

Grievance Administrator,  
State of Michigan  
Attorney Grievance Commission,

Petitioner/Appellant,

v

Norman C Farhat, P 13293,

Respondent/Appellee.

Case Nos. 92-196-GA; 93-154-GA; 93-188-FA; 93-201-GA

Decided: September 8, 1994

MAJORITY BOARD OPINION

The Grievance Administrator has petitioned for review of a hearing panel order suspending the respondent's license for two years based upon the respondent's plea of no contest to allegations that he misappropriated funds entrusted to him by five clients, failed to complete legal services for which he was retained, failed to refund unearned fees and failed to answer two Requests for Investigation. The respondent's conduct was found to be in violation of MCR 9.103(C); MCR 9.104(1-4,7); MCR 9.113(A)(B)(2) and Michigan Rules of Professional Conduct, 1.1(a-c); 1.3; 1.5; 1.5(a-c); 1.6(d); 4.3; 8.1(b) and 8.4(a-c).

We have considered the serious acts of misconduct established in the record below and weighed the aggravating and mitigating factors in this case. The respondent's repeated conversion of funds entrusted to him by clients, continuing even after public discipline proceedings were instituted, warrants the revocation of the respondent's license to practice law.

The charges of professional misconduct in this case are set forth in formal complaints filed by the Grievance Administrator on August 11, 1992, August 2, 1993, and October 4, 1993. Following consolidation of the complaints and reassignment to a new hearing panel, the respondent offered a plea of no contest to all of the charges and was provided an opportunity to submit evidence in mitigation.

In its report on discipline, the hearing panel reported that the respondent had offered no evidence of mental or physical impairment nor was there evidence of substance abuse. The panel noted, however, the respondent's genuine remorse, his straightforward acknowledgement of his misconduct, the esteem in which he

is held by colleagues and clients, his prior unblemished record during nineteen years of practice and his restitution of funds.

The record reveals that on five separate occasions between April 1991 and October 1992, the respondent was entrusted with funds ranging in amounts from \$10,000 to \$50,000 to be held in escrow pending completion of separate transactions involving the sale of commercial properties. Respondent pleaded no contest to the allegations that he withdrew virtually all of those funds to discharge personal debts or, in some instances, to make repayment of escrow funds entrusted to him in unrelated matters. This series of events is described in Respondent's brief:

"Following a failed business venture and during a time of sharp decline in the addition of new clients, respondent, Norman C Farhat, was unable to repay funds initially deposited in his client trust account. The inability to make timely repayment of funds placed in his trust accounts constituted wrongful acts caused by severe economic duress. Those acts were known by Mr Farhat to be wrong and, when he was contacted by various counsel for the individuals for whom the funds were being held, he, respondent, advised those attorneys that it was incumbent upon them to file grievances against him. This economic collapse resulted in the formal complaints in this matter and all arose out of the short falls in the respondent's trust account. Respondent was, however, able to repay all of the trust funds prior to the hearing on the consolidated formal complaints herein on April 5, 1994."

As the Michigan Rules of Professional Conduct, Rule 1.15(a-c), make clear, a lawyer must hold property belonging to clients or third persons in an identifiable account separate from the lawyer's own funds. Those funds were to be held sacrosanct by the respondent until distribution was authorized under the terms of the escrow agreements. It goes without saying that it was the respondent's improper removal of those funds from his trust account, not merely the inability to make timely repayment, which was a fundamental violation of MRPC 1.15.

The importance of a lawyer's duty to safeguard the funds entrusted to him was underscored by the Supreme Court in Matter of Leonard A Baun, 396 Mich 421; 240 NW2d 728 (1976). In that case, the Court agreed with the former State Bar Grievance Board that suspension was inappropriate in a case involving the commingling

and conversion of funds belonging to a probate estate and the Court adopted the Grievance Board's unanimous conclusion that:

"There are few business relations involving a higher trust and confidence than that of an attorney as trustee in the handling of money for his client or by order of the court. The basis of this relationship is one of confidence and trust. Any action by the attorney which destroys that basic confidence and trust clearly subjects the legal profession and the courts to obloquy, contempt, censure and reproach. Foremost among the acts destroying the confidence between the public and the bar is the conversion or misuse of a client's funds and the failure or refusal of an attorney to obey the orders of the Court." Baun at 240 NW2d 729.

