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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 97-129

IN THE MATTER OF

ARTHUR D. BROMBERG

AN ATTORNEY AT LAW

Decision

Argued: September 18, 1997

Decided: December 16, 1997

Brian D. Gillet appeared on behalf of the Office of Attorney Ethics.

Robert L. Hollingshead appeared on behalf of respondent.

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

This matter was before the Board based on an appeal filed by the Office of Attorney Ethics ("OAE") from a dismissal by the District XI Ethics Committee ("DEC") of disciplinary charges against respondent. The formal complaint charged him with failure to safeguard funds of a third party, in violation of RPC 1.15(b), and conduct involving deceit, dishonesty, misrepresentation and fraud, in violation of RPC 8.4(c) and of *In re Siegel*, 133 *N.J.* 162 (1993).

Respondent was admitted to the New Jersey bar in 1979. He has no prior ethics history.

* * *

Respondent admitted that in November 1994 he intercepted and endorsed two checks payable to Moran Bromberg Smith ("MBS"), the law firm with which he was affiliated, that he deposited the checks into his individual business checking account and that he used the funds for his personal expenses. The central issue in this matter is whether that conduct constituted knowing misappropriation of law firm funds, as contended by the OAE, or a partnership dispute, as urged by respondent and found by the DEC.

In November 1993 respondent approached Kathleen F. Moran, Esq., of K.F. Moran & Associates, about entering into a business relationship. Both respondent and Moran were engaged in a very specialized area of the law, representing insurance companies in offering medical defenses on behalf of defendants in asbestos litigation. Moran described her practice as follows:

> Well, in the last few years my practice has been predominantly in one narrow area. I'm joint medical counsel in New Jersey to about 80 companies, and that means in the asbestos personal injury litigation. And what that means is that I handle the medical aspects of the defense for those companies.
> [1T13][1]

[1] 1T denotes the transcript of the June 12, 1996 hearing before the DEC.

At that time, Moran was the sole proprietor of the firm. She employed two associates, Terrence Smith and Susan Braver. Moran was interested in expanding her practice into New York, where respondent was admitted and had business contacts. Respondent, who had recently discontinued his partnership in the law firm of Picillo, Bromberg & Caruso, was looking for other professional options. Aware of Moran's interest in expanding her asbestos litigation practice, respondent envisioned the potential for a mutually beneficial association.

Moran agreed to rent office space to respondent while they considered the possibility of some sort of business relationship. Moran retained a law firm consultant and a corporate attorney to make recommendations and prepare the necessary documents. After several meetings, Moran, her associate Terrence Smith and respondent expressed an interest in forming a future partnership or professional corporation. They agreed to try an interim arrangement on a short-term basis to assess the desirability of entering into a formal professional relationship. The venture was speculative and subject to many variables. In addition, the proposed documents prepared by the corporate attorney to govern the proposed professional corporation were lengthy and complex. Instead, Moran, Smith and respondent signed a letter-agreement dated February 18, 1994 to address this interim venture (Exhibit C-1). The interpretation of this document, which is slightly longer than one page and contains four paragraphs, is at the heart of this dispute.

The parties' testimony concerning the letter-agreement was inconsistent. Moran testified that the firm remained a sole proprietorship, of which she was the sole owner and Smith and respondent were "non-equity partners." Moran contended that, as the sole owner,

she assumed all of the financial risk associated with the venture. She claimed that her right to hire and discharge all her employees at will, including respondent and Smith, was not affected by the letter-agreement. According to Moran, the purpose of the agreement was to set forth the terms of this short-term arrangement, with the understanding that, in October 1994, the parties would evaluate the situation to decide whether they would form a professional corporation.

The agreement allowed the parties to change the name of the sole proprietorship from K.F. Moran & Associates to Moran Bromberg Smith. A trade name certification was signed by Moran, Smith and respondent (Exhibit R-8). Moran contended that this name change was made for marketing purposes and that the signature of the three named attorneys was required on the trade name certification. She also asserted that both Smith and respondent were considered non-equity partners, entitled to a monthly salary of $8,000.

