SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DOCKET NO. DRB 89-090

IN THE MATTER OF :

JOHN MICHAELS, :

AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 20, 1989

Decided: February 7, 1990

Lillian E. Harris appeared on behalf of the District IX Ethics Committee.

Respondent did not appear.[1]

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

This matter is before the Board based on a presentment filed by the District IX Ethics Committee, which presentment sets forth respondent's misappropriation of client funds.

[1] Notice of the Board hearing was provided to respondent's last known address (a home run by the Episcopal Diocese) at 10 Park Street, Burlington, Vermont, 05401, (Telephone: 802-899-4758) by regular and certified mail. Telephone contact was also made with respondent's sister-in-law (RR2, Box 381, Jericho, Vermont, 05465, Telephone 802-899-4758) who confirmed the above address.

In 1986, respondent, who had been admitted to practice law in New Jersey in 1963, was a sole practitioner with offices in Asbury Park. Grievant, Edward Cullen, first met respondent in 1986. At that time, grievant was a recovering alcoholic who also had a history of drug dependency. Moreover, grievant was, and continues to be, permanently disabled as the result of an automobile accident that caused mental retardation, brain damage and emotional problems. As a result of this accident, grievant also suffers from hypopituitarism, and must take daily medication as well as monthly injections of testosterone.

At the request of C.B., a friend of grievant's, respondent agreed to drive and to accompany grievant to Alcoholics Anonymous (AA) meetings.[2] Respondent and grievant became friends. In addition to attending AA meetings together, they would occasionally go out to lunch or dinner together. Respondent knew that grievant then resided with his mother, and that, despite his extensive disabilities, grievant wanted to live alone.

Grievant's mother, Marie Cullen, sold her home in March 1986. Respondent represented her in that transaction. Mrs. Cullen advised respondent that she intended to divide the proceeds of the sale evenly with her son, inasmuch as the house had been purchased in part with settlement proceeds from grievant's accident.

Mrs. Cullen did give one-half of the proceeds of sale, or approximately $100,000, to her son. Grievant then consulted with

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[2] Although the record contains references to respondent's own possible alcoholism, no evidence was introduced in this regard.

respondent concerning a certain investment, in partnership with grievant's employer, in residential property for living purposes. Beginning in May 1986, respondent represented grievant in the purchase by that partnership of residential property in Belmar, New Jersey. Respondent charged $600 for this representation. At closing in March 1987, grievant used $64,000 of the approximately $100,000 given to him by his mother to purchase the home. The sellers took back a mortgage from the partnership on the balance of the purchase price.

While the purchase of the residential property was pending, respondent told grievant of an investment opportunity. Respondent plained that Canadian businessmen were investing in certain property in Ocean Grove. He assured grievant that any investment in the property would be doubled by April 5, 1987.

Thereafter, grievant withdrew various sums from his investment account and gave the money to respondent. Two such withdrawals are supported by cashier's checks made payable to respondent, as follows:

Date	Amount
January 5, 1987	$ 11,152.
February 23, 1987	$ 8,000.

Two additional payments, totalling $6,200, were made by grievant to respondent in November 1986. Grievant thus gave respondent a total of $25,352 to invest in his behalf.[3]

In March 1987, grievant visited respondent, who was then a patient in a local hospital. Grievant told respondent he needed some of his money back. Respondent apparently did not give grievant a satisfactory response. Grievant was unsuccessful in contacting respondent after that meeting. Respondent did not answer his phone and his family was unaware of his whereabouts. Grievant then spent some time in a psychiatric hospital for treatment of drug abuse. Subsequent to his release, respondent visited grievant at the apartment of grievant's mother in June 1987. Although he had promised to provide documents concerning the investment to grievant during that visit, no papers were provided. Despite grievant's request for the return of his investment, no money was returned. T67[4]. Respondent had no contact with grievant after the June 1987 visit. Respondent never repaid grievant.

Respondent did not appear before either the district ethics committee or the Disciplinary Review Board. However, respondent did meet with the District IX Ethics Committee investigator at respondent's then-attorney's office on March 25, 1988. Respondent

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[3] This figure does not include the legal fee of approximately $600 paid by grievant to respondent.

[4] "T" refers to the transcript of hearing before the District IX Ethics Committee on December 13, 1988.

advised the investigator that grievant had advanced the funds in question to respondent as a personal loan, which was used for business operating expenses. P-1 in evidence. Respondent claimed that the loan, which was to earn interest at ten to twelve percent, was evidenced by a written, but not formally prepared, note. Id. Respondent did not have that note in his possession. Id. The investigator noted that respondent admitted discussing an investment in Ocean Grove with grievant, and confirmed that he was seeking Canadian investors for that project. Respondent further admitted to the investigator that he had approached grievant for loans, but that grievant understood the nature of the transaction and was not then abusing alcohol.

