

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 89-257

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IN THE MATTER OF :  
: CLIFTON E. HALL, :  
: AN ATTORNEY AT LAW :  
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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: January 24, 1990

Decided: February 28, 1990

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

Respondent did not appear.<sup>1</sup>

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

This matter is before the Board based upon a Motion for Reciprocal Discipline filed by the Office of Attorney Ethics pursuant to R. 1:20-7, based upon respondent's disbarment from the practice of law in the State of New York for violations of DR 9-102 and DR 1-102. Matter of Hall, 114 A.D. 2d 304, 493 N.Y.S. 2d 758 (App. Div. 2d Dep't 1985).

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<sup>1</sup>Notice of the hearing was provided to respondent at his last known address, Village Green, Apt. 4-D, Budd Lake, New Jersey 07828. When no response was received, notice by publication was made on various dates in December 1989 through the New Jersey Law Journal, the New York Law Journal, and the Mount Olive (New Jersey) Chronicle.

Respondent was admitted to the practice of law in New Jersey in 1972, and in New York in 1961. On September 6, 1989, respondent was suspended from the practice of law in this state for a period of one year, following his federal conviction of willful failure to file a federal income tax return. Notice of this suspension was sent to the New York disciplinary authorities, who promptly informed the Office of Attorney Ethics of respondent's 1985 New York disbarment. Although required by R. 1:20-7(a) to notify both the Director of the Office of Attorney Ethics and the Clerk of the Supreme Court of this 1985 discipline, respondent did not do so.

The facts established in the New York proceeding show that, in December 1983, one of respondent's clients, Ms. Cicely Haynes, gave respondent a check in the amount of \$6,000 which was to be paid over to the New York State Department of Taxation. Under oath, respondent testified as follows:

- Q. Did Miss Haynes' check clear your escrow account?
- A. I believe it did.
- Q. At this time, in December of 1983, were you holding any other escrow monies?
- A. No.
- Q. So Miss Haynes' was the only escrow money that you were holding at that time?
- A. Yes.
- Q. Did you subsequently to receiving her check issue a check from your escrow account to the New York State Tax Department?

A. Yes, I did.

Q. When did you draw that check?

A. In February.

Q. Of 1984?

A. 1984.

Q. Did that check subsequently bounce?

A. Yes.

\* \* \* \* \*

Q. Then the escrow funds were exhausted by you?

A. Well, there was \$500 in the fund.

Q. The other monies were used by you for your own purposes?

A. Yes.

[T12, 13, 15.]<sup>2</sup>

On April 5, 1984, in another matter, respondent deposited a check in his trust account for \$10,000.00, which represented the buyer's down payment in a real estate transaction in which respondent represented the seller. The balance immediately fell below \$10,000 and, by May 1984, none of the money remained. Neither the seller nor the buyer ever received the funds. Respondent did not answer the New York complaint in this matter,

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<sup>2</sup>T refers to the testimony taken by the Grievance Committee for the Second and Eleventh Judicial Districts of New York on July 31, 1984. The testimony is attached as Exhibit One to the March 8, 1985 Order to Show Cause of the New York Supreme Court, Appellate Division.

and his failure to answer was deemed by the New York Court to establish these facts by default.

On September 16, 1985, the Appellate Division of the Supreme Court of New York entered a default judgment of disbarment against the respondent. The Office of Attorney Ethics now requests that reciprocal discipline issue, and that respondent be disbarred.

#### CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board recommends the granting of the Office of Attorney Ethics' motion. Respondent has not disputed the factual findings of the New York Supreme Court. Hence, the Board adopts those findings. Matter of Pavilonis, 98 N.J. 36, 40 (1984); In re Tumini, 95 N.J. 18, 21 (1979); In re Kaufman, 81 N.J. 300, 302 (1979).

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-7(d), which directs that:

(d) 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 disciplinary 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 [Emphasis added.]

In New York, a disbarred attorney may seek reinstatement seven years after the effective date of disbarment. 22 N.Y.C.R. § 603.14. Disbarment in New Jersey, however, is permanent, a "substantially different discipline" from New York's.

The Office of Attorney Ethics requested permanent disbarment under R. 1:20-7(d)(5) because the facts of this case demonstrate a knowing misappropriation of client funds, which requires permanent disbarment in New Jersey.

In the New York proceedings, respondent admitted taking his client's money for his own purposes, and did not deny taking an additional \$10,000 from a second client. The record shows that respondent was having financial difficulties due to personal problems. While the Board is cognizant of the troubles faced by respondent in his personal life, it is even more cognizant of its obligation to protect the integrity of the bar. As in all cases where knowing misappropriation has been established, mitigating factors are irrelevant to the mandated result of disbarment. Matter of Lennan, 102 N.J. 518 (1986); In re Wilson, 81 N.J. 451 (1979).

In reciprocal discipline cases, the Court has not hesitated to hold a New Jersey attorney to the strict standards applied in this state, even if they have received lesser discipline in the initiating state. See In re Tumini, 95 N.J. 18 (1983); In re Keesal, 76 N.J. 227 (1978).

The Board, therefore, unanimously recommends that respondent be disbarred for his knowing misappropriation of client funds. Two members did not participate.

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

Date: \_\_\_\_\_

2/25/1990



Raymond R. Trombadore  
Chair  
Disciplinary Review Board