SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-261

IN THE MATTER OF :

BRUCE J. WECHSLER, :

AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 8, 1993

Decided: June 14, 1994

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance.

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

This matter is before the Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics (OAE). R. 1:20-7. That Motion was based on respondent's suspension from the practice of law for one year and one day in the State of Colorado for mishandling of client funds.

Respondent was admitted to the practice of law in New Jersey in 1983. He has not previously been the subject of discipline in New Jersey.

Respondent's suspension by the Supreme Court of Colorado effective July 14, 1993, for one year and one day, stemmed from findings that respondent had mishandled funds in two separate client matters. In the first, and more serious, matter the respondent represented Space Age Federal Credit Union (Space Age) in various collection matters. The representation began in 1988, and continued until August of 1990, when respondent closed his law practice. Between late 1988 and June of 1990, respondent collected a total of $105,000 from Ann Jackson on behalf of Space Age. Respondent failed either to notify the collection coordinator for Space Age of the receipt of these funds or to segregate the funds in his trust account. When inquiry was thereafter made of respondent in early August, 1990, regarding the status of the account, respondent advised the collection coordinator for Space Age that he had collected a substantial amount from Jackson and that the funds were in his trust account. He agreed to disburse the appropriate funds to Space Age within one week. Thereafter, he failed to take any action on the matter.

At about that time, respondent learned that he had pericarditis, a viral inflammation of the sac surrounding the heart. Because respondent's father had experienced a heart attack at the age of 35, the respondent was excessively concerned concerning that aspect of his health. Thus, when he learned of his medical condition, he immediately closed his law practice. Respondent did contact Space Age's collection coordinator on August 21, 1990 and advised her that he was terminating his law

practice due to illness. Thereafter, despite numerous attempts by Space Age to retrieve the files and the money belonging to them, the respondent failed to provide those items until Space Age filed a request for investigation with the Colorado Office of Disciplinary Counsel on October 9, 1990. At the subsequent ethics hearing in Colorado, respondent contended that he initially deposited the funds in question into his trust account. Thereafter, he stated that he withdrew the money and exchanged them for cash and money orders in various denominations, which he kept in a brief case in respondent's home. Respondent further contended that he periodically replaced the money orders as they were about to expire, and kept no documents to verify the money orders' existence. The respondent was found to have violated DR 9-102(A), which required that all funds of the clients paid to the lawyer be deposited in identifiable interest-bearing depositary accounts maintained in Colorado. In addition, the Colorado Board found that respondent's defense was not credible. As part of that defense, respondent contended that he could not forward the funds due to Space Age because the collection coordinator was "an alcoholic who could not be trusted with the money." The People of the State of Colorado v. Bruce Jeffrey Wechsler (Supreme Court of Colorado, NO. 92SA471, June 14, 1993 at 5). However, respondent did not indicate why he did not attempt delivery to the coordinator's supervisor at Space Age. Additionally, he had previously forwarded funds collected from Jackson to Space Age. He denied telling the collection coordinator that the funds in question remained in a

trust account. The court found, however, that respondent had misrepresented the location of the Jackson funds to the coordinator, thereby violating DR 1-102(A)(4). Additionally, the court found that respondent's failure to account to Space Age for a period of nearly two years violated DR 6-101(A)(3) (neglect of legal matters) and DR 9-102(B)(1), which requires prompt notification to the client of receipt of the client's funds. The court further found violation of DR 9-102(B)(4) in that respondent failed to deliver the funds to Space Age when the demand was made. The court specifically did not find knowing misappropriation of Space Age funds, despite disciplinary counsel's argument of such knowing misappropriation. Rather, the court declined to overturn the finding of the Hearing Board of the Supreme Court Grievance Committee that insufficient evidence of such a knowing misappropriation existed.

In the second matter before the Colorado Supreme Court, the respondent accepted funds intended to assist his client, Caroline Hardin-Arthur, in a bankruptcy action. Ms. Hardin-Arthur delivered to respondent $120.00 in cash for the bankruptcy filing fee, together with an additional $500.00 by check towards respondent's fee, on July 19, 1990. Respondent did not take any immediate action. Shortly thereafter, he became ill and discontinued his practice. He did not notify Hardin-Arthur of this fact until August 20, 1990 and further advised that she would be contacted by respondent's secretarial service when her petition was typed. Respondent did not prepare the petition and failed to keep Hardin-

Arthur advised of the status of the case. He ultimately repaid the $500.00 fee to Hardin-Arthur in July of 1991. The Hearing Board concluded that respondent had violated DR 9-102(A) by failing to replace Hardin-Arthur's funds in an identifiable interest-bearing account in Colorado.

On June 14, 1993, the Supreme Court of Colorado adopted the Hearing Board's recommendation to suspend respondent for a year and a day for his misconduct in these two matters. That suspension began one month after the court's order, on July 14, 1993.

By letter dated June 29, 1993, respondent advised the Office of Attorney Ethics of his suspension. The Office of Attorney Ethics' Motion for Reciprocal Discipline followed within several weeks of receipt of that letter. Within that Motion for Reciprocal Discipline, the Office of Attorney Ethics indicated that it would not object to a similar suspension in New Jersey, retroactive to respondent's July 14, 1993 suspension in Colorado.

CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board recommends that the Office of Attorney Ethics' Motion be granted. Respondent does not dispute the findings of the Colorado Supreme Court. The Board therefore adopts those findings. In re Pavilonis 98 N.J. 36, 40 (1984); In re Tumini 95 N.J. 18, 21 (1983); In re Kaufman, 81 N.J. 300, 302 (1979). Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-7(d), which directs that:

> Upon the expiration of the time allowed for the Director's filing of a reply brief,

> the matter shall be set down before the Board. 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 upon which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (1) the disciplinary order of the foreign jurisdiction was not entered;
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> (2) the disciplinary order of the foreign jurisdiction does not apply to the respondent;
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> (3) the disciplinary order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (4) 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; or
>
> (5) the misconduct established warrants substantially different discipline.

In this matter, the record does not reveal any conditions as set forth in R. 1:20-7(d), which would require a recommendation of a measure of discipline different from that imposed in Colorado. Unless good reason to the contrary exists, the disciplinary actions of New Jersey will customarily comport with that imposed in the other jurisdiction. In re Kaufman, supra, 81 N.J. at 303.

In this state, mishandling of client funds by an attorney in a manner similar to that in the case at hand would normally result in a suspension from the practice of law. The length of the suspension imposed ranges from three months, as in In re James, 112 N.J. 580 (1988) and In re Gallo, 117 N.J. 365 (1989), to as much as two or three years. See In re Rogers, 126 N.J. 345 (1991) (two-year suspension); In re Chidiac, 120 N.J. 32 (1990) (three-year

suspension). The conduct in the case at hand - i.e., two instances of mishandling of client funds combined with findings of misrepresentation - justifies the one-year and one-day suspension imposed in Colorado. See In re Leahy, 111 N.J. 127 (1988); In re Simeone, 108 N.J. 515 (1987).

Accordingly, the Board unanimously recommends that the Motion of the Office of Attorney Ethics be granted, and that respondent be suspended for one year and one day retroactive to July 14, 1993. Respondent is not to be reinstated until such time as he has been reinstated in Colorado. The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Date: 6/14/94

By: Raymond R. Trombadore
Chair
Disciplinary Review Board