

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-359

IN THE MATTER OF
GAIL D. BUTLER
AN ATTORNEY AT LAW

Decision

Argued: February 8, 2001

Decided: May 7, 2001

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. She has no disciplinary history.

On January 12, 1999 respondent was disbarred in New York after she failed to appear or apply for a hearing or reinstatement within six months of her suspension from the practice of law. The suspension, in turn, was based on respondent's failure to cooperate with disciplinary authorities and on uncontested evidence that she had engaged in professional

misconduct, following a complaint that she had knowingly misappropriated client escrow funds. The affirmation filed by staff counsel for the New York disciplinary authorities revealed that:

- respondent represented a musical recording artist who entered into an agreement with a partnership to establish a record company;
- pursuant to the agreement, the partnership's capital contributions were to be deposited into respondent's trust account and held in escrow;
- respondent was required to give the investing partners notice before withdrawing any monies for expenses;
- on June 25, 1996 the partnership gave respondent a \$45,000 check, which she deposited into her trust account the next day;
- on August 2, 1996 the partnership gave respondent a \$20,000 check, which she deposited into her trust account on August 5, 1996;
- as of August 8, 1996 the balance in respondent's trust account was only \$24,026.29 when she should have been holding \$65,000 for the partnership alone;
- by June 4, 1997 the balance in respondent's trust account was minus \$9.27;
- respondent's client reviewed the withdrawals made by respondent and identified ten checks totaling \$9,350 issued from July 1, 1996 to August 10, 1996 that he had authorized for expenses;
- even if the \$9,350 had been disbursed properly to cover the client's expenses, albeit without notice to the partnership, respondent should have retained the remaining \$55,650 in her trust account;
- from August 1996 through March 1997, respondent failed to return the partnership's telephone calls and letters;
- in March 1997 respondent notified the partnership that she was recuperating from an unspecified illness and provided a new address to which correspondence should be sent;

- respondent did not reply to mail sent to the new address, which turned out to be a post office box rented from a commercial mail service;
- in 1996 respondent had been evicted from her home address.

Respondent failed to notify the OAE of her 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 determined to 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:

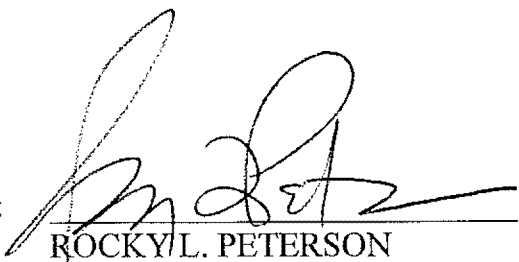
- (B) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (C) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (D) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (E) 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;
- (F) 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. Knowing misappropriation of escrow funds mandates disbarment. *In re Hollendonner*, 102 N.J. 21 (1985); *In re Wilson*, 81 N.J. 451 (1979). We, thus, unanimously recommend that respondent be disbarred. Two members did not participate.

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

Dated: May 7, 2001

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

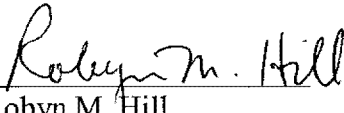
**In the Matter of Gail D. Butler
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Disposition: Disbar

Members	Disbar	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						
Total:	7						2

 7/16/01
Robyn M. Hill
Chief Counsel