SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-478

IN THE MATTER OF

MICHAEL A. CHASAN,

AN ATTORNEY AT LAW

Decision

Argued: March 20, 1997

Decided: June 3, 1997

John J. Janasie 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 the Board based on a recommendation for discipline filed by the District XIII Ethics Committee ("DEC"). The two-count complaint charged respondent with violations of RPC 1.15(a)(failure to safeguard funds of a third person); RPC 3.3(a)(1)(knowingly making a false statement to a tribunal); RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or

misrepresentation)(count one); and RPC 1.15(d)(recordkeeping violations) and R. 1:21-6 (count two).

Respondent was admitted to the New Jersey bar in 1975. He maintains a law office in Greenbrook, New Jersey. In 1982, respondent received a public reprimand for improperly endorsing a client's check for his legal fee. In re Chasan, 91 N.J. 381(1982).

* * *

This matter arose from a fee dispute between respondent and the law firm at which he was formerly employed. Respondent failed to retain the fee in his trust account until the dispute was resolved.

Respondent was employed by the law firm of Leonard and Leonard ("The Leonard Firm") from December 1989 until December 1991 (formerly the law firm of Alvin R. Leonard). While still employed, respondent was assigned to represent the plaintiff in the case of Land v. Cammy, a personal injury matter.

Respondent was terminated from his position at the Leonard firm in December 1992. Some time thereafter, Martha Land, the plaintiff, contacted respondent and requested that he continue to represent her. Respondent took over the representation of the case

on February 18, 1992. Thereafter, by letter dated February 19, 1992, Alvin R. Leonard notified the defendant's counsel, the insurance carrier, respondent and other relevant individuals, that his firm had an attorney's lien on the proceeds of any future settlement or judgment that would result from the Land matter.

On June 18, 1992, the Land v. Cammy matter was settled for $33,300. During the course of the court proceedings, respondent represented that "either as part of the release or releases and/or cover letter I will indicate that all outstanding liens will be satisfied out of the two collective checks [the settlement proceeds]." Exhibit C-3. By letter dated June 23, 1992, respondent sent the defendant's attorney an original executed release and a copy of the stipulation of dismissal. Respondent again confirmed in the letter that all outstanding liens, including outstanding medical bills, "attorney's liens," and costs, if any, would be paid out of the proceeds of the settlement funds upon his receipt of the draft. Exhibit C-4. Because of the attorney's lien asserted by the Leonard firm, respondent also indicated that he would file a motion before the court with regard to the apportionment of fees.

The settlement proceeds were forwarded to respondent by letter dated June 29, 1992. The defendant's attorney indicated in the

letter that the settlement proceeds were being sent with the understanding that respondent would satisfy and discharge all hospital, medical, workers' compensation and/or any other liens incurred in connection with the claim. As noted above, defendant's counsel was aware of the lien asserted by the Leonard firm.

On July 9, 1992, Alvin Leonard wrote to respondent indicating that he had recently learned of the settlement in Land v. Cammy. Leonard reiterated that his firm had an attorney's lien consisting of one-third of the settlement. Leonard requested that respondent apprise him of the details of the settlement and forward a copy of the release and closing statement to his firm.

On July 10, 1992, respondent forwarded a check in the amount of $21,300 to his client, Martha Land. Thereafter, on July 23, 1992, respondent filed a motion for the apportionment of the legal fees. Until that time, respondent maintained the disputed fee in his trust account. In respondent's supporting certification to the court, he stated that the Land matter had been settled for $33,000 on June 19, 1992 and that he had attempted, both in writing and by telephone, to resolve the issue of the apportionment of the fees with the Leonard firm. Respondent further certified that he still had the $12,000 fee in his trust account. Exhibit C-9. The certification of service accompanying the motion showed that copies

of the notice of motion had been served on the Clerk of the Superior Court, on James Horan (defendant's counsel) and on the court. The Leonard firm's name was omitted from the service list. As a result of this omission, on August 7, 1992 the court denied respondent's motion for failure to serve a party.

Notwithstanding that respondent had represented to the defendant's attorney that all outstanding liens would be satisfied out of the proceeds of the settlement and notwithstanding his comments to the court, respondent disbursed the entire fee to himself by issuing five trust account checks between August 20 and September 16, 1992. The Leonard firm was not informed of the disbursements and continued to believe that respondent still had the fees in his trust account.

