SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-322

IN THE MATTER OF	:
EDWARD C. CHEW, III,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 20, 1991

Decided: January 21, 1992

John J. Janasie appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear.[1]

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

This matter is before the Board based upon a recommendation for public discipline by the District IV Ethics Committee.

Respondent was admitted to the New Jersey bar in 1985. He is also a member of the Pennsylvania bar. Respondent was charged with knowing misappropriation of client funds for transactions that occurred between October 1989 and July 15, 1990, in violation of RPC 1.15 and In re Wilson, 81 N.J. 451 (1979).

[1] Respondent did not appear at the Board hearing nor did he waive his appearance, despite proper notice by the Board.

Nicholas Panarella, Jr., Esq., the grievant herein, maintained law offices in both New Jersey and Pennsylvania. Panarella hired respondent in January 1989 to oversee his general practice in New Jersey and Pennsylvania. Respondent, therefore, had control of Panarella's general escrow accounts maintained in both states. Respondent had been in sole practice prior to his association with Panarella and continued to maintain his own escrow account at the Atlantic Financial Bank in Philadelphia, Pennsylvania.

Panarella forwarded a letter, dated September 12, 1990, to the Secretary of the District XIV Ethics Committee, regarding seven clients from whom respondent had misappropriated funds. Exhibit P-2. By letter dated September 14, 1990, Panarella supplemented his claim with an additional charge of misappropriation in the Cannella matter. Exhibit P-11.

Based on Panarella's claims, the Office of Attorney Ethics (OAE) commenced an investigation of the matter by scheduling a demand audit of respondent's attorney accounts. On October 25, 1990, respondent appeared at the audit with his attorney, but failed to produce any records and also failed to respond to the charges against him, as had earlier been requested of him.

At the DEC hearing, Deputy Ethics Counsel Paula Granuzzo testified that during the audit respondent admitted to her and to OAE Investigator Kenneth Tulloch that, with the exception of one claim involving the Salvino matter, the statements contained in

Panarella's first letter were accurate. T51.[2] In the Salvino matter, respondent compromised a claim down to $1600. He retained the entire amount, instead of only the portion that represented his fees. He told Granuzzo that he knew he was not entitled to the entire amount, but kept the money nevertheless. T53. During the October 25, 1990 meeting, respondent admitted that his conduct in the seven matters constituted a knowing misappropriation of client funds. T54. Granuzzo did not discuss the Cannella matter with respondent because she did not become aware of it until after their meeting.

Respondent attempted to justify his conduct to Granuzzo by explaining that: 1.) he was going through a divorce and he was continuing to meet his wife's excessive financial needs for cars, jewelry and other expensive items; 2.) he used a portion of the monies he had taken to satisfy several fee disputes that had been generated prior to his association with Panarella; and 3.) he had anticipated receiving fees from several cases that he had taken to the Panarella firm and intended to repay the clients and Panarella from those fees (as of October 25, 1990 he had not received any such fees.) T54. Granuzzo informed respondent, at that time, that those were not adequate defenses to knowing misappropriation of client funds. T56.

Subsequently, the OAE moved for a temporary suspension of respondent's license to practice law. Respondent's attorney soon

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[2] T denotes the transcript of the DEC hearing on June 27, 1991.

thereafter withdrew from the case because respondent had failed to keep several of their appointments. In a letter dated December 15, 1990, respondent advised Granuzzo that further proceedings would be unnecessary because he would voluntarily consent to both the temporary suspension and disbarment. He requested that the necessary paperwork be forwarded to him for his completion. Exhibit P-15. Although the forms were forwarded, respondent never returned them to the OAE. T58. As a result, the matter was scheduled for hearing before the DEC. The OAE made proper attempts to notify respondent of the hearing by telephone calls, by letter and by publication. Respondent did not appear at the DEC hearing.

Granuzzo and Panarella were the only witnesses to testify at the DEC hearing. Panarella's testimony regarding respondent's misappropriation of funds was uncontroverted and corroborated by Granuzzo's testimony. Panarella testified that, while respondent was on vacation in July 1990, he learned that respondent had diverted client funds. Upon respondent's return, Panarella confronted him regarding same. Panarella testified that respondent "acknowledged that he had diverted funds and [Panarella] immediately fired him." T12. Exhibit P-2. When Panarella questioned respondent as to why he had diverted the funds, respondent replied that his wife "had very expensive tastes and that he needed the money in order to maintain the life style that she had had and was accustomed to. . . ." T45. Panarella, however, did not believe respondent's excuse.

The matters in which respondent admitted misappropriating funds are as follows:

THE MAZZU MATTER

The Mazzu matter involved a New Jersey personal injury matter in which respondent informed his client that the insurance company was withholding her settlement check and that she could, therefore, sue the company for more money. Thereafter, respondent either had her sign a release or forged her name on a release and deposited the settlement proceeds into his own personal account. T18. The signatures of both Panarella and Mazzu, to whom the check was issued, were apparently forged by respondent. Respondent admitted to Panarella that he had taken the funds and placed them into his own personal account. T18.

THE SANNINI MATTER

Sannini was experiencing problems with his mortgage company, GMAC. He, therefore, provided respondent with four checks to cover the mortgage payments. Respondent was to deposit the monies into the firm trust account and pay the mortgage. Two of the checks were certified checks, directly payable to GMAC. The certified checks were never mailed to the mortgage company but, instead, were found in Sannini's file. The other two checks were deposited into respondent's account at Atlantic Financial. Respondent acknowledged taking the money. T23.

