

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-149

IN THE MATTER OF :
CHARLES L. FEELY, :
AN ATTORNEY AT LAW :

Decision

Argued: May 14, 1998

Decided: April 5, 1999

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

Respondent failed to appear despite proper notice.

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 reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14, following respondent's disbarment in the state of New York for, among other things, the knowing misappropriation of client funds.

Respondent was admitted to the New Jersey and New York bars in 1985. He was temporarily suspended by Order of the New Jersey Supreme Court dated September 25, 1996, which was continued by order dated October 8, 1996 for failure to cooperate with the New York ethics authorities, which were investigating allegations of misappropriation.

By order dated May 26, 1998 of the Appellate Division, Supreme Court, First Department ("Appellate Division"), respondent was disbarred from the practice of law in the State of New York and ordered to make restitution to his client.

The procedural history in the New York proceeding was set forth in the Hearing Panel Report of the Departmental Disciplinary Committee of the Appellate Division. Respondent had been temporarily suspended in New York in July 1996 for willful failure to pay money to a client. The client had obtained a judgment against respondent when he defaulted in a suit accusing him of embezzling funds.

On February 14, 1997, respondent was served with a Notice and Statement of Charges for misconduct in three matters. In sum, he was charged with converting client funds, charging and collecting excessive fees, failing to maintain an account for client funds in his possession, failing to properly pay or deliver property to his clients, engaging in a conflict of interest by representing two clients who had adverse interests in a business transaction, failing to satisfy a client-related judgment and failing to cooperate with the committee's investigation.

Respondent served an answer denying the charges, but failed to appear at the first scheduled hearing. He was, therefore, deemed in default, pursuant to 22 N.Y.C.R.,

605.12(c) (4). Thereafter, respondent appeared with counsel at a second hearing, but failed to offer evidence in his behalf and claimed that he was unable to present a defense because of medical conditions. The hearing panel reaffirmed its decision to hold respondent in default, which decision was subsequently affirmed by the Appellate Division.

The Appellate Division rejected respondent's claim, made on a cross-motion for an order continuing his interim suspension and holding the matter in abeyance, that he was deprived of an opportunity to meet the charges either because he was not apprized of his rights by petitioner or because he was entitled to a continuance based on his "supposed" medical condition. The Appellate Division determined that respondent had been afforded every opportunity to present evidence warranting a continuance, but had consistently refused to do so. It also denied respondent's motion seeking to set forth evidence in one of the charges against him, finding that he had had "innumerable opportunities" to present the evidence in a federal, civil and other proceedings, but had failed to do so.

Characterizing the first thirteen charges against respondent as being of "an extremely serious nature," the Appellate Division summarized them as follows:

[R]espondent was charged with failing to properly maintain funds he received from his client, as well as from her estate after her death, in a separate account and instead depositing them into his attorney escrow accounts, with failing to maintain proper records concerning these funds, and with failing to account to a Surrogate's Court or, when the matter became the subject of the civil RICO action, to the Federal District Court. Further, it was alleged that respondent made payments from the estate for his own benefit that were excessive and were without approval from the Surrogate or the sole legatee. Subsequently, a judgment in the amount of

\$1,361,583 was entered against respondent in favor of the legatee in Federal District Court, based on charges that he had converted the funds, which judgment respondent was charged with having failed to satisfy. Finally, as to this complaint, respondent was charged with having submitted false documentation to the Committee in response to its investigations of these matters.

In analyzing the second complaint against respondent, the Appellate Division stated:

[Respondent was charged] with having collected an unauthorized and excessive fee of \$70,000 in relation to having handled an estate and with additionally converted [sic] \$35,000 to his own use from the estate's assets. Respondent was also charged with having charged the estate with a payment of \$41,265 allegedly made to a contractor, when he in fact paid the contractor only \$7,425, and of having charged the estate with an additional \$21,000 for unauthorized "non-estate" work by himself. As to this matter, respondent also failed to cooperate with the Committee by failing to respond to a subpoena duces tecum that had been "so ordered" by this Court requiring him to produce all his original files relevant to the matter.

As to the final complaint against respondent, the Appellate Division noted that the matter involved respondent's conversion of loan payments made by one client for the benefit of another client pursuant to a loan arranged by respondent in a transaction in which the two clients had clearly differing interests. Respondent had failed to disclose the true facts to his clients.

Based on respondent's default on the charges in the three complaints, the Appellate Division determined that the charges were deemed admitted. It affirmed the hearing panel's findings of fact and conclusions of law. The Appellate Division stated in its decision "[i]n light of respondent's reprehensible conduct, including theft from his clients and blatant betrayal of the trust these clients had placed in him, we also confirm the

Panel's recommendation that respondent should be disbarred and ordered to make restitution to his clients"

Based on the foregoing, respondent was disbarred and ordered to make restitution to his clients.

Although respondent was disbarred in New York, in that state a disbarred attorney may seek reinstatement seven years after the effective date of disbarment. 22 N.Y.C.R. 603.14. See also In re Steir, 122 N.J. 22, 28 (1988). Given the nature of this misconduct, however, the OAE argued that a seven-year suspension was insufficient here and urged the Board to find R. 1:20-14(a)(E) applicable and impose permanent disbarment.

* * *

Following a de novo review of the record, the Board determined to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5)(a final adjudication of misconduct by another court "shall establish conclusively the facts on which [the Board] rests for purposes of a disciplinary proceeding. . . ."), the Board adopted the findings of the New York Appellate Division, Supreme Court, First Judicial Department.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a) which directs that:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the fact

of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) 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

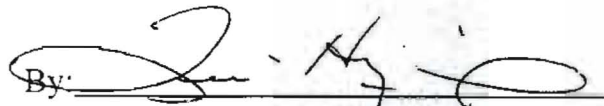
(E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). As to subparagraph (E), although respondent was disbarred in New York, as noted above a disbarred attorney may seek reinstatement in that jurisdiction seven years after the effective date of disbarment. 22 N.Y.C.R. 603.14. A seven-year suspension, however, does not sufficiently address respondent's misconduct, given that he knowingly misappropriated client funds. In New Jersey, attorneys who are found guilty of knowing misappropriation must be disbarred. See In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client trust funds mandates disbarment); In re Noonan, 102 N.J. 157 (1986) (misappropriation of funds triggers automatic disbarment); and In re Hein, 104 N.J. 297 (1986) (misappropriation of clients' funds warrants

disbarment). The Board, therefore, unanimously determined to disbar respondent. Two members did not participate.

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

Dated: 4/5/99

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board