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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-336

IN THE MATTER OF :
BIROL JOHN DOGAN, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 20, 1991

Decided: January 21, 1992

David E. Johnson, Jr. appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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 filed by the District XI Ethics Committee (DEC).

Respondent was admitted to the New Jersey bar in 1983. He began a sole practice in New York in 1984. In 1986, he went into partnership with Robert Jonathan Forrest, creating the law firm of Dogan & Forrest. In 1987, they opened a second office in Paterson, New Jersey. Afterwards, the Paterson office was closed and another office was opened in Pluckemin, New Jersey. In August 1989, the partnership dissolved and respondent became affiliated with another attorney.

In a formal complaint filed by the DEC, respondent was charged with: 1.) knowingly making false statements to a disciplinary authority; 2.) negligent misappropriation of client funds in two matters; 3.) practicing while on the New Jersey Lawyers' Fund for Client Protection (formerly known as Client Security Fund) ineligible list; and 4.) recordkeeping violations. Respondent admitted the conduct with which he was charged in the following matters:

**FALSE STATEMENTS TO THE OFFICE OF ATTORNEY ETHICS (OAE) AND
THE SOYLU MATTER**

By letter dated January 6, 1989, the Midlantic National Bank/North notified the OAE that, on January 4, 1989, an item had been presented for payment against the trust account of Dogan & Forrest. The account, however, contained insufficient funds. It was overdrawn by the amount of \$1,356.57. Exhibit P-1, Attachment 1. On January 30, 1989, the OAE forwarded a certified letter to respondent seeking a written, documented explanation for the overdraft within ten business days. Respondent failed to forward a response. Exhibit P-1, attachment 2. On March 6, 1989, a second certified letter was forwarded to respondent seeking the same information, also within ten business days. Exhibit P-1, Attachment 3. No response was forwarded. On April 25, 1988, the OAE sent a third letter to respondent, enclosing a copy of the January 30, 1989 letter and a certified receipt for same. This letter also sought a written, documented explanation of the

circumstances surrounding the overdraft, within five business days. Exhibit P-1, Attachment 4. Again, no reply was received.

On June 9, 1989, an OAE investigator telephoned respondent regarding the OAE letters. At that time, respondent informed the investigator that he had not received the letters. The investigator again requested the same information and instructed respondent to submit the materials to the OAE by June 30, 1989. The investigator also forwarded a note to Dogan confirming their conversation. Again, no response was submitted to the OAE. Thereafter, on August 3, 1989, a demand audit letter was mailed to respondent, scheduling an audit at his office on August 16, 1989. Exhibit P-1, attachment 6. In an apparent attempt to circumvent the audit, respondent sent the OAE investigator various facsimile copies of documents and a letter explaining the overdraft. The information was forwarded piecemeal between August 9, 1989 and August 16, 1989.

Respondent forwarded a letter dated July 10, 1989 to the OAE investigator, by facsimile, on August 9, 1989. The letter purported to explain the reason for the bank overdraft. The letter alleged that a real estate closing had occurred on December 19, 1989, between respondent's clients, Mr. & Mrs. Soylu, the purchasers, and the seller, Donald Gutfreund. The Soylus had failed to bring certified checks to the closing, as respondent had earlier requested. Instead, they brought two personal checks. The seller refused to accept the personal checks, but agreed to accept respondent's trust account checks and to hold the checks for a

certain period, in order to allow them to clear. Respondent further alleged that his firm had made a miscalculation in the closing costs and, therefore, had not obtained sufficient funds from the purchasers. He explained that the mistake was only detected after the checks were presented to the bank for payment and, thereafter, the firm immediately deposited \$2100 into the trust account to make up the deficiency. A certified replacement check was then issued to the seller.

Based on the foregoing explanation, the investigator deemed that the information was inconclusive and confusing and that the reason for the overdraft had not been satisfactorily explained. A new audit date was therefore scheduled for August 23, 1989.

At the audit, respondent admitted that his earlier explanation for the overdraft was false. The overdraft had, in fact, occurred because both he and his partner had written trust account checks against the Soylu fee without notifying one another of their actions. The fee for the closing was \$2500. However, the checks written by respondent and his partner totalled \$2950.

