SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-396

IN THE MATTER OF

ARTHUR G. WILLIAMSON

AN ATTORNEY AT LAW

Decision
Default [R.1:20-4(f)]

Decided: May 10, 1999

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

Pursuant to R.1:20-4(f), the Office of Attorney Ethics ("OAE") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On August 11, 1998 the OAE sent a copy of the complaint to respondent's office by regular and certified mail. The regular mail was not returned. The certified mail return receipt indicates delivery on August 14, 1998. The signature is somewhat illegible, although the last name appears to be "Suarez." The letter accompanying the complaint stated that, if

respondent did not file a timely answer, the allegations of the complaint would be deemed admitted and the record would be certified to the Board for the imposition of sanctions. On September 11, 1998 the OAE sent a second letter to respondent stating that, if respondent did not file an answer within five days, the OAE would amend the complaint to include a charge of RPC 8.1(b) (failure to cooperate with the disciplinary authorities). The record does not disclose the method used to mail the second letter or indicate whether any of the mail was received by respondent. Respondent did not file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1974. At the time of the underlying events, he maintained an office in Fort Lee, New Jersey. Apparently, by the time the OAE began its investigation, respondent had moved his office to West New York, New Jersey.

In 1988 respondent received a private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney. In the Matter of Arthur G. Williamson, Docket No. DRB 88-114 (1988). On August 7, 1996 he was temporarily suspended for his failure to cooperate with the investigation of this matter. In re Williamson, 145 N.J. 573 (1996). When respondent failed to appear on the return date of an order to show cause, the Court continued the temporary suspension pending the outcome of this matter. In re Williamson, 146 N.J. 474 (1996). In March 1999, the Court reprimanded respondent in a separate matter which also proceeded

on a default basis-for his failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b). In re Williamson, 152 N.J. 489 (1998). Respondent's suspension continues to date.

The District VI Ethics Committee ("DEC") forwarded both of the complaints in these matters (Thompson and Morrison) to the OAE for review. Because the matter concerned knowing misappropriation of client funds, the OAE assumed responsibility for the investigation. The OAE scheduled a demand audit for July 17, 1996 at 10:00 A.M., to take place at respondent's office in West New York, New Jersey. On the day of the audit, the OAE requested that respondent produce certain books and records, as well as the Thompson and Morrison files. Respondent stated that he did not have any records available for review because they were all at his home.

Although respondent's home was nearby, he "adamantly refused" to retrieve the records. He further insisted that the audit be concluded by 2:00 P.M. because he had to pick up his son at a bus stop. The OAE offered to remain in respondent's office until he picked up his son, obtained the records from home and returned to the office. Respondent rejected the offer because of "other commitments" that afternoon. The OAE continued the audit and, apparently, requested that respondent answer some of the allegations in the Thompson and Morrison grievances.

The audit was concluded at 2:20 P.M. Respondent was asked to bring the previously

requested books, records and client files to the OAE's Trenton office by July 19, 1996 at 12:00 P.M. Respondent failed to comply with the OAE's request and to reply to a message later left by the OAE on his answering machine. The OAE then petitioned the Court for respondent's temporary suspension.

The Thompson Matter

The complaint alleged that, in December 1988, Sandra and Charles Thompson gave respondent, "a trusted family member whom they had known for approximately 35 years," a $21,000 check to purchase an investment property in their name in Walden, New York. When the purchase did not occur, respondent retained the funds and informed the Thompsons that he would invest it elsewhere.

In August 1989 respondent proposed to the Thompsons that they invest, along with him and other investors whom he hoped to attract, in a property located in Goshen, New York ("the Goshen property"). The complaint states that, when respondent advised the Thompsons that it was a good investment, they trusted him as a friend and a family member, as well as an experienced attorney. Respondent initially informed the Thompsons that the property would be purchased in their name, but later advised them that, in order to protect them from any personal liability, he would purchase the property in the name of Clinton Venture, Inc. ("Clinton Venture"). At no time during the discussions with the Thompsons

did he advise the them of the desirability of obtaining separate counsel due to a conflict of interest.

