

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-385

IN THE MATTER OF :
 :
DAVID M. KORNFELD, JR. :
 :
AN ATTORNEY AT LAW :
 :

Decision

Argued: December 16, 1999

Decided: June 12, 2000

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based upon respondent's disbarment in the State of New York.

Respondent was admitted to the New Jersey bar in 1987. He was admitted to the New York bar in 1988. Respondent has no disciplinary history.

On May 12, 1997 respondent was disbarred in New York for his knowing misappropriation of client escrow funds in six matters, between April 14, 1994 and December 5, 1994. The opinion and order of disbarment of the New York court reveals that,

in each matter, respondent, as attorney for the seller of real estate, was required to retain intact the deposits tendered by the buyers. According to the decision, respondent wrongfully and intentionally converted and misappropriated client escrow funds for purposes other than those for which they were intended. In each instance, respondent's trust account balance fell below the amount of the real estate deposit that he was required to maintain. He then replenished his trust account with funds borrowed from his relatives. The decision further discloses that respondent commingled personal and trust funds and issued twenty-seven checks payable to cash from his trust account.

Respondent failed to notify the OAE of his disbarment in New York, as required by R. 1:20-14(a)(1).

The OAE urged us to recommend respondent's disbarment.

* * *

Following a review of the full record, we grant the OAE's motion for reciprocal discipline and recommend respondent's disbarment.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides as follows:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

- (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (E) the misconduct established warrants substantially different discipline.

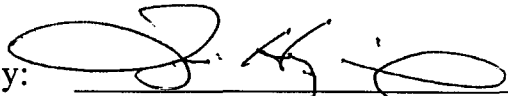
A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With respect to subparagraph (E), although respondent was disbarred in New York, a disbarred New York attorney may seek reinstatement seven years after the effective date of disbarment, pursuant to 22 *N.Y.C.R.* 603.14. In effect, thus, disbarment in New York is equivalent to a seven-year suspension. New Jersey attorneys who knowingly misappropriate client funds are also disbarred, but in our state disbarment is permanent. Accordingly, the imposition of discipline different from that imposed in New York is warranted: the discipline in New Jersey should not be a seven-year suspension, as in New York, but permanent disbarment.

Respondent knowingly misappropriated client escrow funds in six matters. He used those funds for his own purposes. Knowing misappropriation of escrow funds mandates disbarment. *In re Hollendonner*, 102 *N.J.* 21 (1985); *In re Wilson*, 81 *N.J.* 451 (1979). Although respondent repaid the escrow funds in full, no amount of mitigation will be sufficient to excuse misappropriation that is knowing and volitional. *In re Noonan*, 102 *N.J.*

157 (1986). It is enough that respondent used escrow money without the consent of the owners, knowing that he had no authority to do so. *In re Wilson, supra*, 81 N.J. 451 (1979); *In re Noonan, supra*, 102 N.J. 157 (1986). Disbarment is, thus, required. We unanimously recommend that respondent be disbarred.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 6/12/00

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


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Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling	x						
Cole	x						
Boylan	x						
Brody	x						
Lolla	x						
Maudsley	x						
Peterson	x						
Schwartz	x						
Wissinger	x						
Total:	8						


Robyn M. Hill
Chief Counsel

8/15/2000