Two witnesses at the ethics committee hearing directly contradicted respondent's claims. C.B. testified that grievant was abusing drugs and alcohol beginning in late 1986. T32. Respondent had expressed concern to C.B. during this time over grievant's drug use. T33. C.B. was later advised by grievant that he had given respondent money for completion of a business transaction in which he and respondent were involved. T36.

The second witness, R.L., had been referred to respondent by C.B. During their first meeting, R.L. mentioned to respondent that he understood respondent was investing some money for grievant. Respondent replied "I really have something nice for him." T38, T39.

The Committee concluded that grievant gave the money in question as an investment, rather than a personal loan, as claimed

by respondent. The Committee further found that respondent made false representations to grievant concerning the value of the Ocean Grove investment in order to obtain his money. The Committee noted:

> As soon as the money was given, the last money was given to (respondent) there's a pattern of (respondent) slowly staying away from the grievant which again is an indication of what really was happening here, that once he received the money he really wanted nothing to do with (grievant). T76.

The Committee found violations of R.P.C. 1.8, R.P.C. 1.15 and R.P.C. 8.4.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the Committee in finding unethical conduct are fully supported by clear and convincing evidence.

The Board agrees with the Committee's determination that respondent obtained more than $25,000 from Edward Cullen, a disabled client whom he had befriended, under false pretenses. In order to obtain the funds, respondent represented to grievant that he was going to invest the money in a real estate venture that would quickly double Cullen's money, although respondent, in fact, used the money for personal purposes.

Respondent's claim that the money was given to him by grievant as a personal loan is directly controverted by the testimony of two

individuals. Both of these witnesses stated that respondent told them he had invested money for grievant. Similarly, respondent's statement that grievant understood what he was doing and was neither abusing nor under the influence of alcohol at the time of the alleged loan is not supported by the record. The testimony of C.B. demonstrates that C.B. and respondent had discussed grievant's increasing drug dependency beginning in January of 1987. Indeed, grievant's drug abuse progressed to the point where he was hospitalized sometime in April 1987. Respondent was aware of grievant's mental handicap and drug abuse and, by reference, had to be aware that grievant's understanding of any financial transaction was limited by both of these debilitating factors. though respondent claimed that the loan was evidenced by a written note, he could not produce that document.

The Board, therefore, gives no credence to the statements made by respondent to the ethics investigator. To the contrary, these unsupported statements are blatantly self-serving, and were obviously made by respondent in an effort to avoid disbarment.

In this case, the evidence clearly and convincingly established that respondent took advantage of a disabled client, who regarded respondent as both a friend and advisor, in order to obtain funds for his personal use. This case bears certain similarities to Matter of Smyzer, 108 N.J. 47 (1987). In Smyzer, the attorney, inter alia, invested funds on behalf of several clients, and deceived these clients in order to protect his own vestment in a financially troubled company, as well as in another

company of which he was the sole shareholder. Smyzer's "flagrant abuse of the trust placed in him by his clients permits no other alternative but to strike his name from the role of attorneys in this state." Id. See, also, In re Servance, 102 N.J. 286 (1986), where an attorney was disbarred following his fraudulent misrepresentation of the soundness of investments in order to obtain significant sums from others for investment in a "get rich quick- scheme" which failed. Although Servance was not then acting as an attorney, the investors were aware that respondent was an attorney and expected him to act in their best interests. Id. at 293.

"A lawyer is required to maintain the highest professional and ethical standards in his dealings with clients." In re Gavel, 22 N.J. 248, 262 (1956). No exception to this duty exists merely because the attorney chooses to become involved in business transactions with such individuals. In re Carlsen, 17 N.J. 338, 346 (1955). As stated in In re Wolk, 82 N.J. 326, 335 (1980), "(t)his Court will no more tolerate the hood-winking of helpless clients out of funds in a business venture that is essentially for the benefit of the lawyer than it will outright misappropriation of funds."

The facts of this case compel the conclusion that respondent perceived an opportunity to obtain money for his own purposes, albeit to the disadvantage of his disabled client, and took advantage of that opportunity. In re Kazlow, 98 N.J. 9 (1984). Respondent presented no proofs to support his contention that his

use of grievant's money was authorized. Moreover, the record supports a finding to the contrary. The Board, therefore, concludes that respondent knowingly misappropriated client funds.

The Board considers respondent's actions to be egregious. The Board, thus, unanimously recommends that respondent be disbarred. See In re Wilson, 81 N.J. 451 (1979).

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

DATED: February 7, 1990.

Shirley O'Neill, Vice Chair
for Raymond R. Trombadore
Chair
Disciplinary Review Board