Respondent's testimony and interpretation of the letter-agreement were at odds with Moran's. According to respondent, the letter-agreement converted the sole proprietorship of K.F. Moran & Associates to the partnership of Moran Bromberg Smith. He considered himself a non-equity partner in that partnership. Respondent pointed out that he, Moran and Smith held themselves out as a partnership, introduced each other as "partners" to clients and others and referred to each other as "partners" to staff. Respondent introduced into evidence a copy of an announcement from the February 28, 1994 *New Jersey Law Journal* referring to him and Smith as "members" of MBS (Exhibit R-23). He also remarked that Susan Braver,

an associate with K.F. Moran & Associates and later with MBS, did not sign the letter-agreement because she was not a partner, while he and Smith were.

Respondent's major client was Connecticut Valley Claims Service Company, Inc. ("CVCSC"), a third-party asbestos claims' administrator. Respondent had represented CVCSC when he was an associate and then a partner with another law firm. When respondent formed Picillo, Bromberg & Caruso, he continued to be its attorney. Respondent projected to Moran that his annual billings from CVCSC would be between $100,000 and $150,000 for 1994, the year he joined MBS. Moran, in turn, testified that respondent had estimated his annual billings at $150,000 to $300,000. Respondent also had other clients, including matrimonial clients, that he expected to bring with him to MBS.

Respondent viewed his standing in MBS as different from Smith's. According to respondent, Smith was merely a first-time partner who, unlike respondent, did not have his own clients or generate business for the firm. Respondent testified that the preliminary discussions about the professional corporation contemplated the following stock ownership: six shares for Moran, three shares for respondent and one share for Smith. Furthermore, respondent contended, Smith assumed no risk by entering into the letter-agreement, while respondent had accepted a reduced salary from his 1993 salary of $150,000, had affiliated himself with a venture that no one wanted to join and had taken the chance that, if the venture proved unsuccessful, he would have to look for other job opportunities.

Trouble soon followed. After the letter-agreement was signed on February 18, 1994, respondent's accounts receivable were not as high as expected. In April and May 1994,

Moran started pressing respondent for increased receipts. Respondent replied that he was expecting an increase in fees, attributing the low receipts to the delay in start-up and billing. Throughout the summer, Moran expressed concern about the firm's financial condition, holding meetings periodically. Two clerical staff members and the associate, Susan Braver, were dismissed from their employment.

On September 8, 1994 Moran met with Smith and respondent to announce that the venture could not go forward. According to Moran, on September 26, 1994 she notified respondent and Smith that, while the firm had enough business to keep Smith on staff, it did not have enough work for respondent. Moran declared that, after reviewing respondent's hourly billings and collections, she was no longer willing to "subsidize" respondent. She suggested that respondent consider looking for another job, making it clear that the current arrangement could not continue. On September 28, 1994 Moran asked respondent if he was planning to obtain another job, or to stay in his office as a sole practitioner or to continue as part of the firm, but financially independent. Moran told respondent that he had not yet decided. Respondent was told that he would be paid through September.

Respondent's version of the above events was that on September 30, 1994 Moran had notified him that "her business was soft, and that as a result, she was going to unilaterally change our arrangement" (4T62)[2]. In addition, respondent recalled, Moran had informed him

[2] 4T denotes the transcript of the September 4, 1996 hearing before the DEC.

that, after the next paycheck, he would no longer be paid. According to respondent, Moran had told him that she would make a proposal for their future relationship.

On October 5, 1994 Moran gave respondent certain figures indicating that, apart from considerations of payment of overhead, respondent owed her a shortfall of $22,100, computed as salary to date less fees received ($64,800 - $42,700) (Exhibit R-9). Moran calculated that respondent had $36,400 in anticipated future receipts, based on his accounts receivable and work in progress. Moran determined that respondent's overhead was $2,130 per month. She proposed that, upon receipt of respondent's billings, his overhead be paid first, beginning October 1, 1994, and that the remainder of anticipated revenues be distributed in the following order: $12,000 to Moran; $3,000 to Bromberg; $10,000 to Moran and $11,400 to Bromberg.

Moran testified that respondent had agreed to her proposal. Respondent, however, recalled that, after he told Moran that the proposal was one-sided in her favor, she countered that, while she was not inclined to change it, she would see how matters developed.

