

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-096

IN THE MATTER OF :
: :
NORMAN J. CHIDIAC, :
: :
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 20, 1989

Decided: February 7, 1990

Arnold Stadtmauer appeared on behalf of the District XI Ethics Committee.

Alan M. Harris appeared on behalf of respondent.

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

This matter is before the Board based upon a Presentment filed by the District XI Ethics Committee.

Respondent, who was admitted to the New Jersey Bar in 1970, was engaged in the practice of law in Paterson until December 14, 1987, when he was indefinitely suspended.¹

¹The Court imposed an indefinite suspension while awaiting the outcome of two disciplinary matters. Matter of Chidiac, 109 N.J. 84 (1987). This is the first of those two disciplinary matters.

In 1974, respondent began his representation of Cathedral Housing Corporation, a charitable organization affiliated with the Diocese of Paterson (1T64; 2T5).² Cathedral Housing was incorporated in 1973 for the purpose of rehabilitating houses for low-income families. One of the initial trustees and director of the corporation was a Father W., a Catholic priest, and the person who performed the daily activities of the corporation for seven years. He personally bought, renovated, sold, and rented houses for Cathedral Housing.

In the six years between 1974 and 1980, at least eleven real estate closings were performed by respondent, as documented by the closing deeds entered into evidence. (P-20 through P-30 in evidence). Furthermore, both Father W. and respondent testified that, although they do not have the remaining deeds, a more accurate figure of the number of closings performed by respondent is at least twenty (2T23; 3T50).³ Other services performed by respondent included:

- (1) representation of the corporation in a contractor claim;
- (2) representation of the corporation in a workers' compensation claim;

²1T refers to the transcript of the hearing before the District XI Ethics Committee on October 4, 1988. 2T refers to the transcript of the hearing before the District XI Ethics Committee on November 3, 1988.

³3T refers to the transcript of the hearing before the District XI Ethics Committee on December 6, 1988.

- (3) drafting of a state grant application;
- (4) performance of several tenant evictions;
- (5) preparation of rental leases;
- (6) preparation of a sub-division application;
- (7) and conferences with Father W. two to three times weekly
(3T48-3T55).

During this time, respondent never received compensation for his legal services. Respondent testified that Cathedral Housing Corporation was not generating sufficient income to afford his legal fees. He made the decision he wanted to continue to help Cathedral Housing; therefore, he decided to work without reimbursement (3T46).

In January 1980, Father W. left Cathedral Housing for another position, and asked respondent to manage the remaining three properties. Respondent was to collect the rents, pay the taxes, arrange for repairs and sell the properties if possible. Father W. testified he instructed respondent to do the following:

I am going to leave the properties in your hands since you were our attorney for the other properties and since you manage other properties in the City, you have your own houses that you collect rent from and since the Diocese doesn't seem to be interested in this thing at all, I said, I think the best thing is to turn it over to you and you manage the properties and try to find a buyer as soon as possible. There is no sense keeping these things. Try to manage the properties and manage them as you would your own.
[2T15]

Father W. further stated respondent was to take whatever legal fees were appropriate, including fees for earlier legal services, and

to turn any surplus funds over to the Diocese. He stated he gave respondent a corporation checkbook and seal, and told respondent he did not need to provide an accounting to the Diocese, since they had never asked for one in the past (2T15-2T17; 2T37-2T38).

Respondent's testimony differed in that he recalled Father W. asking him to manage the properties only until Father W. came back to resume the work (3T48). (Initially, when Father W. left, he intended to return after several years.) Respondent also understood that he was to keep all surplus fees after managing and selling Cathedral properties for his past legal fees and present management fees (3T153). He testified that Father W. never gave him a checkbook, or any other records concerning Cathedral Housing.

Respondent admitted he kept no records on either income received or expenses paid on behalf of Cathedral Housing (3T60). Respondent's explanation for not maintaining Cathedral records in a similar fashion as his other trust records⁴ was that, after 1980, he was acting as a property manager for Cathedral Housing, rather than as an attorney. Father W.'s testimony on this subject was as follows:

- Q. Was Mr. Chidiac, to your understanding, being selected as a property manager.
- A. Primarily as a property manager with the idea once the properties were sold, he would double as an attorney as well.

[2T42.]

⁴The general audit of respondent's trust account did not produce any violations other than the Cathedral matter (2T59, 3T101).

However, in contradiction to his testimony that he was solely a property manager, respondent also testified that, after 1980, he prepared the legal documents necessary for several tenant evictions (3T111). In addition, he prepared the legal documents for a real estate closing for the 118 Barclay Street property in June, 1982 (3T113-3T116; P-4 in evidence).

