Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-128

IN THE MATTER OF :
:
ARTHUR H. SORENSEN, :
:
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 26, 1990

Decided: October 23, 1990

Paula T. Granuzzo appeared on behalf of the Office of Attorney Ethics.

William F. Dowd appeared on behalf of respondent, who was also present.

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

This matter is before the Board based upon a disciplinary stipulation executed by the Office of Attorney Ethics and respondent, whereby respondent admitted the factual allegations set forth in the ethics complaint, waived a hearing before the district ethics committee, and agreed to proceed to hearing before the Board for the sole purpose of determining the extent of the discipline to be imposed.

The facts are as follows:

Respondent, Arthur H. Sorensen, was admitted to the New Jersey bar in 1978. He maintains an office for the practice of law at 98 First Avenue, Box 330, Atlantic Highlands, Monmouth County.

On December 14, 1988, an auditor from the Office of Attorney Ethics conducted a random compliance audit of respondent's books and records. The audit disclosed that respondent maintained an interest-bearing special trustee account. During a period of almost three years, from January 1986 through November 1988, respondent earned a total of $13,403 in interest in client funds in this account. As of November 9, 1988, all interest, with the exception of $703.01, had been either disbursed to respondent for his business account or utilized to offset bank charges.

Respondent explained to the OAE auditor that the funds deposited in that account consisted of clients' real estate deposits on certain transactions. Respondent maintained a separate ledger book detailing the clients' funds in the account. In addition, an interest ledger card was set up to record the interest earned and any disbursements or charges against the interest. The interest was disbursed periodically when respondent drew checks payable to himself, which checks were usually deposited into his business account.[1] According to respondent, he believed he was entitled to the interest to offset the administrative costs of maintaining the records for the accounts. He explained that the clients had the option of depositing their funds into a separate interest-bearing trust account, where they would receive full interest. In that case, respondent would charge $100 for that service.

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[1] Respondent's income tax returns for the years 1986 through 1988 show that respondent reported as income the interest earned on client trust funds during the relevant period.

Respondent admitted that he was not aware of Opinion 326, 99 N.J.L.J. 298 (1976), providing that "any interest or accretion is the property of the client."

CONCLUSION AND RECOMMENDATION

Upon a full review of the record, supplemented with oral argument, the Board concludes that the evidence clearly and convincingly establishes that respondent's conduct was unethical.

The Court recently (July 11, 1989) addressed an identical factual pattern in Matter of Goldstein, 116 N.J. (1989).[2] Like respondent, the attorney in Goldstein maintained an interest-bearing trust account. None of the interest was turned over to the clients. Instead, between 1982 and 1986, the attorney withdrew the sum of $25,000 in interest monies and deposited it in either his business account or in a money market account. For those clients who specifically requested that their funds earn interest, the attorney opened separate interest-bearing accounts. He contended that he was unaware of Opinion 326. Following an audit by the OAE, he agreed to calculate the accrued interest and to make prompt restitution to his clients. Because the attorney was unaware of Opinion 326, the Court was unable to find that he had knowingly misappropriated client funds. There was no clear and convincing proof that he knew that his use of the accrued interest was

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[2] The parties agreed, in the disciplinary stipulation, that the principles articulated in Goldstein apply to this matter.

improper. In light of the fact that (1) Goldstein was a matter of first impression; (2) the attorney had an unblemished ethics record for 20 years; (3) the attorney cooperated with the auditor and the subsequent proceedings; (4) the attorney candidly admitted his wrongdoing upon being apprised of Opinion No. 326; and (5) the attorney made full restitution to his clients, the Court imposed only a public reprimand, with a warning to the bar that, in the future, similar misconduct would be met with harsher discipline. The warning is inapplicable to respondent, however, inasmuch as his conduct preceded the Goldstein opinion.

At the Board hearing, respondent's counsel conceded that the facts of this matter are identical to those of Goldstein. He argued, however, that several mitigating factors militate against a public reprimand. First, the amount of interest earned by Goldstein ($32,000) was two- and one-half times greater than the amount kept by respondent ($13,000). Second, some months had elapsed between the OAE's directive that Goldstein make prompt restitution to the clients and his compliance therewith. Third, because respondent represents at least one public body, the imposition of a public reprimand will bring harsh consequences to him through the loss of that client and its accompanying financial injury.

The Board is not persuaded that the factors enumerated above set respondent's conduct apart from that exhibited by Goldstein: first, the amount of interest earned — great or small — is irrelevant to a finding of unethical conduct; second, Goldstein's

failure to comply immediately with the OAE's directives was the result of a misunderstanding on his part; lastly, while the Board is sympathetic to respondent's potential loss of a client and concomitant pecuniary loss, this factor cannot be determinative of the level of discipline to be recommended.

In view of the foregoing, the requisite majority of the Board recommends that respondent receive a public reprimand. One member would impose a private reprimand. Additionally, the Board recommends that respondent be required to turn over forthwith to the IOLTA fund all monies kept by him as interest accrued on client funds in his special trustee account from January 1986 through November 1988.

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

Dated: 10/23/1990 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board