Wilson, 81 N.J. 451, 461 (1979). See also In re Barlow, 140 N.J. 191 (1995) (disbarment for knowing misappropriation of $2,800); In re Noonan, 102 N.J. 157 (1986) (disbarment for knowing misappropriation involving nine matters); In re Hein, 104 N.J. 267 (1986) (disbarment for knowing misappropriation of about $1,400). Clearly, disbarment is the only appropriate result in knowing misappropriation cases.

Here, respondent not only exhibited a disregard for the disciplinary system, as evidenced by his default, he has also admitted that he knowingly misappropriated at least $1,600 in the Arline matter. Therefore, on the basis of count one alone, respondent must be disbarred. Moreover, it is clear that the allegations contained in the remaining counts of the complaint have also been admitted by default. Thus, in total, respondent has knowingly misappropriated $77,700. Accordingly, disbarment is the only appropriate result in this case.

In light of the foregoing, the Board unanimously determined to recommend that respondent be disbarred. One member did not participate.

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

Dated: 9/2/97

LEE M. HYMERLING
Chair
Disciplinary Review Board