Respondent argued that his lack of records was not a sign of deception, but rather was in keeping with his behavior in managing his own personal property. He personally owned five buildings consisting of a total of 30 rental units. Respondent deposited all rent and mortgage payments into one checking account for both his own property and the Cathedral property, and he paid all expenses from the same checking account. For both respondent's properties and for Cathedral Housing the only records maintained were checks, deposit slips, and bank statements. He had no records of expenses or income for any of the rental units. During this period, respondent also failed to pay the taxes on both his own property and the property owned by Cathedral Housing.

Respondent contended that his poor record keeping on his own properties demonstrates that he did not intentionally treat Cathedral in a disorganized manner in order to steal from them, but that disorder was a problem in his own property management as well.

Although an accountant from the Office of Attorney Ethics could not identify specific Cathedral Housing deposits, he also could not state definitely that there were no Cathedral deposits in respondent's attorney trust account (2T67; 2T76 - 2T77; 2T89).

None of the incoming checks were marked as being deposited to a specific account. For example, in June 1982, the Cathedral property known as 118 Barclay Street was sold. Father W. signed the papers and respondent handled the closing. A \$4,355 check was given as a downpayment to respondent (P-7 in evidence). The accountant was unable to trace the deposit to determine whether the downpayment check was or was not deposited to respondent's trust account (2T90).

However, the testimony of the accountant is not necessary to show that respondent did not deposit other Cathedral funds to his attorney trust account. Respondent admitted that he placed the Cathedral rent payments and the later mortgage payments from 118 Barclay Street in his personal checking account rather than the attorney trust account:

- Q.[D]id you ever consider or feel you were required as opposed to putting those funds in your personal account that those funds should have been placed in an attorney's trust account?
- A. No, because I wasn't working as an attorney. In my mind I was working as a property manager. Never even occurred to me they should be deposited in any attorney trust account.

[3T113.]

An unsuccessful attempt was made to reconstruct the income and expenses generated by Cathedral Housing between 1980 and 1986. Because respondent kept no rent records which would indicate which units were producing income, and which units were not, it was impossible to determine the accurate amount of income generated by Cathedral Housing properties during this period.

Furthermore, although respondent recalled some specific repairs made to the properties, such as new roofing and plumbing replacements, he maintained no records of these expenses. Given these facts, the auditor found it impossible to assess accurately the net funds generated from 1980 to 1986 after housing expenses, even without considering respondent's legal fees (2T68-70).

Finally, respondent admitted he had no idea what his exact Cathedral Housing legal fees for 1974 to 1980 should have been. Similarly, he did not know what surplus, if any, he had taken from Cathedral Housing between 1980 and 1986.

Q. Have you attempted to calculate a total amount of legal services that you rendered to Cathedral Housing during that period of '74 to 1980 based upon your testimony here this morning?

A. Best educated guess I could give, probably in the neighborhood of \$50 or \$60,000. If I was going to be charging what attorneys normally charge.

[3T65.]

* * * * *

Q. In effect, then even though you took this money for your fees you did not know what your fees were at that time, did you?

A. Correct, I didn't.

[3T138-3T139.]

* * * * *

Q. You did not make any effort to determine exactly what your fees were? By that I mean you did not keep records or prepare bills to determine your fees, isn't that correct?

A. That's correct. [3T140]

In 1985, respondent was contacted for the first time for an accounting by the Diocese of Paterson. In May 1985, respondent provided an estimated accounting for 1/1/85 through 3/31/86 to the Diocese (P-16 in evidence). This accounting estimated income generated without taking into account non-paying rental units. Second, no legal fees or property management fees were recorded as expenses. The Diocese used this incomplete estimate provided by respondent to reach the conclusion that respondent owed them money (1T81).

In February 1987, respondent settled with the Diocese of Paterson by purchasing a Cathedral property located at 123 Barclay Street. Respondent paid an amount beyond the property's estimated value, and agreed to pay the back taxes. This agreement had the effect of respondent reimbursing the Diocese for approximately \$50,000 (P-17 in evidence; 1T78). Respondent gave the following testimony concerning this settlement:

Q. What was your position with regard to whether there was any money owed by you to the Catholic diocese?

A. In all honesty I told them the arrangements with Father [W] as I understood them. Father [W] wanted me to manage the properties until he returned and that I should retain any surplus for fees for work that I had done previously and also for managing the property until he returned.