While the Discipline Board reviews a panel's factual findings for proper evidentiary support, the Supreme Court has recognized that the Board also possesses "a measure of discretion with regard to its ultimate decision." Grievance Administrator v August, 438 Mich 296; 475 NW2d 256 (1991). When considering the level of discipline to be imposed, the Board takes advantage of its broader overview to achieve a certain consistency among panel decisions.

In general, it can be said that cases involving intentional misappropriation of client funds have resulted in discipline ranging from a suspension of one year<sup>1</sup> to disbarment.<sup>2</sup>

However, review of those cases in which intentional misappropriation resulted in discipline less than revocation reveals that the Board has consistently recognized the egregiousness of such an offense and has warned of the expected consequence. In Matter of Patrick M Tucker, 91-60-GA; 91-104-FA; 91-180-GA for example, the Board stated:

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<sup>1</sup> See Matter of Patrick M Tucker, 91-60-GA; 91-104-FA; 91-180-GA Brd. Opn. 12/18/92 [affirming hearing panel order; app. lv. den. 443 Mich 1201; 505 NW2d 577 (1993)]; Matter of Paul F Zyburnski, 92-177-GA, Brd. Opn. 11/4/93 (increasing susp from sixty days to one year).

<sup>2</sup> See Matter of George H Furcron, ADB 90-88, Brd. Opn. 1/17/89; Matter of Gerard DelGiudice, ADB 65-89, Brd. Opn. 4/30/90.

"The respondent's commingling and misappropriation of client funds was inexcusable and reprehensible. Absent mitigation, respondent's offense would likely result in revocation of his license to practice law." Matter of Muir B Snow, DP 211/84, Brd. Opn. 2/17/87.

In that case, the Board affirmed a hearing panel's decision to impose a one-year suspension coupled with conditions related to the respondent's established alcoholism and his continuing rehabilitation. Similarly, the mitigating effect of the respondent's recognition of and ongoing treatment for an impairment caused by substance abuse was cited by the Board in Matter of Muir B Snow, DP 211/84, Brd. Opn. 2/17/87 [increasing suspension from two years to three years]; Matter of John D Hasty, ADB 1-87, Brd. Opn. 2/8/88 [affirming a three-year suspension]; Matter of Gary B Perkins, ADB 124-87, Brd. Opn. 6/28/89 [increasing reprimand to two-year suspension]; and, Matter of Thomas H Peterson, 90-41-GA; 91-11-GA, Brd. Opn. 2/18/94 [increasing suspension from two years six months to two years eleven months].

Mitigation of that type is not present in this case. More importantly, this case presents an aggravating factor which is particularly troubling.

The Grievance Administrator filed formal complaint 92-196-GA on August 11, 1992. The complaint was served on the respondent on August 17, 1992. That complaint charged that between April 11 and June 14, 1991, respondent misappropriated approximately \$8200 entrusted to him as an escrow agent pending the completion of a real estate transaction. In a separate count, the complaint alleged that the respondent misappropriated approximately \$39,000 between April 25, 1991 and October 15, 1991.

Based upon the respondent's plea of no contest to the charges contained in a subsequent formal complaint, 93-154-GA filed August 6, 1993, it has been established that in October 1992, two months after charges of misappropriation of client funds were filed, the respondent received \$50,000 from a client and that the respondent misappropriated those funds as well.

On October 4, 1993, a third complaint was filed against the respondent, Case No. 93-201-GA. The respondent pled no contest to the charge in that complaint that he agreed to serve as an escrow agent in August 1992, that he was entrusted with a check in the amount of \$10,000 on August 19, 1992 and that he misappropriated those funds.

This respondent's continued misuse of funds which rightfully belonged to clients or third parties, even after public discipline

proceedings were underway precludes the imposition of discipline less than revocation.

Michigan Court Rule 9.103(A) declares that the license to practice law in Michigan is, among other things, a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters. This respondent has demonstrated his inability to conform his conduct to a fundamental standard of trustworthiness which the public has a right to expect from every member of the bar.

Board Members C Beth DunCombe, Barbara B Gattorn, Linda S Hotchkiss, M.D., and Miles A Hurwitz concur in this opinion.

Chairperson Elaine Fieldman and Board Member Albert L Holtz would increase discipline to a suspension of three years.

Board Member George E Bushnell, Jr. would reduce discipline to a suspension of one year.

Board Member John F Burns was recused and did not participate in this matter.

Board Member Marie Farrell-Donaldson did not participate in this decision.