In addition to the original $21,000, the Thompsons disbursed the following funds to respondent:

- On September 19, 1989, $5,000 payable to Tectonic Engineering for a survey of the Goshen property and $52,800 payable to the Goshen property sellers as a down payment.
- On September 27, 1989, $315,408 payable to Fidelity USA to be placed in an interest-bearing account, pending completion of the Goshen property.
- On September 28, 1989, $335,346 payable to Fidelity USA to be placed in an interest-bearing account, pending completion of the Goshen property.

The checks made payable to Fidelity USA were used to open a brokerage account, operated by Fidelity Brokerage Services, in the name of Clinton Venture. The sole shareholders in Clinton Venture were respondent and Lawrence Campagna, respondent's partner.[1] Campagna was the president of the corporation; respondent was its secretary and treasurer. Contrary to their beliefs, the Thompsons held no legal interest in Clinton Venture.

On September 17, 1990 Clinton Venture purchased the Goshen property from Fred and Henrietta Kaplowitz for $422,400. Instead of purchasing the property with the funds provided by the Thompsons, respondent, as President of Clinton Venture, signed a mortgage

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1 The complaint doe not specify the nature of respondent's partnership with Campagna. There is no listing in the New Jersey Lawyer's Diary and Manual for 1988-90 for a Lawrence Campagna.

note in the entire amount, $422,400, payable to Fred Kaplowitz and Stanley Kilman.[2] The mortgage payments were set at $50,000 per year, interest due quarterly. The mortgage was to be fully satisfied on September 17, 1995.

In connection with this transaction, respondent prepared a promissory note from Clinton Venture to the Thompsons. However, because the promissory note failed to list a principal amount, it was unenforceable. Respondent also prepared a venture agreement giving the Thompsons the right to receive interest on their money at a rate of 10.5% per year. However, no date was specified for payment. In a third document, the Thompsons assigned all of their interest in the original contract of purchase to Clinton Venture, in which the Thompsons had no legal interest. In essence, the transaction allowed respondent to purchase the Goshen property in the name of Clinton Venture, leaving the Thompsons with no interest in their money or in the land that they believed was being purchased on their behalf.

From October 1989 to September 1995 the Thompsons received a total of $240,246 in interest payments from respondent. Additionally, respondent "advanced" the Thompsons $21,500 for personal purchases. However, during this time period, Clinton Venture made only one $50,000 payment on the mortgage to Kaplowitz and Kilman and did not pay the property taxes on the Goshen property. As a result, Kaplowitz and Kilman foreclosed on the

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2 The record does not state whether the Thompsons' $52,800 check, dated September 19, 1989 and payable to the Goshen property sellers as a down payment, was applied towards the purchase.

mortgage loan on February 24, 1994. Apparently, the Thompsons were unaware of the foreclosure until respondent stopped paying them interest in September 1995.

On March 21, 1996, the Thompsons filed a grievance against respondent.

During the OAE audit, respondent denied that he was the Thompsons' attorney. He stated that the Thompsons had given him approximately $690,000 to purchase the Goshen property, that the land had cost $528,000 and that the $162,000 difference had been used for costs in subdividing and selling the land. He also stated that, after receiving the money, he formed Clinton Venture for the purpose of purchasing, developing and subdividing the Goshen property and that Campagna, who respondent admitted had invested only $15,000, was half-owner of Clinton Venture. Respondent did not state the amount of his own investment or explain why he failed to make the Thompsons partners in Clinton Venture. Respondent admitted that he had deposited the Thompsons' funds in the Fidelity USA account, that there were no funds left in that account and that, because he was "barely solvent," he could not refund the Thompsons' money.