I felt that, you know, there really wasn't any surplus. But I didn't keep any records to substantiate it. I had no bills, no idea what was the value of my previous services rendered; just sort of a general agreement with Father [W] to retain whatever there may have been.

Q. Did you explain this to Mr. [H]?

A. Yes. As best as I recall, yes, I did.

- Q. As a result of the discussion you had with Mr. [H], did you decide to do anything with regard to their claim for reimbursement?
- A. Yeah. I had at that time agreed to buy the 123 Barclay Street property which was the only real estate remaining and I finalized that sale on September of '87.
- Q. Essentially you settled the matter in the way which had been described in the Presenter's direct examination?
- A. Yes.
- Q. You don't deny it?
- A. No. I did.
- Q. Why did you settle the matter?
- A. Well I figured it was the intelligent thing to do at this point since I really didn't feel that I owed any money and I just figured it was the thing to do because they were asserting a claim. I didn't want to have any additional problems. I had enough on my hands and mind at the time; couldn't cope with anymore.

[3T98-3T99.]

Respondent's settlement with the Diocese of Paterson did not include any offset for his fees for the period of 1974 through 1986.

Testimony was elicited concerning the circumstances surrounding respondent's handling of Cathedral Housing Corporation. Before respondent attended law school, he was employed as a social worker from 1961 to 1966. When respondent opened his law office he continued to work for this same population: his clients consisted of many disadvantaged individuals, half of whom he

estimated he represented free of charge. The letter from the Executive Director of the Passaic County Legal Aid Society stated the following:

The entourage of people to his [respondent's] office, including many repeat clients, compels me to wonder at times as to whether or not there were actually two Legal Aid offices in our building.

What I am saying is that Norman Chidiac is a special kind of individual who cares for and takes care of many people who would not easily obtain legal services in the City of Paterson. My experiences with him compel me to conclude that he is honest, trustworthy and without any kind of larcenous intent as to anyone.

[P-4 in evidence.]

Testimony by attorneys and clients indicate respondent provided a large volume of pro-bono legal services. Respondent's psychiatrist, who testified after seeing respondent eight times, found respondent combined his earlier training as a social worker with his legal training, sometimes to a disadvantage. Respondent would neglect his professional responsibility to maintain proper documentation in order to respond quickly to his needy clients (3T79-3T80). The psychiatrist did not find any psychological deficiencies on respondent's part: he was sure that respondent could learn to manage his practice more efficiently (3T91-3T93).

Furthermore, during the period of 1981 through 1986, respondent experienced marital difficulties. In 1981, respondent's older sister came to live with his family for four years, while her own home was being renovated. This additional household member did not get along with respondent's wife. The resulting conflict

between respondent and his wife contributed to their separation in 1984, followed by divorce in 1988 (3T39-3T40).

Q. Did this family circumstance have any effect upon you personally?

A. Oh yeah. I was, I just was -- I was working constantly. I was emotionally upset constantly. I worked to keep busy, to stop from thinking about all my personal problems

[3T42.]

* * * * *

Following the hearing, the committee found that respondent violated RPC 1.4 [DR 9-102(B)(2)]⁵ by not keeping his client reasonably informed. It further found that respondent violated RPC 8.4 [DR 1-102(A)(4)] by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation by retaining all the net proceeds for his own benefit without communicating this to his client. Finally, the committee found that respondent violated RPC 1.15 [DR9-102] by commingling his own personal funds with those of his client, by not accounting to his client for the funds received, and by not obtaining the consent of his client for the disbursement of those funds to himself.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the ethics committee in finding

⁵The Rules of Professional Conduct replaced the Disciplinary Rules effective September 1984. Respondent's conduct occurred before and after that date. Hence, both the Disciplinary Rules and the Rules of Professional Conduct apply.

respondent guilty of unethical conduct are supported by clear and convincing evidence. The Board agrees that respondent did not communicate adequately with his client, in violation of RPC 1.4 [DR 9-102(B)(1)] and that he failed to safekeep property in violation of RPC 1.15 [DR 9-102]. However, the record before this Board does not support a finding of intentional deception or dishonesty by respondent in violation of RPC 8.4 [DR 1-102(A)(4)].

Respondent represented Cathedral Housing for twelve years. At no point during this lengthy representation did he provide any accounting of his legal services. When respondent took over the management of Cathedral properties in 1980, he maintained no records of income, expenses, or services provided to his client. Respondent contends that in his role as property manager, he did not have any duty to keep financial records similar to those required of an attorney, and, additionally, that there was no identifiable client to report to when Father W. left in 1980.