In addition, respondent miscalculated the closing costs in the Soylu matter by \$1000. A trust account check payable to Gutfreund in the amount of \$3,062.97 was, therefore, returned by the bank for insufficient funds. Respondent did not become aware of the overdraft until notified by the bank. Thereafter, respondent's partner immediately deposited \$2100 into the trust account to cover the overdraft.

Respondent did not have a written partnership agreement or a clear verbal agreement with his partner about the operation of the partnership, the distribution of fees or how the partnership would maintain its books and records.

THE BASARAN MATTER

The above bank overdraft was apparently exacerbated by the disbursement of funds in the Basaran matter, which also involved a real estate transaction. Basaran had purchased property located in Riverdale, New Jersey, from Mr. Haencher. On the client ledger sheet for the Basaran matter, there was an undated entry for the receipt of \$3,500, as well as a disbursement to Haencher in the amount of \$3,358.87. The disbursement to Haencher was traced to a Midlantic Bank statement of January 3, 1989. However, no corresponding deposit was found for the \$3,500 entry. Respondent concluded that he must have invaded the Soylu funds to accomplish the Basaran disbursement. The disbursement to Haencher, without corresponding funds or deposit, contributed to the bank overdraft. The record is silent as to the explanation for the missing \$3500 deposit.

PRACTICING WHILE ON THE INELIGIBLE LIST

Respondent was declared ineligible to practice law, by order of the Supreme Court dated September 20, 1989, for failing to pay his annual registration fee to the Client Protection Fund. Despite his ineligibility, respondent represented purchasers of

real estate at a closing on October 30, 1989. On November 9, 1989, respondent paid his \$120 fee to the fund.

RECORDKEEPING VIOLATIONS

At the audit conducted at the Paterson office, respondent only produced a portion of the firm's records. He advised the investigator that most of the records were at the Pluckemin office, but because the firm was dissolving, the records were being shipped to his New York office.

Despite the lack of records, the auditor was able to conclude that the partnership kept a general ledger showing yearly income and expenses; a case register book, where client ledger cards were kept; and bank statements with corresponding canceled checks. An attorney business account and attorney trust account were maintained at the Midlantic Bank/North. There were no reconciliations prepared for the client ledger cards or the trust account. Notwithstanding the lack of records, the following recordkeeping deficiencies were found:

- 1.) Deposit slips lacked sufficient detail to identify each item of deposit (R.1:21-6(b)(1));
- 2.) Clients' trust ledger sheets were not fully descriptive (R.1:21-6(b)(2));
- 3.) A schedule of clients' ledger accounts was not prepared and reconciled quarterly to the trust account bank statement (R.1:21-6(b)(8));
- 4.) Inactive trust ledger balances remained in the trust account for an extended period of time (R.1:21-6(c));
- 5.) Attorney trust and business receipts and disbursement registers were not maintained in accordance with generally accepted accounting practice (R.1:21-6(c));

- 6.) Receipt and disbursement journals for both trust and business accounts were not fully descriptive (R.1:21-6(b)(1));
- 7.) Funds received for professional services were not deposited into the business account; and
- 8.) Trust account checks were disbursed against uncollected funds, in violation of Opinion No. 454, 105 N.J.L.J. 454 (May 15, 1989).

Based on the foregoing, the DEC recommended that respondent receive public discipline for his conduct.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the DEC in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence. Respondent admitted all of the allegations contained in the complaint charging him with unethical conduct. Respondent's admissions, coupled with the OAE's investigation, as detailed in Exhibit P-1 together with attachments 1 through 13, clearly and convincingly established respondent's unethical conduct.

