

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-085

IN THE MATTER OF :
: :
V. JOSEPH JAMES, :
: :
AN ATTORNEY AT LAW :
:

Decision of the
Disciplinary Review Board

Argued: May 18, 1994

Decided: June 22, 1995

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

Respondent failed to appear, despite appropriate 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Board on a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics ("OAE") pursuant to R. 1:20-7(b) (superseded by R. 1:20-14 on March 1, 1995), based upon respondent's disbarment in the State of Pennsylvania. The Pennsylvania disbarment on August 17, 1993 followed a lengthy hearing process related to various charges filed against respondent, including knowing misappropriation of client funds.

This disbarment was not reported to the OAE by respondent, contrary to the then controlling rule, R. 1:20-7(a). The OAE

became aware of this action following review of a Pennsylvania bar magazine that revealed respondent's disbarment. Thereafter, respondent was suspended from the practice of law in New Jersey on December 21, 1993. That suspension remains in effect.

Respondent was admitted to the practice of law in New Jersey in 1985. He had previously been admitted to practice law in Pennsylvania in 1984.

The misconduct at issue here spanned a period of nearly four years and was termed by the Special Master hearing the case in Pennsylvania as a "great chess game with funds of various clients." The specific conduct was summarized by the Disciplinary Board of the Supreme Court of Pennsylvania, in its Report and Recommendation, as follows:

As specified in the Lynch/Glatt matter (Charge I), Respondent entered into an unauthorized business transaction with his clients when he attempted to purchase their property. Respondent advised and prompted his clients to execute a mortgage when they did not understand the reason for the execution of documents by them concerning their property. Respondent entered into two listing contracts with a real estate agency with regard to his clients' property without the clients' permission. Respondent also misrepresented to the real estate agency that his clients gave him power of attorney. Respondent told the real estate agency that he discussed an offer with his clients and they rejected the offer. This statement was false in that Respondent never discussed the offer with his clients. In addition, Respondent falsely represented to the Office of Disciplinary Counsel that he had partners in regard to the purchase of his clients' property.

In the Cramer matter (Charge II), Respondent placed his client's money in an account not designated as an "escrow" or "fiduciary" account. Between September 11,

1987 and January 20, 1988, this account was continuously below the entrusted amount. Respondent misappropriated the funds entrusted to him and commingled these entrusted funds with personal funds. Furthermore, Respondent entered into a business transaction with his client when his client and Respondent had differing interests.

In the Aiello/Anderson matter (Charge III), Respondent put a client's funds into an account that was not a denominated segregated account for client funds. Respondent deposited personal funds into his account. Respondent later transferred these funds into another account which also was not a denominated segregated account for client funds. This account was continuously below the entrusted amount. Respondent used other clients' entrusted funds to pay amounts he owed to clients whose funds he had misappropriated.

In the matters of the Paul Launer Estate and the Paul Launer Funds (Charges IV and V), Respondent neglected a legal matter entrusted to him by failing to promptly settle a relatively simple estate. Respondent prepared incomplete and incorrect inheritance tax returns. Respondent failed to keep an accurate record of receipts and disbursements of estate funds; and failed to file an account despite an Order by the Court. Respondent improperly paid himself commissions and attorney's fees. In addition, Respondent arranged a \$5,000.00 "loan" from his client's funds to pay legal fees owed him by another client, the repayment of which was never shown on the record. Respondent also transferred most of the entrusted funds to a personal account which Respondent drew checks on for expenses unrelated to his client's affairs.

In the Loder/Hodnicki matter (Charge VI), Respondent once again deposited a client's funds into an account that was not a denominated segregated account for client funds. Thereafter, the amount of funds in the account continuously went below the entrusted amount and eventually showed a negative balance. However, Respondent deposited in this account \$22,000.00 drawn on the account of another client. Respondent used some of this money for his own purposes.

Additionally, in the matters involving the McGinness Estate and the McGinness Fund (Charges VII and VIII), Respondent kept client funds in a law account that was not a denominated segregated account for client funds. Respondent improperly retained client funds in payment of his miscalculated fees. Respondent secured \$5,000.00 from the estate funds as a personal loan. Furthermore,

Respondent continued to represent the client after he had been discharged. Lastly, Respondent failed to take any action whatsoever to conclude the administration of the estate.

[Exhibit C to OAE letter of February 24, 1994
at 117 to 120]

The Pennsylvania Disciplinary Board did not accept respondent's claims that his problems were the result of his inexperience and unfamiliarity of the practice of law. That Board continued:

In addition, it must be recalled that respondent's misconduct included more than his extensive misappropriation of client's funds. As stated by the Special Master, 'the other facts involved allegations and use of a fictitious power of attorney, of being involved in business transactions with clients, of dilatory handling of two estate administrations, of falsely claiming progress in several of the cases, of issuing non sufficient funds checks, and of receiving fees for work not performed.' (Opinion of Special Master, page 14).

The Board agrees with the conclusion of the Special Master that disbarment is the only appropriate sanction in this matter.

After reviewing respondent's egregious conduct, the Board is of the adamant opinion that Respondent is not fit to continue the practice of law in this Commonwealth. Respondent once advised clients that 'if you can't trust your lawyer, who can you trust,' or words to similar effect. Unfortunately, respondent's conduct will leave the public with a contrary predilection of attorneys. Respondent's attitude and behavior denigrated the integrity of the bar and demonstrated that he is an unfit and reckless practitioner from whom the public deserves protection. Therefore, respondent must be disbarred.

[Exhibit C at 122-23]

The OAE has urged the Board to recommend disbarment.

* * *

Upon a review of the full record, the Board has voted to grant the motion of the OAE and agrees that disbarment is the only appropriate remedy in this case.

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-7(d) (currently R. 1:20-14, effective March 1, 1995), 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 face of the record upon which the discipline in another jurisdiction was predicated, that it clearly appears that:

- (1) the disciplinary order of the foreign jurisdiction was not entered;
- (2) the disciplinary order of the foreign jurisdiction does not apply to the respondent;
- (3) the disciplinary order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (4) the procedure followed in the foreign 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.

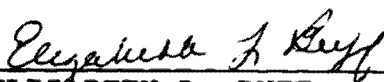
Sub-paragraphs one through four are clearly not applicable here. The OAE has argued, however, and the Board agrees, that respondent's conduct in this matter warrants substantially different discipline from that imposed in Pennsylvania. R. 1:20-7(d)(5). In Pennsylvania, disbarment is not permanent. A "disbarred" Pennsylvania attorney may apply for reinstatement to the practice of law five years after the effective date of

disbarment. See PRDE R. 218(b). A five-year suspension does not sufficiently address respondent's misconduct here, which included knowing misappropriation and other serious ethics violations over a period of nearly four years. The Board specifically finds that respondent's actions in Pennsylvania constituted knowing misappropriation was known and that disbarment is, therefore, mandated. In re Wilson, 81 N.J. 451(1979). Even if the misconduct stopped short of knowing — and it certainly does not — the other numerous unethical acts committed by respondent, as detailed by the Special Master and the Pennsylvania Disciplinary Board, are sufficiently outrageous to require disbarment. See, e.g., In re Harris 131 N.J. 117(1993); In re Ritger, 128 N.J. 112(1992).

The Board has unanimously voted to recommend respondent's disbarment. Two members did not participate.

In addition, respondent is to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: June 22, 1995



ELIZABETH L. BUFF
Vice-Chair
Disciplinary Review Board