Respondent and the firm continued to negotiate over the fee. Because of their difficulty in reaching an agreement, Leonard notified respondent that he had contacted the judge's secretary to suggest that the matter be scheduled for a conference. Exhibit C-13. In accordance with Leonard's request, the assignment judge scheduled a conference for October 8, 1992 to resolve the outstanding fee dispute. Ultimately, the conference was conducted before the assignment judge on November 17, 1992, at which time respondent was directed to deposit the $12,000 with the Clerk of

court within twenty-four hours. As seen below, respondent failed to do so. Instead, his office contacted the judge's chambers with the news that the matter had been settled. At this juncture, the assignment judge believed that respondent still had the $12,000. From the record it is unclear whether the judge believed that the money was being held in respondent's trust account.

It appears that there was a misunderstanding about the settlement tentatively reached between respondent and the Leonard firm. Nevertheless, on November 18, 1992 respondent forwarded a letter to the Leonard firm indicating that the matter would be settled as follows: respondent would forward $5,000 to the firm by November 20, 1992 and an additional $5,895.86 no later than December 11, 1992. Exhibit C-14. (The Leonard firm believed that the amounts were to be sent in the reverse order).

On November 20, 1992, respondent forwarded a $5,000 check to the Leonard firm. The check omitted the year from the date of the check and it was made payable to "Al" Leonard, not the firm. The Leonard firm, thus, believed that respondent was trying to alter the terms of the settlement. Moreover, it appears that Albert Leonard believed that the check was non-negotiable as drafted. He, therefore, voided the check, returned it to respondent and

requested a replacement check. Respondent failed to forward another check.

When the assignment judge learned that the settlement had not been reached, as represented by respondent, he issued an order to show cause on December 8, 1992, stating as follows:

> It having been brought to the attention of the Court that the matter of Land v. Cammy has been settled by and between the parties, and that as a result, the settlement draft was issued by the defense to the plaintiff and [respondent], and that as a result, [respondent] was directed by the Honorable John Pisansky to retain the sum of $12,000 apparently in his trust account until he matter of Leonard and Leonard v. Chasan was resolved and specifically the asserted attorney's lien involved therein was also resolved, and that during a conference with the court on November 17, 1992, [respondent] was directed by this Court to deposit the sum of $12,000 with the Clerk of the Court within 24 hours to await the further order of the Court, and it appearing that although the parties reported a resolution of the matter to the Court on November 18, 1992, the matter has not been resolved, the asserted attorney's lien has not been satisfied, and certain payments allegedly agreed upon have not been made . . .
>
> [Exhibit C-23]

The judge ordered respondent to appear before him on December 11, 1992 to explain his actions after his agreement before the court on November 17, 1992 and to explain why the $12,000 deposit had not been made.

Respondent and the defendant's attorney appeared before the assignment judge on December 11, 1992. Albert Leonard was not present. During the proceedings, the assignment judge explained that it had been the trial court's understanding that the disputed $12,000 fee was in respondent's possession and that it would so remain until the division of the fee was resolved. The assignment judge continued that, when respondent appeared before him to conference the matter, respondent had acknowledged that he had the $12,000. The assignment judge, therefore, directed him to deposit the fund in court the next day to await the outcome of the pending motion. The deposit was not made. Instead, respondent's office represented to the assignment judge's secretary that the matter had been settled. The judge later learned that the settlement had not been achieved. As a result, he issued the order to show cause sua sponte to finally resolve the matter.

Respondent was not represented by his attorney at the hearing. When respondent was asked by the assignment judge whether he had any comments, respondent admitted that he did not have $12,000 with him at that time. Respondent stated the following:

> However, I anticipate, I think the record should indicate, it's my intention to work completely with the Court, in the Court's best interest and hopefully will enable this matter to be resolved.

> I anticipate and hope and expect that I will be, if given a very limited amount of time to -- and I would suggest most respectfully -- one week -- I anticipate -- and I can't guarantee -- but I fully anticipate I would, within one week, be able and will either deposit $12,000 in court and/or deposit or post an irrevocable letter of credit which would accomplish the same purpose.
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> Unfortunately, because of the short time period concerning this matter -- I apologize for taking the court's time on this -- but unfortunately, I was served with the latest Order to Show Cause Tuesday night at my home. . . .I cannot guarantee to the Court but I ask the Court's limited respect, and I can do as much as, I can come as close to a guarantee as is humanly possible.