By November 1994 respondent was experiencing personal cash flow problems as a result of Moran's decision to terminate his salary in September. In late October or early November respondent asked Ralph Pizzuti, his contact at CVCSC, if CVCSC could send a check for fees to respondent directly. Pizzuti did not respond. Respondent also asked Pizzuti if CVCSC would delay sending the payment to MBS. Pizzuti replied that delaying payment to MBS would not be a problem. Respondent later learned that CVCSC would be mailing the check in November. Armed with this knowledge, on two consecutive days respondent asked

Kathy Mooney, MBS's accounts receivable clerk, if he could examine the mail received for MBS. Respondent contrived an explanation that he was expecting mail from his prior law firm. That was not true. On the second day, November 13 or 14, 1994, respondent found and intercepted an envelope from CVCSC, containing two checks payable to MBS in the amounts of $3,260.18 and $3,355.38, for a total of $6,615.56 (Exhibits C-3 and C-5). After endorsing the checks by signing the firm's name and his own name, respondent deposited the checks into his attorney business account on November 14, 1994 (Exhibits C-7 and C-8). Respondent explained that he maintained an attorney business account even after he joined MBS because he was still receiving fees from his prior law practice. Respondent used these funds to satisfy personal obligations, including the payment of his mortgage, car loan, American Express bills and other miscellaneous debts (Exhibits C-10A through C-10F).

On November 22, 1994 Moran met with Smith and respondent about the lack of receivables. According to Moran, she specifically mentioned the funds expected from CVCSC in the approximate amount of $6,000. Respondent made no mention that he had kept the two checks. Moran met with respondent again on December 1, 1994 regarding three specific outstanding fees, including the fees due from CVCSC. It was Moran's position that, with the payment of those fees, there would have been sufficient funds to apply toward respondent's overhead and, in accordance with her proposal of October 5, 1994, both she and respondent would have shared the balance. Moran alleged that she could not understand why respondent was not displaying more interest in collecting these funds, particularly because he had not been paid since September. According to Moran, at their December 1, 1994

meeting respondent finally told her that he had asked Ralph Pizzuti of CVCSC to make the checks payable to him individually and to send them to his home address. As a result of this conversation, Moran retained legal counsel and reported the incident to the DEC (Exhibit C-11).

Not surprisingly, respondent's version of the events varied substantially from Moran's. According to respondent, the CVCSC fees were not discussed at all at the November 22, 1994 meeting with Moran and Smith. Respondent asserted that, at that meeting, Moran had presented yet another proposal that was not acceptable to him, although it was more favorable than the October 5, 1994 offer (Exhibit R-12). Under this modified proposal, of the $160 per hour billed for joint medical counsel work respondent would receive $60 per hour, while Moran would receive the remaining $100 per hour; of respondent's receivables, he would receive sixty percent until the shortfall due to Moran was paid in full and Moran would receive forty percent; thereafter, respondent would receive 100 percent of the receivables, less overhead expenses. Respondent testified that, approximately one week after the November 22 meeting, on a Friday afternoon, he informed Moran that, because he believed that he was entitled to the funds, he had taken the CVCSC checks. The following Monday or Tuesday, Moran asked respondent to tell Smith that he had taken the checks. After respondent did so, Moran told respondent that she wanted him to leave the firm immediately. However, because respondent was about to begin selecting a jury for ten cases in New York, it was agreed that he would remain with the firm until the end of December 1994. Respondent left the firm at the end of 1994.

At the DEC hearing, respondent maintained that he permitted all fees received from his clients in December to be paid to the firm, notwithstanding that, under all of Moran's proposals, the funds should have been paid to him. Respondent subsequently modified this position, contending that he was entitled to at least sixty percent of the fees. As an example, he mentioned that, although a matrimonial client had paid $7,500 that should have gone to him, he had allowed the firm to retain those monies (Exhibit R-13). Respondent added that he did not receive any compensation from MBS after September 1994.

At the time of the DEC hearing, no final accounting had been prepared and the dispute between Moran and respondent still had not been resolved.

