SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-459

IN THE MATTER OF

ANDREW G. MALONEY

AN ATTORNEY AT LAW

Decision

Argued: February 6, 2003

Decided: June 9, 2003

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

Respondent was admitted to the New Jersey bar in 1988. In 1997, he entered into an agreement in lieu of discipline, admitting that he practiced law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection and that he did not maintain a *bona fide* office in New Jersey. He fulfilled the terms of the agreement in 1998.

In its seventy-five count complaint filed on November 18, 1999, the New York Grievance Committee for the Ninth Judicial District charged respondent with unethical conduct, primarily in connection with his trust account. Although respondent admitted most of the factual allegations, he denied that his actions were unethical. Four of the charges were withdrawn during the ethics hearing. On July 19, 2000 the special referee found respondent guilty of the remaining seventy-one charges. On April 16, 2001 the Supreme Court of New York, Appellate Division, Second Judicial Department, found respondent guilty of fifty-three of the charges and disbarred him. Respondent filed several motions for reargument and reconsideration, all of which were denied. The United States Supreme Court denied his petition for writ of certiorari.

The charges sustained by the New York Appellate Division included allegations that respondent (1) knowingly misappropriated client funds; (2) disbursed an escrow check without sufficient funds on deposit or before the corresponding deposit had cleared; (3) disbursed more funds than he had on deposit for a particular client; (4) transferred funds from one escrow account to another to cover a negative balance in the receiving account; (5) made withdrawals from an escrow account payable to cash and not to a named payee; (6) entered

into an improper business relationship with a client; (7) breached an agreement to repay, upon request, a loan from a client's escrow funds; (8) commingled earned fees or personal funds and funds belonging to clients or third parties; and (9) failed to maintain or produce required bookkeeping records.

The New York Appellate Division found respondent guilty of eighteen charges of knowing misappropriation of client funds. In his answer to the complaint, respondent admitted the factual bases for the charges of knowing misappropriation of client funds. For example, charge forty-six of the complaint alleged as follows:

> Respondent, ANDREW G. MALONEY, has been guilty of breaching his fiduciary duty by misappropriating client funds with which he had been entrusted, in violation of 22 NYCRR § 1200.46(a) [also known as DR9-102(a)] and/or conduct that adversely reflects on his fitness as a lawyer, in violation of 22 NYCRR §1200.3(a)(7) [also known as DR 1-102(a)(7) [formerly (8)] of the Code of Professional Responsibility] as follows:
>
> > 1. On March 24, 1997, respondent's attorney trust account had a zero balance. On that date, respondent deposited into the account check #9202 from Family Centers, Inc., dated 3/21/97, made payable to 'Andrew Maloney Esq. as Escrow Agent,' in the amount of $7,600. The memo portion and back of the check indicate that the funds were to be held in escrow pending approval of a retail liquor permit by the State Liquor Authority ['SLA'].
> >
> > 2. Without waiting for the liquor permit to be issued, and in violation of a written escrow agreement signed by respondent on or about 3/21/97, respondent disbursed two checks to himself against the escrow funds: #5008, dated 3/26/97, in the amount of $1,500, and #5009, dated 3/28/97, in the amount of $5,100.

In his answer to that charge of the complaint, respondent denied that his conduct was unethical, but admitted the factual allegations.

In addition, according to the complaint, on March 25, 1997 respondent was retained to represent Benjamin Madlansacay in the sale of his apartment. The retainer agreement provided for a fee to respondent of $850. On April 15, 1997 respondent deposited the buyer's $22,700 down payment check into a sub-account of his master attorney trust account. Ten days later, on April 25, 1997, respondent transferred $1,500 of those funds to his master attorney trust account and disbursed them to himself. Although the retainer agreement stated that respondent's fee was $850, the memo portion of the check indicated that the $1,500 was for respondent's legal fees. On May 8, 1997 respondent transferred an additional $6,600 from the *Madlansacay* sub-account to his master attorney trust account. Before the transfer, the balance in respondent's master attorney trust account was negative $14.99. The next day, respondent disbursed $585 to "cash" from the transferred funds, noting "Madlansacay Legal Fees" on the check. On May 12, 1997 respondent disbursed $6,000 from his master attorney trust account to Constance Harding, leaving a balance of $.01 in that account. According to the complaint, the disbursement to Harding was not related to the *Madlansacay* transaction.

The *Madlansacay* real estate closing occurred on June 20, 1997. On that date, respondent transferred $14,649.49 from the *Madlansacay* sub-account to his master attorney trust account. That balance was $8,050.50 less than the buyer's down payment of $22,700 that respondent should have held intact. Despite this shortage, respondent issued three checks totaling $22,795 to his client. The memo portion of each check indicated "down payment." On June 23, 1997 respondent deposited $3,000 into his master attorney trust account. The

complaint did not indicate whether respondent deposited additional funds in his account to compensate for the $8,050.50 shortage.

According to a letter from respondent to the grievance committee, he deposited into his account legal fees of $3,000 paid by another client to "compensate for a discrepancy in [his] bookkeeping records" with respect to the *Madlansacay* transaction. Except to deny that he was guilty of unethical conduct, respondent's answer essentially admitted the foregoing allegations.

Respondent's testimony also contained the following admission:

> Q. With regard to, in general, allegations in which the Grievance Committee has talked about, in the charges, your taking funds from escrow before you had permission to do so or otherwise improperly, do you have any statement that you wish to make to the Court.
>
> A. Yes. In those instances where that happened, where I was holding funds, any moneys that I took out I put back for the benefit of the client before the closing actually took place. Consequently, no client was harmed, and, to my knowledge, the clients are not even aware that the actual incident took place.
>
> I was under a tremendous amount of financial distress at the time with respect to my practice. I had as many as four attorneys who were working for me and three support staff people, particularly in the 1996 and '97 period. Hindsight, looking back, I should have terminated those people once I realized that I could not meet my payroll obligations in a timely fashion.
>
> I deeply regret having even – having done anything like this.

Relying primarily on *In re Wilson*, 81 *N.J.* 451 (1979), the OAE urged us to recommend respondent's disbarment.

* * *

Following a review of the full record, we determined to grant the OAE's motion for reciprocal discipline.

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.

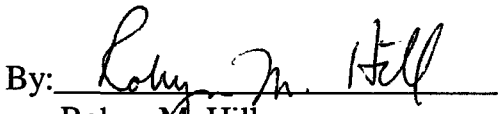
A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With respect to subparagraph (E), although respondent was disbarred in New York, a disbarred New York attorney may seek reinstatement seven years after the effective date of disbarment,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

warranted in New Jersey, that is, permanent disbarment. Knowing misappropriation of client or escrow funds mandates disbarment. *In re Wilson*, 81 *N.J.* 451 (1979); *In re Hollendonner*, 102 *N.J.* 21 (1985). At oral argument before us, respondent admitted that he knowingly misappropriated client and escrow funds. Although respondent eloquently argued before us against disbarment, no amount of mitigation will be sufficient to excuse misappropriation that was knowing and volitional. *In re Noonan*, 102 *N.J.* 157 (1986). It is enough that respondent used his clients' money without their consent, 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).

We voted to recommend respondent's disbarment. One member did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Andrew G. Maloney
Docket No. DRB 02-459

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Disposition: Disbar

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson	X						
Maudsley	X						
Boylan	X						
Brody	X						
Lolla							X
O'Shaughnessy	X						
Pashman	X						
Schwartz	X						
Wissinger	X						
Total:	8						1

Robyn M. Hill 6/10/03
Robyn M. Hill
Chief Counsel