Subsequent investigation by the OAE disclosed that the Clinton Venture account with Fidelity USA had been opened with the $335,346 and the $315,408 checks issued by the Thompsons on September 27, 1989. The account had been closed on August 23, 1996. At that time, the account had a negative balance of $5. The OAE was able to verify that respondent used a portion of the Fidelity funds for his personal use. Those disbursements

were as follows: $31,433 to respondent, $3,000 to respondent's wife, $2,250 to respondent's mother, $1,000 to respondent's mother-in-law and $17,750 to DiFeo Imports for the purchase of an automobile. These disbursements totaled $55,433. It is not clear from the complaint what respondent did with the remaining $595,321 of the funds entrusted to him by the Thompsons. What is clear is that those funds were not in the account on August 23, 1996, when it was closed, that none of those funds were used for the benefit of the Thompsons and that respondent no longer possesses any of those funds, as he is "barely solvent."

The complaint alleged that the Thompsons were respondent's clients because, in November 1991, they paid respondent $1,500 for the preparation of a will and for legal advice on the Goshen property. The complaint charged respondent with dishonesty, fraud, deceit and misrepresentation (RPC 8.4(c)), knowing misappropriation of client funds (RPC 1.15), conflict of interest (RPC 1.7) and prohibited transaction with a client (RPC 1.8(c)).

The Morrison Matter

At some unspecified time, but apparently during this same time period, James Morrison retained respondent to represent him in an action against Hudson County Collision to recover damages sustained by Morrison's car. Respondent never filed suit on Morrison's behalf. When Morrison repeatedly requested information about the suit, respondent informed him that a $27,000 judgment had been issued against the towing company. On December

19, 1995, respondent issued to Morrison check number 1214 for $20,000. The check was drawn on the Clinton Venture Fidelity USA account opened for the Thompson matter. That check was returned for insufficient funds.

Morrison filed a grievance against respondent on March 1, 1996.

When questioned by the OAE about the Morrison matter, respondent admitted that he never filed suit, that he fabricated a docket number and that he staged a deposition to cover up his inaction. He claimed that he was hoping to resolve the matter with the towing company. He further claimed that he was feeling pressured by Morrison for what Morrison believed to be his share of the judgment proceeds. Morrison was trying to obtain a mortgage to purchase a property in Florida and needed the judgment proceeds for that purpose. In order to help Morrison convince the mortgage company that Morrison had funds, respondent "faxed" to the mortgage company a copy of check number 1153 from his attorney business account, dated December 18, 1995. The check was written out for $20,000 and included the notation "Proceeds Suit." However, the check had been written against a closed account.

The complaint charged respondent with gross neglect (RPC 1.1), lack of diligence (RPC 1.3) and conduct involving dishonesty, fraud, deceit and misrepresentation (RPC 8.4(c)).

Immigration Court Appearances

In addition to respondent's temporary suspension in New Jersey, on January 7, 1997 respondent was suspended from the practice of law by the United States District Court, District of New Jersey. Thereafter, respondent appeared in immigration court before the Honorable Alberto Riefkohl. On May 13, 1997, he again appeared in immigration court, this time before the Honorable Annie S. Garcy. When he appeared before Judge Garcy, respondent was asked whether there was anything preventing him from practicing law. He answered "absolutely not." When pressed further by Judge Garcy about an order for his temporary suspension, respondent reiterated that there was no problem and that he would provide proof of his good standing.

In connection with these allegations, respondent was charged with the unauthorized practice of law (RPC 5.5), lack of candor toward a tribunal (RPC 3.3), lack of truthfulness to others (RPC 4.1) and conduct involving dishonesty, fraud, deceit and misrepresentation (RPC 8.4(c)).

* * *

Service of process was properly made in this matter. Following a de novo review of the record, the Board found that the facts recited in the complaint support a finding of unethical conduct. Therefore, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

When a lawyer knowingly misappropriates client trust funds, disbarment must follow. In re Wilson, 81 N.J. 451 (1979). Disbarment is also required where an attorney knowingly misappropriates escrow funds. In re Hollendonner, 102 N.J. 21 (1985).