It is undisputed that respondent never asked Moran's permission to take the CVCSC checks. It is also undisputed that, with one exception, Moran was the only person authorized to sign checks as the payor. The exception was the firm's controller, Dev Mittra, who was permitted to sign checks up to $200. Moran's and respondent's testimony about MBS's practice on checks was consistent: accounts receivable staff would endorse all checks with the firm's stamp and deposit them in the firm's account. The accounts receivable clerk's testimony in this regard was in agreement with Moran's and respondent's. The clerk's version of the events surrounding respondent's interception of the CVCSC checks was consistent with respondent's version.

Terrence Smith testified that he had been hired by K.F. Moran & Associates as an associate in May 1991. He explained that the firm had changed its name to Moran Bromberg

Smith for "marketing purposes" (3T40).[3] Smith's recollection was that respondent had not expressed any dissatisfaction with the letter-agreement at the time of its execution. Smith asserted that he was and still is a full-time salaried employee, not a member, of the firm, with no equity in it. He conceded that the attorneys referred to each other as "partners" for marketing purposes. However, he contended, he was not legally responsible for the firm's debts or entitled to its profits.

Smith recalled that, in late November or early December, Moran had told him that respondent had taken checks intended for MBS. Smith's reaction was that he was not interested in proceeding with any type of professional relationship with respondent. Smith stated that, although he had not had prior problems working with respondent, he could not work with a person he did not trust. According to Smith, during a meeting of the three attorneys respondent had revealed his request to someone named Ralph at CVCSC to write and send checks directly to respondent; respondent indicated that he had received the checks at his home. Smith recalled that he and Moran then essentially asked respondent to leave the firm.

Smith's view of the letter-agreement of February 18, 1994 was as follows:

> I understood it to be an agreement for an interim venture with specific reservations that were known to everyone before the agreement was signed, with the intention in the agreement itself to revisit those reservations at some point and to decide to continue either in the interim status or in some different status or not at all. That's my understanding of the agreement based on a long series of discussions Mr. Bromberg and Ms. Moran and I had had beginning

[3] 3T denotes the transcript of the August 1, 1996 hearing before the DEC.

> some time in December of 1993, going through one or two drafts that were far more complicated and inflexible than I believe any of us cared to agree to. And that it was an interim document for an interim purpose with the intention that it would be changed at some point in the future.
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> [3T69-70]

Smith claimed that he believed that the agreement could be changed as of October 1994.

Smith viewed his status in the firm as different from respondent's. Smith stated that he had been there for a considerably longer period of time and was responsible for the daily legal management of the firm's core business - the joint medical counsel work - which accounted for the majority of the firm's revenues. He perceived respondent as a full-time salaried employee. Smith understood that both he and respondent were employees at will, working at the pleasure of Moran, subject to termination at any time, notwithstanding the letter-agreement. According to Smith, the only changes brought about by the letter-agreement were the prospect for a future professional relationship, the change in the name of the firm and the addition of respondent to the firm.

Smith's understanding of respondent's compensation was that respondent was responsible for generating enough profits to pay one-half of his own salary. Thus, on an annual basis, respondent was obligated to bring in $48,000 in profits to the firm to pay one-half of his $96,000 annual salary. Smith stated, however, that there was no discussion or agreement on how "profit" would be calculated.

The presenter introduced into evidence statements from three employees of CVCSC, which were the subject of a stipulation between the presenter and respondent's counsel (Exhibits C-13, C-14 and C-15). Ralph Pizzuti's statement revealed that he is a claims'

analyst for CVCSC and worked with respondent when respondent was a partner with Picillo, Bromberg & Caruso. In late October or early November, during a telephone conversation, respondent asked him whether it was possible for checks to be made payable directly to respondent, instead of the firm. Respondent mentioned that the firm was having problems and that he was not being treated fairly. Before Pizzuti could reply, respondent asked Pizzuti to delay the preparation of the checks, adding that he would be in touch with Pizzuti. Pizzuti reported this conversation to his supervisor, John Dickhoff, who mentioned the company's policy against making checks payable to individual attorneys. The checks were processed in the ordinary fashion and Pizzuti did not hear from respondent again on this issue.

