

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-303

IN THE MATTER OF :
LESLIE A. DIENES, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 20, 1993

Decided: April 9, 1994

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

Neither respondent nor his counsel appeared, despite proper notice of the hearing.

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

This matter was before the Board on a Motion for Final Discipline filed by the Office of Attorney Ethics ("OAE"). R. 1:20-6(c)(2)(i). That motion was based on respondent's conviction of theft by deception, in violation of N.J.S.A. 2C:20-4, and theft by unlawful taking, in violation of N.J.S.A. 2C:20-3.

Respondent was admitted to the New Jersey bar in 1981. Prior to this encounter with the disciplinary system, respondent was publicly reprimanded, in April 1990, for threatening a defendant-corporation to disclose confidential information, in order to

obtain a favorable legal result for himself. In re Dienes, 118 N.J. 403 (1990).

In the matter at hand, the OAE conducted a demand audit of respondent's trust account, following the receipt of information, in late 1990, about respondent's improper use of client trust funds. The audit disclosed that the funds of at least two clients had been invaded. Thereafter, the OAE petitioned the Supreme Court for respondent's immediate temporary suspension from the practice of law. Respondent was temporarily suspended by Order dated March 25, 1991. By Order dated May 8, 1991, that suspension was continued.

Following respondent's initial temporary suspension, and in accordance with R. 1:20-10(c), this matter was referred to the Middlesex County Prosecutor's Office, in April 1991. A two-count indictment was returned against respondent in March 1992. Count I of that indictment charged respondent with theft by unlawful taking, in violation of N.J.S.A. 2C:20-3. The indictment essentially charged respondent with misappropriating property - here, trust funds - in excess of \$75,000.00, belonging to or in the control of Jennie Rinke and Karen McCarthy. Count II charged respondent with theft by deception, in violation of N.J.S.A. 2C:20-4, by taking a fee of \$500.00 from a prospective client, without performing any services in return.

On March 23, 1993, respondent entered a guilty plea to both counts of the indictment. Respondent was sentenced, on July 12, 1993, to probation for five years. He was further ordered to make

restitution to the New Jersey Lawyers' Fund for Client Protection, in the amount of \$47,833.23. At the time of sentencing, the crime charged in Count I was reduced from a second-degree crime to a third-degree crime, in order to avoid the requirement of incarceration, which otherwise applied, and meet the terms of the plea agreement.

A brief discussion of the facts underlying both counts of the indictment is helpful to an understanding of this case. In Count I, respondent was retained by Jennie Rinko, who, on occasion, worked for respondent as a paralegal. Respondent was hired to represent an investment group, of which Rinko was a member, in the sale of property in Patterson, New Jersey. Following the execution of the contract for sale, in March 1989, respondent was to hold the deposit of approximately \$41,000.00 in an interest-bearing trust account. Respondent misappropriated those funds. In addition, respondent admitted that, in November 1990, he paid the funds to Rinko by utilizing funds belonging to Karen McCarthy, another client. McCarthy was later reimbursed by the Lawyers' Fund for Client Protection.

As to Count II of the indictment, on January 30, 1991, respondent accepted a \$500.00 check from Lisa McSweeney as a fee for legal services to be performed. He never performed any legal work in return for the \$500.

As noted previously, respondent was temporarily suspended on March 25, 1991. That suspension continues to the present date.

The OAE requested that the Board recommend to the Court that respondent be disbarred.

CONCLUSION AND RECOMMENDATION

A criminal conviction is conclusive evidence of an attorney's guilt in disciplinary proceedings. In re Tusso, 104 N.J. 59, 61 (1986); In re Rosen, 88 N.J. 1 (1981); R. 1:20-6(c)(1). An independent examination of the underlying facts is, therefore, unnecessary to ascertain guilt. In re Bricker, 90 N.J. 6, 10 (1982). Thus, the only issue to be determined is the quantum of discipline to be imposed. In re Goldberg, 105 N.J. 278, 280 (1987); In re Kushner, 101 N.J. 397, 400 (1986); R. 1:20-6(c)(2)(i).

Respondent was charged with, and admitted to, purposeful theft of funds. N.J.S.A. 2C: 20-3 provides, in pertinent part, that "(a) person is guilty of theft [by unlawful taking] if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof." Similarly, the theft by deception statute, N.J.S.A. 2C:20-4, provides, in pertinent part, that: "(a) person is guilty of theft if he purposely obtains property of another by deception."

It is clear that respondent's criminal acts constituted knowing misappropriation. In re Wilson, 81 N.J. 451 (1979).

Criminal conviction for thefts of this nature requires the ultimate sanction of disbarment. In re Iulo, 115 N.J. 498 (1989).


Accordingly, seven members of the Board unanimously recommend that respondent be disbarred. Two members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated:

4/9/1994

By:



RAYMOND R. TROMBADORE, ESQ.
Chair
Disciplinary Review Board