Here, the Thompsons trusted that respondent would utilize their funds for the purchase of the Goshen property. The funds were placed in an interest-bearing account for this purpose. Respondent, however, did not buy the land with those monies, which are missing from the account. Although it is not clear from the allegations of the complaint that respondent was, in fact, the Thompsons' attorney when he was entrusted with those funds, because of his fiduciary duty to safekeep funds entrusted to him for escrow purposes, it is unnecessary to determine whether an attorney-client relationship existed. Indeed, any misbehavior by an attorney, whether private or professional, that reveals an absence of the good character and integrity essential for an attorney, constitutes a basis for significant discipline. In re LaDuca, 62 N.J. 133, 140 (1979). An attorney "is bound even in the absence of the attorney-client relation to a more rigid standard of conduct than required by laymen . . . [The] fiduciary obligation of a lawyer applies to persons who, although not

strictly clients, [the attorney] has or should have reason to believe rely on him." In re Hurd, 69 N.J. 316, 330 (1976) (quoting In re Gavel, 22 N.J. 248, 265 (1965)).

In the Thompson matter, respondent knew or should have known that the Thompsons were relying on his statements that the Goshen property was a good investment when he persuaded them to invest over $700,000. The Thompsons have stated that they did, in fact, rely on respondent's assurances because of his expertise as an attorney and as a trusted family member. Disbarment for stealing funds entrusted to a lawyer is required even when the funds do not belong to a client. See, e.g., In re Imbriani, 149 N.J. 521 (1997); In re Siegel, 133 N.J. 162 (1993); In re Spina, 121 N.J. 378 (1990).

In short, it is not necessary to determine whether respondent was acting as the Thompsons' attorney. Respondent must be disbarred under either scenario. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1). The allegations include a charge that respondent misused the Thompson funds entrusted to him, in violation of In re Hollendonner, 102 N.J. 21 (1985) and RPC 8.4(c). That alone mandates disbarment.

In addition, however, respondent again violated RPC 8.4(c) when, in the Morrison matter, he forwarded a copy of a check that was never issued, written on a closed account, with the intention of deceiving a mortgage company into granting financing to his client.

Additionally, respondent's failure to file an action on behalf of Morrison violated both RPC 1.1(a) and RPC 1.3.

Furthermore, in his immigration court appearances, respondent practiced while suspended. When questioned about his suspension, respondent lied to the judge that he was eligible to practice law and assured her that he would submit proof of his good standing. Respondent's actions here violated RPC 3.3, RPC 4.1, RPC 5.5 and RPC 8.4(c), as charged.

Finally, respondent failed to cooperate with the investigation of these matters and failed to file an answer to the formal ethics complaint, in violation of RPC 8.1(b). The record is silent as to whether respondent received the second letter from the OAE, advising him that the complaint would be amended to include a charge of RPC 8.1(b). Yet, when a complaint fails to charge a specific ethics violation, but the facts in the record are sufficient to put respondent on notice of that violation, the allegations may be deemed amended to conform to the proofs. In re Logan, 70 N.J. 223, 232 (1976). Respondent was aware of his obligation to cooperate with disciplinary authorities, particularly because he had already been the subject of former ethics proceedings. The Board, therefore, deemed the complaint amended to include a charge of a violation of RPC 8.1(b).

Since respondent stole $690,000[3] of funds that were entrusted to him because of his status as an attorney, the Board unanimously determined to recommend that respondent be disbarred. Even if there were no attorney-client relationship here-and, therefore, In re Hollendonner were not applicable-the Board would still recommend respondent's disbarment based on the totality of his conduct, his prior ethics history and his failure to answer the complaint.

One member did not participate.

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

Dated: 5/10/99

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

3 The Board was not inclined to deduct from the unaccounted for monies the $240,000 in interest that respondent paid to the Thompsons. The fact remains that the entire principal sum entrusted to him by the Thompsons ($690,000) is missing. Moreover, respondent was given an opportunity to explain the various disbursements but, instead, chose not to answer the complaint. Under these circumstances, the allegations that respondent did not use the $690,000 for the Thompsons' purposes stand admitted.