John Dickhoff's statement was consistent with Pizzuti's. He asserted that, approximately three weeks before the November checks were issued to MBS, Pizzuti had reported to him respondent's request that the checks be made payable to respondent. Dickhoff had told Pizzuti that company policy required checks to be made payable to law firms, never to individual attorneys. Although Dickhoff later spoke to respondent, they did not discuss the check incident. After respondent left MBS, the Picillo Caruso firm undertook CVCSC's representation.

According to the statement of Kathryn Manning, a claims analyst for CVCSC responsible for sending out checks, she had sent the November checks to MBS. In early December she had received a telephone call from Kathy Mooney at MBS, asking if the November invoices had been paid. Manning learned from Pizzuti that the checks had been mailed to MBS. Several days later, Manning telefaxed copies of the front and back of the

canceled checks to Mooney. That telefax is dated December 8, 1994, after respondent's disclosure to Moran that he had intercepted the checks.

* * *

The DEC found that respondent was not guilty of any ethics violations and dismissed the complaint. The DEC concluded that respondent was not merely an employee of MBS, but a partner. The DEC based this conclusion on the following facts:

- all three attorneys executed the trade name certificate that referred to the attorneys as "partners" or "members of the firm";
- the attorneys held themselves out to the Court and the public, including clients, as partners;
- the firm sent out announcements declaring that respondent and Smith had joined the firm as members;
- Moran referred to herself as the managing partner;
- the letter-agreement stated that the trade name certificate was executed in accordance with RPC 7.5, which provides that lawyers may state or imply that they practice in a partnership only if the persons designated in the firm's name and the principal members of the firm share the responsibility and liability for the firm's performance of legal services. Although the DEC recognized that this provision addresses liability to third parties, it considered it as a factor in determining that the attorneys had formed a partnership;
- the grievance sent to the DEC was signed by Smith as well as Moran, despite Moran's contention that Smith was merely an employee;
- Susan Braver did not sign the letter-agreement. Therefore, if respondent and Smith were also merely employees, Braver should have signed the agreement as well.

The DEC also found that the letter-agreement was effective through December 31, 1994, with no provision for early termination. The DEC determined that, although the document specified that the parties would agree, no later than October 1, 1994, to discuss and negotiate in good faith issues concerning the venture, the term of the agreement was from February 18, 1994 through December 31, 1994. The DEC concluded that, despite the ambiguity in the agreement's use of the terms "salary" and "draw," respondent was entitled to receive $8,000 per month through December 31, 1994. The DEC expressed its belief that ambiguities in the agreement should be construed against Moran because she was the "moving force" behind the venture and the person who had retained the consultant and legal advisor in connection with the formation of the entity. The DEC also found that Moran had agreed to bear the sole financial risk of the interim venture.

The DEC noted that there was no dispute that respondent's salary had ceased as of September 1994, although he had rendered services through the remainder of the year. The DEC concluded that Moran breached the letter-agreement when she presented respondent with a proposal on October 5, 1994, thereby unilaterally changing the agreement. The DEC questioned the accuracy of Moran's calculations of respondent's shortfall, but chose not to resolve the issue in light of its finding of a breach of contract. The DEC found that Moran's rescission of the prior agreement was not only a breach of that agreement, but also contrary to her testimony that she would bear the sole risk of the loss of the venture. The DEC believed respondent's testimony that he had objected to Moran's unilateral change in the agreement, but remained with the firm through December 1994 in an effort to work things

out. The DEC remarked that, before Moran presented her next proposal on November 22, 1994, respondent had already intercepted the two CVCSC checks.

The DEC mentioned that it was also undisputed that (1) respondent had taken and endorsed the checks payable to the firm, deposited them in his bank account and used the funds to pay personal obligations and (2) respondent had failed to tell Moran that he had taken the checks until on or about December 1, 1994. The DEC considered it very significant that, at the time that respondent had taken the checks in mid-November, he had not received any salary for October and November, despite the fact that he had continued to render services for both the firm's clients and his own. The DEC found that Moran and Smith reluctantly permitted respondent to remain because of upcoming jury trials in New York that respondent was handling. In this regard, the DEC observed that Smith's involvement in these types of decisions further supported the conclusion that there was a partnership agreement and that Smith and respondent were not mere employees. Again, the DEC noted that, notwithstanding respondent's continuous work for the firm through 1994, he had received no compensation even under Moran's November 22, 1994 proposal, under which she would pay respondent $60 per hour for joint medical counsel work.