The judge then stated:

> [Y]ou're now indicating rather clearly to me that that sum of money is not in your trust account. . . . You indicated to me several weeks ago in this conference to which I referred that you had the money and could deposit it the very next day. Now you're digging your hole much deeper, sir. You're indicating to me that you cannot do that. Is this the wrong impression?

Respondent replied:

> Your Honor, part of my problem is I'm not completely at leave to discuss the specifics of what was said or the implications of them without counsel, and I mean that fully respectfully, your Honor. I'm not trying to dig a hole for myself or the Court, either, but I am somewhat limited in terms of this time-frame of discussing specifics concerning

that because of the obvious ramifications of it, without counsel.
[Exhibit C-25]

As a result of that exchange, the assignment judge informed respondent that the record would be referred to the ethics authorities. On December 14, 1992, the assignment judge forwarded a transcript of the proceedings to the Secretary of the Advisory Committee on Professional Ethics. The matter was ultimately forwarded to the Office of Attorney Ethics ("OAE"). An investigation ensued.

In response to an inquiry by the OAE, respondent conceded that the trial court judge had specifically directed him to retain the funds in his trust account until the filing of an appropriate motion for the apportionment of the fees. Respondent asserted his belief that he had fully complied with the judge's directive in the matter and that he would document and substantiate his position when he appeared at the demand audit scheduled for January 25, 1993.

During the demand audit, the OAE uncovered numerous recordkeeping violations: a trust receipts and disbursements journal was not maintained; a running cash balance was not keep in the trust account checkbook; client ledger cards were not fully

descriptive; and quarterly reconciliations were not prepared. OAE investigator Verdel testified that, without the foregoing information, it was difficult to determine the amount in respondent's trust account and to whom it belonged, as well as whether the trust account was in balance.

Investigator Verdel noted that the manner in which respondent maintained his checkbook did not comply with generally accepted accounting principles or the recordkeeping rules. She noted that, while respondent supplied some information, it was difficult to follow his accounting; it was not accurate and the checks were out of sequence, which made it difficult to maintain an accurate running balance. Moreover, with regard to the Land matter, the investigator noted that respondent had improperly recorded the check in his trust account checkbook ledger. According to the investigator, respondent's errors were beyond simple arithmetic miscalculations or poor recordkeeping practices. She also opined that the $300 mistake in the Land matter could have affected respondent's trust account balance and, consequently, other client funds.

The OAE directed respondent to reconstruct his records. That office supplied him with information from the attorney trust and business account manuals and enclosed copies of pages to review to

assist him in reconstructing his records in accordance with the OAE requirements. Respondent submitted a response on April 23, 1993, enclosing a copy of his trust account receipt ledger prepared to the best of his ability. He stated in his letter, "it would appear to me that I have fully complied with all recordkeeping requirements as requested originally in your February 16, 1993 letter." However, the investigator noted that he had not so complied. She explained that respondent's corrected records were still not accurate, and only purported to comply with the OAE recordkeeping rules. The information supplied by respondent was inaccurate. Respondent's receipts and disbursements journal still failed to identify dates, amounts and clients and he failed to indicate check numbers. He also failed to include balances. There was no significant improvement over the situation revealed by the OAE audit. The OAE did not seek further information from respondent. Instead, the recordkeeping problems were incorporated into the charges of the formal complaint.

At the DEC hearing, respondent explained that, since he had not heard from the OAE for two years after his submission of the corrected records, he believed that he had complied with the OAE requirements. As to the fee matter, respondent claimed that he thought that he was entitled to the fees, that he did not make

misrepresentations to the court with regard to whether he retained the fees intact, and that he disbursed the monies to himself out of a sense of frustration because he was unable to resolve the matter with the Leonard firm. Respondent contended that he also felt that he would not be paid by the firm for other matters in which he had been involved.

In a separate proceeding, the Leonard firm was eventually awarded the return of the disputed fee. The record does not reveal whether the terms of the repayment were met.

