

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 98-044

IN THE MATTER OF
ALAN J. WEINER,
AN ATTORNEY AT LAW

Decision

Argued: March 19, 1998

Decided: September 28, 1998

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

Respondent failed to appear, despite proper service.

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.

Respondent has been a member of the New York and New Jersey bars since 1982.

The present allegations arose out of respondent's representation of Robert and Kerrie Heitz in a landlord-tenant action brought by their former landlord, Lorenzo Troni, for back rent. The parties signed a stipulation of settlement whereby the Heitzes agreed to pay back rent to Troni. Respondent received from the Heitzes a \$9,000 check payable to him, which he deposited in his New Jersey escrow account. When respondent sent Troni's counsel a check for \$9,000, Troni did not accept the settlement money.

Soon thereafter, respondent transferred the funds from his New Jersey escrow account to his New York escrow account. Respondent then deposited all or part of the \$9,000 funds into his business account and spent the funds on personal matters. Respondent did not have authorization from the Heitzes to use any portion of the escrow funds.

Because Troni would not accept the \$9,000 settlement, a hearing was scheduled in New York County Civil Court. At the hearing respondent falsely represented to the court that he was holding the \$9,000 in escrow. In fact, the account's balance on that date was only \$12.60. After the court directed respondent to send the landlord a check for \$9,000, he failed to comply with the court's order.

Pursuant to a complaint filed by Troni with the Departmental Disciplinary Committee, depositions were conducted on November 2, 1995 and January 26, 1996. At both of the depositions, respondent falsely testified that the Heitzes had given him permission to use the escrow funds as a "loan." Additionally, respondent claimed at the depositions that he sent

the \$9,000 to Troni on March 4, 1994. On that date, however, the balance in respondent's escrow account was only \$1.60.

On November 12, 1996, the New York Departmental Disciplinary Committee of the Appellate Division, First Department, initiated formal disciplinary proceedings against respondent. On February 20, 1997, a Committee Hearing Panel conducted a hearing. The panel issued a report and recommendation on April 30, 1997. The hearing panel found that respondent intentionally converted third-party escrow funds for his own use, falsely represented to a civil court judge that he had the \$9,000 in his escrow account when he knew this was untrue, disobeyed a court directive that he forward a \$9,000 check to his client's landlord and lied under oath to a staff attorney during the course of two depositions when he swore that his client had given him permission to use the escrow funds as a loan. The panel unanimously recommended that respondent be disbarred.

Respondent was disbarred on October 14, 1997 by Order and Opinion of the Supreme Court of New York, Appellate Division, First Judicial Department. The Court found that respondent intentionally converted client funds, made misrepresentations to the disciplinary committee and to a court and violated a court order. Although respondent claimed that psychiatric testimony adduced at the hearing established a direct casual connection between his psychiatric disorders and his misconduct, the Court rejected respondent's psychiatric defense.

The OAE urged the Board to permanently disbar respondent.

* * *

Upon a review of the full record, the Board determined to grant the OAE's Motion for Reciprocal Discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction's finding of misconduct 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 Supreme Court, Appellate Division.

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

[t]he 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:

- (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, where a disbarred New York attorney may seek reinstatement seven years after the effective date of disbarment. See 22 N.Y.C.R. 603,14. See also In re Stier, 112 N.J. 22, 28 (1988). A seven-year suspension, however, does not sufficiently address respondent's misconduct, given that he knowingly misappropriated escrow funds, made misrepresentations to the disciplinary committee and to a court and violated a court directive.

In New Jersey, attorneys who are, like this respondent, 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 Hollendonner, 102 N.J. 21 (1985) (misappropriation of escrow funds mandates disbarment). Accordingly, the Board unanimously determined to recommend that respondent be disbarred.

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

Dated: 9/28/98


LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

*DISCIPLINARY REVIEW BOARD
VOTING RECORD*

**In the Matter of Alan J. Weiner
Docket No. 98-044**

Decided: September 28, 1998

Disposition: Disbar

Members	Disbar	Suspension	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:	9						

Robyn M. Hill 10/27/98
Robyn M. Hill
Chief Counsel