The DEC summarized its findings as follows:

> It is the panel's conclusion from all of the evidence that the actions of Mr. Bromberg in intercepting the two checks, although somewhat improvident, was [sic] directly attributable to Miss Moran's unilateral actions at the end of September and beginning of October 1994 at which time she in effect breached the Letter Agreement, C-1. It bears repeating that from that point forward, Mr. Bromberg, although he continued to work and stay at the firm, received no money, and that should be emphasized. . . .

> [I]t is inconceivable that Mr. Bromberg should continue to render services for three months generating fees to the Moran Bromberg Smith firm and not be entitled to any further compensation. . . .
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> Even giving Miss Moran the benefit of her interpretation of the agreement, Mr. Bromberg would have been entitled to further salary or draw depending on the use of that terminology.
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> [5T124-126][4]

In addition to finding that Moran breached the letter-agreement, the DEC remarked that by terminating respondent's salary Moran had breached "certain fiduciary duties" owed to respondent under their partnership or joint venture.

The DEC further found that respondent had an interest in the checks, that the matter was a dispute among partners that should have been resolved in a court of law, and that respondent's actions did not constitute theft. Accordingly, the DEC concluded that the burden of proof required for a finding of a violation of RPC 1.15(b) had not been met.

Similarly, the DEC found that respondent did not violate RPC 8.4(c). The DEC compared respondent's conduct with that of the attorneys in *In re Siegel*, 133 *N.J.* 162 (1993) and *In re Spina*, 121 *N.J.* 378 (1990), who had surreptitiously misappropriated large sums of money over several years. The DEC also distinguished the misconduct discussed in the Board's decision in *In the Matter of Douglas Weiss*, DRB Docket No. 96-038 (October 1, 1996), in which the attorney misappropriated $76,000 over a two and one-half year period. Here, the DEC found one incident of intercepting a check as an alternate form of compensation. The DEC found that respondent's conduct was similar to that of the attorney

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[4] 5T denotes the transcript of the November 6, 1996 hearing before the DEC.

in *In re Rice*, 661 *P.* 591 (Wash. 1983). There, the attorney took eight checks from his law firm, totaling about $2,500. The DEC noted that the attorney in *Rice* did not try to hide his actions and, when confronted by members of the firm, made a full disclosure and promised restitution. Finally, the DEC concluded that, while it would have been preferable for respondent to resolve the dispute over compensation in court, his actions were understandable, in light of the total cessation of his salary for a substantial period of time, during which he continued to perform services for the firm.

* * *

Following a de novo review of the record, the Board found that the evidence clearly and convincingly established that respondent's conduct was unethical. The Board was unable to agree with the DEC's finding that respondent did not violate RPC 1.15(b) and RPC 8.4(c) as seen below. The Board could not find, however, that respondent's conduct constituted knowing misappropriation of partner funds, as urged by the OAE.

Much of the record in this matter concerned whether Moran Bromberg Smith was a partnership or a firm solely owned by Kathleen Moran. The DEC found that the entity was a partnership, based on the factors listed above. The DEC properly concluded that the letter-agreement was ambiguous. While the agreement declared that Moran was the sole owner and that neither respondent nor Smith would have equity in the venture, it referred to RPC 7.5, requiring attorneys whose names appear in the name of the firm to be responsible for firm

liabilities. The "salary" or "draw" payable to respondent was based on equal contributions from the firm and profits generated by respondent. However, the agreement did not define "profits" or explain how such profits would be computed. Thus, a "simple" document intended to define the parties' relationship while they worked together on a trial basis generated not only a financial dispute between the parties, but also an ethics complaint against respondent.