* * *

The DEC found that respondent deliberately issued a defective check to the Leonard firm. In count one, the DEC found violations of RPC 1.15, RPC 3.3(f) and RPC 8.4(c). As to the recordkeeping violations (count two), the DEC found that respondent failed to correct his recordkeeping practices, thereby violating R. 1:21-6 and RPC 1.15. Notwithstanding these findings, the DEC recommended only a reprimand.

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent claimed that he did not keep the fees in his trust account because of his frustration over the difficulty in resolving the Land v. Cammy fee matter. He also believed that the Leonard firm owed him fees in several other matters with which he was involved while in their employ. Nevertheless, respondent was directed by the court to keep the fees in his trust account until the resolution of the apportionment of the fees. At the time that he disbursed the fees to himself, he had been in practice for seventeen years and should have known better. Notwithstanding that the motion filed by respondent was denied, based on his representations to the court and others, he was unquestionably under an obligation to keep those fees in his trust account pending the outcome of the matter. Respondent's explanation that he believed that he had complied with the court's direction was disingenuous. Respondent was obligated to either refile the motion and serve the one party that was not served, or to settle the dispute. Instead, he exercised self-help.

Respondent claimed that he did not make misrepresentations to the court about maintaining the fees. However, the exchange

between the assignment judge and respondent on December 11, 1992 leads to a contrary conclusion. If not explicitly, then at least implicitly, respondent led both the trial court judge and the assignment judge to believe that he was still in possession of the fees. It was not until the return date of the order to show cause that the assignment judge learned that the fees were not in respondent's trust account and that respondent did not have that sum of money readily available to him to pay the Leonard firm. Moreover, in respondent's exchange with the judge, respondent exhibited a continued lack of candor by his feeble attempt to skirt the issue of the whereabouts of the $12,000. His conduct in this regard was a clear violation of RPC 3.3(a)(1).

Respondent's letter to the defendant's attorney agreeing to pay all of the liens from the settlement proceeds was also a misrepresentation. In addition, respondent failed to advise the Leonard firm that he had disbursed the funds to himself, knowing that Albert Leonard believed that he still had the money. Respondent, therefore, violated RPC 8.4(c) by making an affirmative misrepresentation as well as by his silence.

Once the fee dispute was purportedly settled, respondent forwarded an incorrectly drafted check to Albert Leonard. Respondent's failure to replace the check underscored the

deliberate nature of his conduct, as found by the DEC. Moreover, respondent's failure to retain the fees in a separate account pending the final resolution of the fee dispute was a violation of RPC 1.15. Finally, respondent violated the recordkeeping requirements of RPC 1.15(d) and R.1:21-6.

Under less serious circumstances, reprimands have been imposed. In In re Banas, 144 N.J. 75(1996), the attorney improperly and knowingly retained $5,000 that had been intended to secure a defendant's release from prison. In mitigation, the Court noted that the attorney had no history of discipline and that, while he was an assistant prosecutor, he had assisted in devising a Central Judicial Processing System for the courts. See also In re McKinney, 139 N.J. 388(1995) (attorney violated RPC 1.15(b) and (c) by failing to notify his client of the receipt of settlement funds and disbursing funds he knew were in dispute).

Here, respondent's conduct was more serious. Not only did he make misrepresentations to an adversary and to a third party, that is, expressly to the defendant's attorney and implicitly to the Leonard firm, but he also implicitly, if not expressly, misled two judges that he was holding the fee, when he had already disbursed it to himself. Exacerbating respondent's conduct were his violations of RPC 1.15(d) and R. 1:21-6.

Clearly, respondent's conduct was serious and cannot be condoned or excused by virtue of his claim of anger or frustration. Moreover, respondent had been disciplined in the past for engaging in self-help with fees. The Board, therefore, determined that a short-term suspension is warranted. The Board unanimously voted to impose a three-month suspension.

The Board also directed that, following reinstatement, respondent submit to audits of his attorney records for a period of two years.

The Board further directed that respondent complete ten hours of ethics and professional responsibility courses within two years of this decision. Two members of the Board did not participate in this decision.

The Board further directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 6/3/97

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael A. Chasan
Docket No. 96-478

Hearing Held: March 20, 1997

Decided: June 3, 1997

Disposition: Three-Month Suspension

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Huot							x
Cole		x					
Lolla							x
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson		x					
Total:		7					2

Robyn M. Hill 6/16/97
Robyn M. Hill
Chief Counsel