

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-115

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IN THE MATTER OF  
ROBERT W. SPENCER  
AN ATTORNEY AT LAW

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Decision

Argued: May 11, 2000

Decided: December 20, 2000

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

Respondent waived appearance for oral argument.

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"), pursuant to R. 1:20-14, following respondent's suspension from the practice of law in New York.

Respondent was admitted to the New Jersey bar in 1966. He has no history of discipline.

Respondent was found guilty of various charges of professional misconduct, including conversion, breach of fiduciary duty, allowing the balance in his attorney escrow account to fall below zero, failing to oversee the recordkeeping of the firm's attorney escrow account and "causing or failing to prevent the deposit of funds held on behalf of others at a time when a negative balance existed in the account." On August 16, 1999, the Supreme Court of New York, Appellate Division, Second Judicial Department, ordered respondent's disbarment. Thereafter, the court granted leave for respondent to reargue the case, based on his expressed remorse, the absence of any personal benefit to him from any of the irregularities in the account, the absence of monetary loss to any clients, his implementation of new escrow procedures, his role in reporting a former partner's conduct to the grievance committee, and the firm's prior arrangement with his bank to cover overdrafts in his escrow account, which removed early warning signs of financial disorder. The court found that, under the above circumstances, the imposition of disbarment was excessive discipline. The court reconsidered the matter on January 18, 2000, revoked its earlier order of disbarment and imposed a one-year suspension, retroactive to August 16, 1999.

The relevant facts in this matter were set forth in the report of the Special Referee:

In 1984, respondent became "of counsel" to the firm of Walsh, Maroney & Ponzini. In August 1987, he became a full partner. From the firm's inception, in 1980, Donal M. Walsh was the managing partner entrusted with the responsibility of the firm's financial affairs, including the payment of bills, the management of non-lawyer staff and the

overseeing of the firm's escrow account operations. Michel Kessman, an accountant who was a friend of Walsh, was brought into the firm, under a "work for space" arrangement, to manage the firm's bookkeeping and accounting needs.

From 1980 through the summer of 1987, the firm's non-lawyer secretarial and paralegal staff tended to the firm's escrow accounts. They made all the deposits, entered all transactions in the firm's ledgers and checkbook registers and reconciled the bank statements with the firm's books.

The partners relied on the lack of any client complaints as proof that the firm's bank accounts were properly maintained. By 1987, however, Walsh and Kessman believed that a more experienced accountant was needed. In 1987, when respondent became a full partner, an accounting firm was hired to review the firm's operating and escrow accounts. During the review, the accounting firm discovered a \$32,000 shortage in the escrow account. The shortage was eventually traced to approximately six client matters that had been handled between 1980 and 1988.

Following the receipt of the accounting review, the firm attempted to recover the improperly disbursed funds, which it was unable to do in two matters; one was an overpayment to a former secretary of the firm. In December 1988, a lawsuit was filed against the secretary, seeking the recovery of the improperly disbursed funds.

In May 1992, while the lawsuit was still pending, respondent and his two partners deposited over \$21,000 of their own money into the escrow account, in order to replenish

the shortfalls associated with the two unreimbursed matters. Ultimately, in August 1994, the firm abandoned the lawsuit against the secretary, who did not return the funds.

Following the audit, changes were implemented in connection with the firm's management of its accounts. The firm's staff was trained in proper accounting practices, respondent created forms for use in opening new escrow accounts and requesting escrow check disbursements, a reconciliation statement was created each month and distributed to the partners for review with the bookkeeper. The accounts continued to be audited by an accountant on an ongoing basis.

Despite these changes, the accountants were unable to properly instruct the firm's non-lawyers in attorney escrow accounting procedures. Moreover, respondent admitted that the new procedures were not employed in every disbursement situation. In addition, respondent and his partners continued to have the firm's non-lawyer staff handle virtually all ministerial account activities, including the preparation of the new monthly reconciliation statements, the pre-disbursement verification of deposit clearances and account balances, the entry of all client ledger and checkbook register notations, and the drafting of checks for signature by the partners, without any meaningful supervision by respondent or his partners.

Frequent errors continued to occur, including multiple negative balance periods in the account, the disbursement of checks prior to the clearance of corresponding deposits and the entry of incomplete or inaccurate check register and client ledger notations.

Because the firm utilized overdraft privileges, it never bounced a check. Also, because clients did not complain, the partners remained largely unaware of the "plethora" of problems regularly occurring in their attorney escrow account.

In August 1990, respondent, Maroney and Ponzini discovered that Walsh had been engaging in questionable activities with both the firm's escrow accounts and personal transactions involving a client of the firm. Walsh was discharged from the firm and subsequently convicted of a federal felony offense. He is temporarily suspended from the practice of law, pending the conclusion of his own disciplinary proceeding.

The grievance committee for the ninth judicial district conducted an intensive investigation and review of the firm's escrow account, which revealed many questionable transactions. Respondent and his partners learned of the negative balances in their escrow accounts between 1988 and 1990.

In imposing discipline, the court determined that respondent had breached his fiduciary responsibility to safeguard the integrity of the funds entrusted to him. In mitigation, the court considered, among other factors, that respondent had misplaced his trust in Walsh and his other employees, that he instituted new procedures to try to correct the firm's improper accounting practices, and that he reported his former partner's theft of funds to the grievance committee.

The OAE urged us to recommend the imposition of a one-year suspension, retroactive to August 16, 1999, the effective date of respondent's New York suspension. The OAE also

suggested that respondent not be permitted to apply for reinstatement in New Jersey until reinstated in New York.

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Upon an de novo review of the full record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of a disciplinary proceeding), we adopt the findings of the Supreme Court of New York, Appellate Division.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a), which directs that:

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; or

(E) the misconduct established warrants substantially difference discipline.

A review of the record does not reveal that any of the conditions set forth above apply in this matter. Respondent failed to supervise his staff and to take charge of his attorney records, which resulted in the negligent misappropriation of client funds (and also knowing misappropriation by his partner, Walsh).


Cases involving similar misconduct have resulted in suspensions of six months to one year. See In re Ewing, 132 N.J. 206 (1993) (one-year suspension for negligent misappropriation of client funds because of recklessness in handling trust account; multiple disbursements made from client accounts without sufficient funds in those accounts; attorney blamed errors on a deceased employee who handled the records while the attorney was suffering from a serious illness); In re Konopka, 126 N.J. 225 (1991) (six-month suspension where careless recordkeeping resulted in the negligent misappropriation of client trust funds); In re Ichel, 126 N.J. 217 (1991) (six-month suspended suspension where attorney negligently misappropriated client funds due to poor bookkeeping practices, but where transgressions were not part of a pattern and occurred nine years prior to the imposition of discipline; attorney relied on a cushion whereby he commingled his fees with trust account funds to prevent a shortage or overdraft in his trust account).

Based on the foregoing, we agreed with the OAE's recommendation and unanimously determined to impose a one-year suspension, retroactive to the date of respondent's New

York suspension. Respondent is not to be reinstated in New Jersey until he is reinstated in New York. One member did not participate.

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

Dated: 12/20/00

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board



**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Robert W. Spencer  
Docket No. DRB 00-115**

**Argued: May 11, 2000**

**Decided: December 20, 2000**

**Disposition: One-year suspension**

Members	Disbar	One-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz							X
Wissinger		X					
<b>Total:</b>		8					

*Robyn M. Hill* 3/14/01  
Robyn M Hill  
Chief Counsel