Whether MBS was a sole proprietorship or a partnership need not be determined. What matters is that respondent reasonably believed that he was a partner with that firm. Even if respondent's belief was mistaken, that belief led him to understand that he was entitled to receive the checks from CVCSC. Respondent had not been paid any salary for October or November. He was experiencing cash flow problems and he felt that Moran had unilaterally breached the letter-agreement. Thus, he resorted to "self-help." This is not to say that respondent acted correctly or justifiedly. Even if he was a partner or firmly believed that he was a partner, he had no right to avail himself of funds that should have gone to the firm for whatever form of distribution that applied by agreement or practice. Partners are not entitled to intercept firm's funds no matter how legitimate their right to compensation or remuneration might be. That human sympathy might be on respondent's side gave him no license to appropriate the funds. In addition, respondent had to be aware of the impropriety of his conduct. While he ultimately disclosed his misdeeds to Moran two weeks after he had taken the checks, he could been motivated by the certainty that eventually Moran would have discovered his conduct. Indeed, the record shows that, on December 8, 1994, Kathryn E.

Manning of CVCSC telefaxed to the Moran firm copies of the front and back of the two checks endorsed by respondent (Exhibit C-14). Thus, within a week of respondent's disclosure Moran would have learned of his interception of the funds.

As noted above, the Board agreed with the DEC's finding that respondent's actions did not constitute knowing misappropriation of law firm funds as in Siegel. Respondent's actions were very different from Siegel's. Siegel was receiving his partnership draw. Convinced that others in his firm were engaged in improprieties, such as submitting inflated meal vouchers, he embarked upon a several-year course of fraud and deceit, stealing $25,000 from his partners in thirty-four separate incidents. This respondent, having received no compensation for approximately six weeks and understandably desperate to remain solvent, intercepted two checks totaling approximately $6,600 because he had not been able to otherwise resolve the dispute with Moran. Respondent did not have the *mens rea* to steal. In his mind, he was advancing to himself funds to which he was absolutely entitled. He acted out of self-righteousness. It is the manner in which respondent chose to make things right that is reproachable.

There is little doubt that respondent violated RPC 1.15(b) and RPC 8.4(c). Respondent used deceptive means to take possession of checks payable and intended for the Moran firm. He improperly endorsed the name of the firm on the reverse side of both checks and deposited them into his own bank account. Respondent had no authority to take the checks. Thereafter he lied, telling Moran that the checks had been made payable to him and sent to his home address.

Although the seriousness of respondent's misconduct cannot be minimized, there are substantial mitigating factors in this case. No doubt respondent was frustrated with Moran's inflexible and, in his view, unreasonable position on financial matters. At the time that respondent took the checks, he had not received compensation for six weeks. He had financial obligations to satisfy. Respondent used the funds for mortgage and car payments, credit card bills and other personal obligations. Moreover, after being told that he would no longer receive a salary, respondent was presented with an unacceptable proposal. Respondent testified that the proposal was not subject to negotiation by Moran, but presented on a "take it or leave it" basis. Meanwhile, respondent considered the proposal to be a breach of the letter-agreement that called for an $8,000 monthly compensation through the end of 1994. The proposal presented by Moran on October 5, 1994 provided that, upon collection of respondent's accounts receivable, an overhead of $2,130 per month attributable to respondent would be paid first. Thereafter, Moran would receive the next $12,000, respondent would receive the next $3,000, Moran would receive the next $10,000 and respondent would receive the next $11,400. Thus, Moran proposed that, after the overhead was paid, she be given $22,000 of the first $25,000 collected to recoup the $22,000 "shortfall." Furthermore, on cross-examination Moran conceded that, in arriving at $64,800 as the amount of fees generated by respondent and $36,400 as anticipated revenues, she did not credit him for the fees billed for joint medical counsel work. In other words, Moran gave respondent credit only for the clients that he had brought to the firm.