Respondent's mishandling of the Soylu and Basaran matters resulted in a bank overdraft in the amount of \$1,356.57. As a result, the OAE undertook an investigation of the reason for the overdraft. Initially, respondent failed to cooperate with the OAE by failing to respond to letters and telephone calls and, thereafter, by providing inadequate information in a piecemeal

fashion. Respondent also gave a false explanation for the reason for the bank overdraft. His conduct, therefore, violated RPC 8.1(b), failing to respond to the OAE's demand for information; RPC 8.1(a) and RPC 8.4(c), knowingly making a false statement of material fact and RPC 1.15(a), failing to safeguard clients funds. Respondent also violated R.1:21-6 by failing to deposit his fees into the firm's business account and by failing to record the fees on the client ledger card, thereby facilitating the invasion of client funds. Respondent's conduct in representing a client while on the ineligible list is a violation of RPC 5.5(a) (unauthorized practice of law). His failure to comply with the recordkeeping requirements of R. 1:21-6 is a violation of RPC 1.15(d). Finally, his disbursement of a trust account check against uncollected funds in the Soylu matter is a violation of Opinion No. 454, 105 N.J.L.J. 454 (May 15, 1980).

The sanction imposed in cases involving negligent misappropriation of client funds ranges from private reprimand to disbarment. For instance, in In re Barker, 115 N.J. 30 (1989), the attorney received a public reprimand where, due to a number of unusual circumstances, the attorney's trust account check issued for that attorney's personal real estate closing was returned for insufficient funds. The Court considered that: 1.) no client was financially injured; 2.) the attorney immediately covered the shortage with his personal funds; 3.) the bookkeeping error was an isolated event; 4.) there was no pattern of a failure to safeguard clients' funds; 5.) the attorney immediately engaged an experienced

full-time bookkeeper; 6.) the new bookkeeping system recommended by the auditor was implemented; and 7) the attorney's records had been in compliance with R. 1:21-6(b)(8) for the three prior years. Id. at 37.

More serious accounting improprieties resulted in a six-month suspension in In re Librizzi, 117 N.J. 482 (1990). In that case, there was a \$25,000 shortage in the attorney's trust account due to his inadequate bookkeeping procedures. The attorney had claimed reliance on the existence of a cushion created by excess recording and cancellation fees from real estate transactions, which fees, he contended, had accumulated in his trust account for a period of ten years. The attorney also misdeposited monies into the wrong accounts and failed to properly note his deposits and disbursements. The attorney was unaware of the shortage until he undertook to reconcile his accounts for the OAE audit. While the Court did not find a knowing misappropriation of client funds, it did find flagrant recordkeeping violations deemed to be extremely serious. The violations spanned a twelve-year period.

In the matter now before the Board, respondent's multiple ethics violations were serious. His fabricated explanation to the OAE for the bank overdraft was particularly disturbing. His only excuse for the lie was that "he feared the consequences of the overdraft." In mitigation, the Board considered that respondent has no prior history of discipline and that he testified that he had taken a course from the Institute for Continuing Legal Education (ICLE) on the Code of Professional Responsibility.

Respondent has also taken measures to correct his bookkeeping deficiencies. Respondent explained that the overdraft was an isolated incident and that none of the firms's clients was injured. There was never an intent to deprive any client of money. While respondent never explained the reason for his initial lack of cooperation with the OAE, he has expressed his intent to cooperate fully henceforth with the disciplinary authorities.¹

Had respondent's conduct been confined to negligent misappropriation as a result of shoddy recordkeeping practices, a public reprimand would have sufficed. See In re Fucetola, 101 N.J. 5 (1985) (a public reprimand was imposed where the attorney's inadequate recordkeeping led to a bank overdraft, but no injury to clients resulted). However, as noted above, respondent's more serious misconduct included his failure to cooperate with the OAE which, in and of itself, warrants a public reprimand. See In re Macias, 121 N.J. 243 (1990). The additional violations of providing a false explanation to the OAE for the bank overdraft and practicing while on the Client Protection Fund ineligible list elevate the proper sanction to a period of suspension.

Based on the totality of the circumstances, the Board unanimously recommends that respondent be suspended from the practice of law for a period of three months. The Board further recommends that respondent submit to an annual audit of his attorney records for a period of three years. The Board

¹ Despite this representation before the DRB, respondent has failed to keep an appointment with a representative of the OAE relative to the recent pending audit.

additionally recommends that respondent's reinstatement be conditioned on the resolution of all ethics matters now pending before the DEC.

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

Dated: 1/21/1992

By: Raymond R. Trombadore
Raymond R. Trombadore
Chair
Disciplinary Review Board