

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellee,

v

FREDERICK A. PATMON, P-18695,
Respondent/Appellant.

File No. DP 66/85

Decided: May 14, 1990

BOARD OPINION

The hearing panel imposed a ninety-day suspension based upon its finding that the respondent failed to deliver and misappropriated the sum of \$8660 entrusted by a client for investment in a real estate development. The Grievance Administrator's petition for review, filed January 5, 1990, was voluntarily withdrawn February 21, 1990. The Board's review in this matter is therefore limited to the issues presented in the respondent's petition for review filed January 18, 1990. The Board is not persuaded that the panel's decision was entered erroneously and the order suspending the respondent's license to practice law for ninety days is therefore affirmed.

The complainant, James Del Rio, entered into a subscription agreement in 1973 to obtain a twenty-two and one-half percent interest in limited partnership known as Boulevard East Apartment Development for tax shelter purposes. He retained the respondent's law firm to represent him in the transaction. Mr. Del Rio made two payments totaling \$8660 to the firm to be transferred in accordance with the installment agreement. The funds were never transferred to Boulevard East and the complainant's limited partnership interest was eventually declared forfeit. Mr. Del Rio testified that he was unaware of the forfeiture until it was uncovered during an IRS investigation following his unwitting filing of improper tax claims.

The panel dismissed four of the five counts in the complaint filed by the Grievance Administrator. Count IV charged Mr. Patmon with misappropriation and failure to deliver the \$8660 upon demand. In its report, the panel stated that the allegations of misconduct were established by a preponderance of the evidence. Mr. Patmon was found to be in violation of MCR 9.104(1-4) and Canons 1 and 9 of the Code of Professional Responsibility, DR 9-101(A)(4-6) and DR 9-102(B)(4).

In its report, the panel wrote: ". . . we find that an attorney/client relationship was established between the (respondent and complainant). Respondent held funds in trust belonging to Del Rio which were to be used for an investment in a limited partnership. Del Rio requested the return of said funds. Respondent failed to return the funds and kept same without authorization and this constitutes misconduct."

The first issue considered by the Board is whether or not proper evidentiary support existed for the hearing panel's finding of misconduct. See In re Del Rio, 407 Mich 336; 285 NW2d 277 (1979) and Grievance Administrator V Crane, 400 Mich 484, (1977). We find that the testimony of Mr. Del Rio established that an attorney/client relationship existed between Mr. Patmon and Mr. Del Rio.

In instances where the testimony of the parties may be contradictory, we defer to the assessment and judgment of the hearing panel in determining the credibility of witnesses and the significance of the evidence presented. Schwartz v Sauer, DP 25/84, Brd. Opn. 359 (1985). The panel received evidence and testimony over eight separate hearing dates in this matter. They had ample opportunity to review both the Grievance Administrator's and the respondent's presentation of the circumstances leading to the filing of the formal complaint. We conclude that their finding of misconduct is properly supported by the evidence and the record. Schwartz v Sauer, DP 25/84, supra.

The second issue involves the culpability of the respondent as it bears upon the level of discipline to be imposed. It was uncontroverted that the two payments totaling \$8660 were received by respondent's law firm. The testimony showed that Mr. Patmon was the attorney responsible for these funds. The funds were never transferred to the Boulevard East development and as a result, Mr. Del Rio's interest was forfeited without his knowledge. He remained unaware of this situation until an IRS investigation resulting from his failure to pay Boulevard East revealed that his interest had been forfeited. We do not accept Mr. Patmon's contention on appeal that he cannot, as a matter of law, be held personally responsible for improprieties which may have occurred under his law firm's corporate umbrella. As we have stated, the determinations of the panel and the evidence and testimony in the record sufficiently establish that an attorney/client relationship between Mr. Del Rio and Mr. Patmon existed. Accordingly, he must be held personally and professionally accountable in this matter.

The respondent's petition for review raises a number of procedural challenges including the makeup of the panel and the Board) the length of these proceedings, and the respondent's opportunity to present evidence or cross-examine witnesses. These objections have been considered by the Board in the light of MCR 9.102 which directs that the rules governing these disciplinary proceedings are to be liberally construed for the protection of the public, the courts and the legal profession and the language of MCR 9.107(A) which directs that "an investigation or proceeding may not be held invalid because of a non-prejudicial irregularity or an error not resulting in a miscarriage of justice." The Board is not persuaded that the objections raised by the respondent warrant modification or reversal of the proceedings below.

Finally, we reject the respondent's claim that the discipline imposed by the panel should be reduced. The withdrawal of the Grievance Administrator's petition for review precludes our consideration of whether an increase in discipline would be appropriate. We therefore emphasize that the decision to affirm a ninety-day suspension in this case will not prevent the Board from considering the imposition of more stringent discipline in future cases involving the willful failure to deliver funds entrusted by a client.

Concurring: John F. Burns, Remona A. Green, Robert S. Harrison, Linda S. Hotchkiss, M.D.
and Theodore P. Zegouras