Testifying about the meeting with Moran and Smith, in which he discussed taking the checks, respondent described his situation as follows:

> I tried to convey a little bit of why it had happened. Some of my feelings of anger, and just being upset about this whole relationship. I had high hopes for this venture and it didn't happen. Cassie was very angry at this point. She hadn't been angry the week before, but she was very angry at this point, and Terry was sort of going on. And then I was - I was upset. I mean, I probably should have expected that taking - putting the money in my account was going to cause this problem. And maybe I was trying to postpone it for a while, but it did happen. I mean, I was upset by it. I was bothered by the whole situation. It was not something I'd been through before. I'd been pushed into a corner and I reacted in this fashion. I would have liked to have found a better way out of it. I didn't.
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> [4T96-97]

Similarly, asked whether he considered discussing this matter with Moran, respondent replied as follows:

> I think that I had a high degree of frustration with Ms. Moran at that point, which is what precipitated this act in the first place. I was angry. I felt these were funds that she had wrongfully withheld money from me and I acted probably out of that anger and said this is what I'm going to do. These were my client [sic], work I'd done and was being deprived. So that was the basis for my action. . . .
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> As I said, I think I was entitled to those monies based - for all the reasons I've set forth already. That's why did it. I had good faith - in my mind, a belief that I had an entitlement to the money and that I was being wrongfully deprived of significant revenue by the firm
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> [4T204, 206]

Because, in *Siegel*, the Court discussed a case decided by the Supreme Court of Washington, both the presenter and respondent's counsel referred to cases from that state to support their respective positions. The OAE relied on *In re Selden*, 107 *Wash.* 2d 246, 728 *P.* 2d 1036 (1986), reviewed by the Court in *Siegel* at 169-170. In that case, an associate

believed that he was not being paid a bonus that had been promised to him by the partners of the firm when he was first employed. Over an eight-month period, the associate deposited in his personal account thirty checks received from twenty clients, totaling $6,810.40 . When confronted with his misconduct by members of the firm, the associate misrepresented that he had taken only $2,000. In determining that he should be disbarred, the Supreme Court of Washington referred to the length of time over which the checks had been repeatedly taken and the associate's concealment of his wrongdoing.

Respondent, in turn, relied on *In re Rice*, 99 *Wash.* 2d 275, 661 *P.* 2d 591, considered by the DEC. In that case, a partner received $2,510 in fees for which he failed to account to the law firm. The attorney maintained that each member of the firm was responsible for his own billings, collections and write-offs of accounts receivable. Because no testimony was taken from any other member of the law firm, its position on this issue was not presented. The attorney also contended that he planned to account for the funds as soon as a new computerized accounting system was installed. The Supreme Court of Washington referred to the matter as an intrapartnership accounting dispute, best resolved by a civil lawsuit, not a disciplinary proceeding. Key to the court's ruling was the fact that there was no finding that the attorney intended to permanently deprive the firm of the funds. The Court also found that the attorney did not alter the firm's accounting records to conceal his acts.

Neither *Selden* nor *Rice* appears to be applicable to this matter. In both cases, the attorney committed multiple thefts over a long period of time. *Selden* is distinguishable for the additional reason that the attorney first tried to "bluff," and then misrepresented the

amount he had taken. *Rice* is distinguishable by the absence of intent to permanently deprive the firm of the taken funds. Furthermore, because only the attorney's version of the firm's accounting procedures had been presented, there was no disputed evidence. In the instant matter, much of the testimony was at odds, particularly with regard to financial matters.

In the Matter of Harrison R. Butler, Docket No. DRB 97-067 (September 30, 1997) offers guidance as to the issue of discipline. There, an associate sold a computer that he had been permitted to use at home. The Board determined that, contrary to the attorney's testimony, the computer belonged to the law firm and that title to the computer would pass to the attorney upon the attorney's reimbursement of the cost of the computer to the firm. Although the value of the computer was not clearly determined, it appears that it was worth about $3,000. In that matter, a five-member majority of the Board voted to impose a reprimand. Three members would have imposed a three-month suspension.

Here, while respondent's conduct was serious, there are substantial mitigating factors present, as discussed above. Based on all of the circumstances, the Board determined that a reprimand is the appropriate level of discipline for respondent's misconduct.

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

Dated: 12/16/97

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Arthur D. Bromberg
Docket No. DRB 97-129

Argued: September 18, 1997

Decided: December 16, 1997

Disposition: Reprimand

Members	Disbar	Suspension 3-Months	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley		x					
Peterson		x					
Schwartz			x				
Thompson			x				
Total:		2	7				

Robyn M. Hill 12/22/97
Robyn M. Hill
Chief Counsel