THE PRAJAPATI MATTER

Prajapati was involved in a bitter business dispute over the purchase and resale of a newsstand in Philadelphia. She gave Panarella $3,824.49 to be held in escrow, pending the resolution of her matter. Apparently, the money was deposited into Panarella's New Jersey escrow account. Thereafter, respondent transferred the money by drawing a check to Panarella, forging Panarella's endorsement thereon and then depositing the money into his own Pennsylvania account. Respondent then used the Prajapati escrow monies to pay off several fee disputes with other clients. Respondent admitted transferring the money and using it for his own benefit.

THE WILSON MATTER

A $12,000 settlement was obtained on behalf of the firm's client, Marvin Wilson, in the matter of Wilson v. Greenhouse. Respondent deposited the money into his own account at Atlantic Financial rather than in the Panarella escrow account. Physician's fees that should have been paid from the settlement proceeds were never paid. Panarella, thereafter, personally reimbursed the doctors. Respondent admitted misappropriating the settlement proceeds. T33.

THE SWEENEY MATTER

This matter, a slip and fall case, was settled for $11,000, of which Sweeney was entitled to $4,103.68. The settlement proceeds were deposited into Panarella's Pennsylvania escrow account at Jefferson Bank. Thereafter, on March 5, 1990, the entire $11,000 was transferred from Panarella's account to respondent's account at Atlantic Financial. Respondent never provided Sweeney with the proceeds from the settlement. Respondent admitted taking the $11,000.

THE ROKUSKIE MATTER

The Rokuskie matter was settled for $12,500. Rokuskie was Panarella's brother-in-law. Panarella was, therefore, surprised that respondent believed he could successfully divert this client's funds without Panarella's knowledge. Respondent deposited the proceeds of the settlement into his own account at Atlantic Financial. When Panarella discovered that respondent had taken the proceeds, he had his investigator accompany respondent to the bank. Respondent's account was immediately closed out and the money was deposited into a special account to reimburse the clients from whom monies had been misappropriated. When confronted by Panarella, respondent admitted taking the $12,500.

THE McQUILLEN MATTER

McQuillen, a friend of both Panarella and respondent's paralegal, was involved in a serious automobile accident.

McQuillen's insurance policy provided for the reimbursement of her lost wages. Apparently, the insurance company forwarded $2500 for lost wages to respondent, which he deposited into his own account at Atlantic Financial. Respondent's paralegal repeatedly questioned him regarding the money. Eventually, respondent wrote a check on his account to Panarella, endorsed Panarella's name on the check, deposited the check into Panarella's escrow account in New Jersey and then disbursed the appropriate monies to McQuillen.[3]

THE CANNELLA MATTER

Respondent received a medical insurance payment on behalf of his client in the amount of $960. Respondent deposited the money into his own trust account but failed to reimburse the health care provider from the insurance payment. Panarella did not have the opportunity to discuss this matter with respondent. There are, therefore, no admissions of misappropriation with regard to this claim.

Based on: 1.) respondent's admissions of knowing misappropriation to Granuzzo; 2.) Panarella's testimony and exhibits and respondent's admissions to Panarella; and 3.) respondent's December 15, 1990 letter to Granuzzo voluntarily consenting to suspension and disbarment, the DEC found that

[3] While Panarella did not specifically testify that respondent admitted the allegations contained in this matter, respondent did generally admit to Granuzzo his misconduct in the eight matters. T51.

respondent had knowingly misappropriated funds from eight clients. The DEC, therefore, unanimously determined that public discipline was warranted.

CONCLUSION AND RECOMMENDATION

After a de novo review of the record, the Board is satisfied that the DEC's conclusions that respondent's conduct was unethical are fully supported by clear and convincing evidence. Indeed, the testimony of both Panarella and Granuzzo conclusively established that respondent knowingly misappropriated client funds in seven of nine matters. In the Salvino matter, respondent admitted withholding the client's entire recovery, notwithstanding the fact that he was only entitled to a portion of the recovery as his fee. With regard to the Cannella matter, respondent's deliberate deposit of monies to his own account, together with the pattern of the other misappropriations, provide sufficient evidence of knowing misappropriation to a clear and convincing standard in this matter as well.

The Board agrees with the DEC's conclusion that respondent's admissions to both Granuzzo and Panarella; Panarella's testimony and exhibits; and respondent's letter consenting to both suspension and disbarment establish a knowing misappropriation of client funds by a clear and convincing standard. Misappropriation has been defined as

> 'any unauthorized use by the lawyer of clients' funds entrusted to him, including not

> only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.' In re Wilson, 81 N.J. 451, 455 n.1 (1979). The misappropriation that will trigger automatic and almost invariable disbarment 'consists simply of a lawyer taking a client's money and knowing that the client has not authorized the taking.' Matter of Noonan, 102 N.J. 157, 159-60 (1986).

Respondent attempted to justify taking client funds by claiming he was trying to maintain his wife's expensive standard of living. As the Court observed in Noonan:

> It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. To the extent that the language of the DRB or the District Ethics Committee suggest that some kind of intent to defraud or something else is required, that is not so. To the extent that it suggests that these varied circumstances might be sufficiently mitigating to warrant a sanction less than disbarment where knowing misappropriation is involved, that is not so either. The presence of 'good character and fitness,' the absence of 'dishonesty, venality, or immorality'--are all irrelevant. While this court indicated that disbarment for knowing misappropriation shall be 'almost invariable,' the fact is that since Wilson, it has been invariable. [Id. at 160] [footnote omitted; emphasis supplied] [In re James, 112 N.J. 580, 585 - 586 (1988).]

Respondent admitted that he knowingly misappropriated client funds. Accordingly, the only appropriate discipline herein is disbarment. In re Wilson, 81 N.J. 451 (1979).

Based on the foregoing, the Board unanimously recommends that respondent be disbarred.

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

Date: 1/21/1992

By: Raymond R. Trombadore
Chair
Disciplinary Review Board