The Board concurs in the conclusion of the ethics committee that respondent became Cathedral Housing's attorney in 1974 and continued in that role until 1986. In 1980, when respondent added managing the properties to his responsibilities, he did not have the right to lessen his accountability to his client. While it is true that Father W. knew respondent himself owned other property and allegedly had management skills, that does not obviate the fact that Father W.'s trust in respondent primarily rested in his previous experience with respondent as Cathedral Housing's attorney. This high regard for respondent as Cathedral Housing's

attorney for many years is the reason why Father W. entrusted respondent with the care of the remaining properties.

Respondent argues that Father W. instructed him to treat the property as his own. But as an attorney, respondent should know "it is not enough simply to follow a client's instructions, for a client cannot foresee or be expected to foresee the great variety of legal problems that may arise." Matter of Wallace, 104 N.J. 589, 593 (1986). Perhaps Father W. thought the buildings would sell quickly, or that he would return in a few years and that the short time involved would not necessitate the keeping of records. It does not matter how straightforward the client thought the accounting needs for Cathedral Housing would be; respondent failed to recognize that "part of [his] responsibility to the legal system is the maintenance and supervision of accounting records." Matter of Orlando, 104 N.J. 344, 350 (1986).

RPC 1.15 [DR 9-102] and R. 1:21-6 specify the standards for handling a client's money. These standards exist to prevent not only the loss of funds caused by intentional misappropriation, but also to prevent the losses caused by negligent or nonexistent bookkeeping. Respondent here is unable to inform his client even as to whether there is a surplus or a deficit in the account, precisely because he failed to keep the required records.

Respondent argues that his duties as a property manager do not require he meet the standards of RPC 1.15 [DR 9-102]. The Board has already discounted respondent's claim that he was not acting as an attorney. Moreover, the court has held that the Rules of

Professional Conduct may apply even where the attorney is not directly involved in the practice of law. It is well settled that an attorney is ". . . obligated to adhere to the high standard of conduct required of a member of the bar even though his activities did not involve the practice of law." In re Franklin, 71 N.J. 425, 429 (1976). If an attorney wishes to be a businessman as well as perform the precise functions of a lawyer, he must act in the transaction with the high standards of his profession. In re Genser, 15 N.J. 600, 606 (1959). See also In re Suchanoff, 93 N.J. 226 (1983). The Board finds that, even assuming he was acting only as a property manager from 1980 on, he would still be held to the high standards expected of an attorney whenever client funds are involved.

While this record clearly evidences flagrant record keeping violations, a finding of knowing misappropriation cannot be sustained by clear and convincing evidence. Misappropriation is "any unauthorized use by the lawyer of client's funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derived any personal gain or benefit therefrom." In re Wilson, 81 N.J. 451, 455 n.1 (1979). The misappropriation that will trigger automatic disbarment "consists simply of a lawyer taking a client's money entrusted to him, knowing that the client has not authorized the taking." In re Noonan, 102 N.J. 157, 159 (1986).

The Board is convinced respondent had a good faith belief that his taking of funds was authorized by his client. Father W.'s

testimony that he told respondent to take his fees, as well as respondent's philanthropic approach to law in general, provide evidence in support of respondent's belief that his taking of funds was authorized. Furthermore, there was no evidence that respondent designed a system to prevent himself from knowing whether he was using client funds. In re Fleisher, 102 N.J. 440 (1986). This conclusion is supported by the fact that respondent was facing foreclosure on his own property for failure to pay property taxes, and his recordkeeping for his own investments was as poor as that for his client.

Nonetheless, the Board finds that respondent's misconduct is very serious and warrants the most severe discipline short of disbarment. The absence of financial records and inability to account to the client, the lack of any communication to the client concerning legal services between 1980 and 1985, and the failure to maintain any records are all unacceptable conduct by a member of the Bar and can not be tolerated.

Accordingly, a requisite majority of the Board recommends that respondent be suspended for three years, retroactive to the date of his temporary suspension on December 14, 1987. The Board's recommendation is based upon both the matter presently before it, and another matter⁶, now pending with the Court, which concerns the forgery of an inheritance tax waiver. Two members dissented,

⁶It is this matter which caused respondent's indefinite temporary suspension from the practice of law. Matter of Chidiac, 109 N.J. 84 (1987).

finding clear and convincing evidence of knowing misappropriation which requires disbarment. Three members did not participate.

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

DATED: February 7, 1995

for

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