

Grievance Administrator,  
Petitioner/Appellant,  
v  
George H. Furcron, P-13764,  
Respondent/Appellee.

ADB 90-88

Decided: January 17, 1989

BOARD OPINION

The Hearing Panel in this case found that the Respondent misappropriated approximately \$4000 from a decedent's estate; failed to pay the estate's inheritance tax due in 1985; filed a false account with the Probate Court; and failed to file an answer to a Request for Investigation. In light of the seriousness of the misconduct, Respondent's prior discipline for misappropriation of funds and the lack of any significant mitigating factors, discipline is increased from a suspension of three years to a revocation of Respondent's license.

The Respondent was appointed personal representative of the Estate of Leona Reed, deceased by the Wayne County Probate Court in April 1985. In July 1985 he received a \$9000 check from the former conservator of the estate and that check was deposited in a separate account in the name of the estate. Four days after the account was opened, the Respondent wrote a check to himself for \$3000. Two additional checks for \$500 each were cashed by the Respondent in August and December 1985. In addition, the Respondent wrote a check on December 13, 1985 to one Terrence Turner for \$2500.

When requested to explain why \$4000 was paid to him from the estate's funds, the Respondent speculated that it may have been paid in anticipation of attorney fees. However, the record disclosed that the Respondent listed his attorney fees on the account filed with the Probate Court as to only \$1500. The Respondent candidly admitted that Mr. Turner had no legitimate claim on the estate funds and that he delivered the funds to Turner to discharge a personal obligation.

In addition to the misappropriation of funds from the estate, the Hearing Panel found that the Respondent neglected the estate by failing to pay the inheritance tax, that he filed an account with the Wayne County Probate Court which falsely stated that the appropriate cash was on hand and that he failed to answer the Request for Investigation filed by the beneficiary of the estate. The Respondent's conduct was found to be in violation of MCR 9.104(1)-(4) and (7); MCR 9.103(C); MCR 9.113(B)(2) and Canons 1 and 9 of the Code of Professional Responsibility, DR 1-102(A)(1), (3)-(6) and DR 9-102(B)(2)-(4).

There is no polite way to describe the Respondent's conduct. He stole money from an estate. Four thousand dollars entrusted to him went directly into his own pocket. The Respondent made reference at the hearing to some investigations conducted prior to the opening of the estate to locate assets but he has never seriously claimed that he is entitled to \$4000 in fees in this \$9000 estate.

The payment of \$2500 to Terrence Turner in December 1985 with estate funds was, in the Respondent's words to the Panel, a case of "robbing Peter to pay Paul." In an opinion issued by the Attorney Discipline Board in April 1988, we affirmed the Respondent's suspension for 180 days for his apparent misappropriation of funds collected from Turner as payments on a land contract. Matter of George H. Furcron, (DP 87/86, Brd. Opn. 4/12/88).

In that case, the Board referred to "unique circumstances" suggesting gross negligence rather than a "calculated scheme to misappropriate funds." The Board noted the mitigating effect of the Respondent's prior unblemished record of 31 years. Although not specifically cited by the Board in that Opinion, the record in that case includes references to the Respondent's "restitution" of \$2500 to Mr. Turner and the Respondent's suggestion that most if not all of that amount represented funds which he had actually kept in a desk drawer. It is now obvious from the record before us in this case that the "restitution" to Mr. Turner was the result of nothing more than an exalted shell game in which embezzled funds were replaced with money improperly taken from another source.

The three-year suspension imposed by the Hearing Panel in this case appears at first glance to be consistent with similar actions taken by the Board in cases involving the misappropriation of funds. The Panel specifically cited Matter of Edwin Fabre, DP 84/85 (Brd. Opn. 7/23/86), in which the Board increase a hearing panel suspension of sixty days where respondent misappropriated \$3000 but had a prior unblemished record and Matter of Muir B. Snow, DP 211/84 (Brd. Opn. 2/17/87) where the Board increased a two-year suspension to three years for an attorney who took \$27,000 from an estate. In that case, the Board noted that Respondent's conduct would have likely resulted in revocation absent mitigating circumstances. The Board has routinely stated in such cases that revocation could be expected as an appropriate level of discipline in the absence of substantial mitigation.

We can find no such mitigation in this case. The Respondent does not have an unblemished record. In addition to the prior 180-day suspension for misappropriation of funds, Respondent has also been suspended for sixty days effective July 20, 1988 in an unrelated matter involving the Respondent's neglect in a divorce case. Although it has been two years since the money was removed from the estate account, he has not made restitution. The respondent stated affirmatively at the hearing that he was not suffering from an alcohol, drug or emotional problem.

While we have focused our discussion in this matter on Respondent's embezzlement of funds from an estate, we are not unmindful of the aggravating effect of the panel's additional findings that the Respondent neglected the estate, filed a false account with the Probate Court and failed to file a timely answer to the Request for Investigation.

Under the circumstances, we believe that the Respondent embezzlement of funds from an estate, we are not unmindful of the aggravating effect of the panel's additional findings that the Respondent neglected the estate, filed a false account with the Probate Court and failed to file a timely answer to the Request for Investigation.

Under the circumstances, we believe that the Respondent can no longer be proclaimed as person fit to be entrusted with judicial and legal matters. His license to practice law is therefore revoked.

The prior disciplinary order suspending this respondent's license for 180 days became effective May 4, 1988. Matter of George H. Furcron, (DP 87/86, Board Opinion filed April 12, 1988). The respondent has been barred from the practice of law since May 4, 1988 and the Order of Revocation in this case shall be entered nunc pro tunc, effective May 4, 1988.

Robert S. Harrison, Linda S. Hotchkiss, M.D., Patrick J. Keating, Theodore P. Zegouras.

#### Separate Opinion

Martin M. Doctoroff, Remona A. Green, Hanley M. Gurwin.

We agree with the decision to increase discipline to a revocation of the respondent's license and we concur in the rationale for that decision. We take exception only to the decision to apply the order of revocation retroactively to the effective date of an earlier order of suspension. We believe that the facts and circumstances of this case fully justify the revocation of the respondent's license. The retroactive application of a revocation will, for all practical purposes, effectively wipe out the respondent's earlier suspension. We are unable to perceive the justification for that action.