

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-261

IN THE MATTER OF :
: :
NICHOLAS A. MINA :
: :
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 21, 1994

Decided: October 28, 1994

William R. Wood appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite notice by publication.

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 Special Master Terry Paul Bottinelli.

Respondent was admitted to the New Jersey bar in 1983. By consent order dated October 30, 1990, he was temporarily suspended from the practice of law. That suspension continues to date. Respondent has no other history of prior discipline.

Before the filing of the formal ethics complaint, respondent was represented by John A. Moore, Esq. After the complaint was filed, however, the OAE was unable to communicate with Mr. Moore or

with respondent. Neither respondent nor counsel filed an answer or appeared at the DEC hearing, despite proper notice, including publication in the New Jersey Law Journal and the Jersey Journal.

At the ethics hearing, the presenter withdrew the first count of the complaint (the LaBracio Matter).

* * *

The grievants in this matter are Grace Krynicki and her daughter, Joan Vincente. In late April 1993, both met with respondent and retained him to assist in posting a bond required by the Surrogate's Office after Krynicki was appointed administratrix of the estate of her brother, William Mazziotta. Mr. Mazziotta died intestate on March 18, 1993.

On April 28, 1993, respondent, Krynicki and Vincente opened a bank account, in which \$120,000 in estate funds were deposited. At that time, respondent asked Krynicki to sign ten blank checks so that he could begin paying some of the estate debts, including funeral expenses. Krynicki did so. Respondent charged a \$1,000 flat fee for his services, which included the posting of the bond, the payment of the debts of the estate and the distribution of the balance of the estate assets to the heirs. On April 29, 1993, Krynicki signed a check payable to respondent for \$1,000.

Utilizing the blank checks signed by Krynicki, respondent began paying some of the estate bills immediately. The day after the account was open, he reimbursed Vincente for \$5,400 advanced for Mr. Mazziotta's mausoleum and for \$660 expended for the surety bond. The next day, April 30, 1993, respondent made a \$985 reimbursement to Karen Rodriguez for funeral expenses, a \$60

reimbursement to Krynicki for surrogate fees and the death certificate and a \$1,137 reimbursement to Krynicki for funeral expenses. He also paid \$3,990 to the McLaughlin Funeral Home. There is no allegation of impropriety in the payment of those bills.

On May 6, 1993, however, respondent used one of the signed blank checks to pay himself a legal fee for \$3,500, of which Krynicki was unaware and which she had neither authorized nor agreed to pay. Similarly, on May 13, 1993, respondent issued another of the blank checks signed by Krynicki to New Jerseyans for Accessible Health Care, in the amount of \$50,000. Again, that check was issued without Krynicki's knowledge or consent. In fact, Krynicki knew nothing about that organization or its connection to the estate. On May 20, 1993, respondent issued another unauthorized check to himself for legal services, this time for \$3,400. He again used one of the blank checks previously signed by Krynicki. On June 15, 1993, respondent used the last blank check signed by Krynicki to pay her \$10,000, as partial distribution of the estate proceeds.

Once the signed blank checks ran out, respondent began forging Krynicki's signature on the checks. On July 14, 1993, he wrote a check to New Jerseyans for Accessible Health Care for \$7,500; on July 30, 1993, he issued another check to New Jerseyans for Accessible Health Care for \$8,000 and, finally, on August 12, 1993, he issued a third forged check to New Jerseyans for Accessible Health Care, also for \$8,000. Krynicki and Vincente were unaware

of the unauthorized activity in the estate account, as respondent had requested the bank to forward the monthly statements directly to his attention.

Out of the \$120,000 initially deposited in the account, thus, respondent paid approximately \$13,000 in legitimate expenses incurred by the estate, distributed \$10,000 to Krynicki and disbursed \$80,000 either to himself or to New Jerseyans for Accessible Health Care without Krynicki's knowledge and consent.

As the months passed, Krynicki and Vincente began contacting respondent to set up a meeting to discuss the progress of the matter. Respondent either did not return their telephone calls or cancelled numerous scheduled meetings with both Vincente and Krynicki. Suspicious about respondent's numerous excuses, Vincente and Krynicki called the bank directly, whereupon they learned that respondent had withdrawn large sums of money from the account. They then obtained copies of the bank statements and of all cancelled checks, at which time they noticed that Krynicki's signature on three checks had been forged.

Armed with this information, Vincente and Krynicki contacted respondent, who at first did not return their telephone call. Ultimately, respondent admitted to them that he had forged Krynicki's signature on the checks. Respondent confessed to them that he had borrowed the funds. He expressed his intent to repay them if Vincente and Krynicki gave him some time and if they did not "do anything stupid [such as] report[] him to whatever agencies" T4/26/1994 28. Vincente replied that, if all funds were

replaced within twenty-four or forty-eight hours, "that would be the end of it." According to Vincente, she gave respondent the benefit of the doubt because, at times, people "borrow money and put it in another account". T4/26/1994 28. Respondent, however, never made restitution of the stolen funds. Although Krynicki filed a claim with the New Jersey Lawyers' Fund for Client Protection for \$64,000, that claim is still pending before the Fund.

* * *

The Special Master concluded that respondent knowingly misappropriated client funds, in violation of RPC 1.15(a) and RPC 8.4(c).

CONCLUSION AND RECOMMENDATION

Following a de novo review of the record, the Board is satisfied that the Special Master's conclusion that respondent was guilty of knowing misappropriation is fully supported by clear and convincing evidence.

Respondent did not answer the complaint or otherwise appear in these proceedings. Consequently, the allegations of the complaint are deemed admitted. There is also Vincente's credible testimony that respondent confessed to her and Krynicki that he had forged Krynicki's signature on three checks and that he had disbursed unauthorized funds either to himself or to others. The only appropriate sanction for respondent's knowing misappropriation of

trust funds is, therefore, disbarment. In re Wilson, 81 N.J. 451
1979. The Board unanimously so recommends.

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

Dated:

10/28/1994



RAYMOND R. TROMBADORE, ESQ.
Chair
Disciplinary Review Board