

GRIEVANCE ADMINISTRATOR,
Petitioner/Appellant,
c
GEORGE H. FURCRON, P-13764,
Respondent/Appellee.

File No. DP 87/86

Decided: April 12, 1988

BOARD OPINION

The Board has considered the Petition for Review filed by the Grievance Administrator seeking an increase in a suspension of 180 days imposed for Respondent's alleged misappropriation of funds in a land contract matter.

Neither the Respondent nor the Grievance Administrator have appealed the factual findings made by the panel based upon the testimony and exhibits which were presented. We therefore considered only whether the discipline imposed is appropriate.

In June 1980, Respondent represented William Gregory, a resident of Pennsylvania, in the sale of a piece of real property in Detroit. Gregory knew that Respondent was both an attorney and a real estate agent and Respondent negotiated and closed the sale of the property by land contract to one Terrence Turner and his wife. In August of that year, Turner came to Respondent's office to ask how the monthly payments should be conveyed to the land contract seller in Pennsylvania and Respondent told Turner that he would take the payments and forward them to Gregory (Tr. 2/4/87, p. 101). Respondent received three payments of \$250.00 each which were transmitted to Gregory along with monthly payments received from Turner in April 1981 and August 1981. However, from 1981 to 1985, Turner delivered to the Respondent payments of cash, personal checks and money orders totaling in excess of \$10,000. The majority of those payments were not forwarded to the seller but were, according to Mr. Furcron, simply thrown into a drawer.

It was not until 1985 or 1986 that the purchaser discovered that his payments had not been forwarded to Gregory in Pennsylvania. When confronted by Turner, Respondent was, in fact, able to produce the uncashed checks and money orders which he had received during the previous four years and he gave Turner a personal check as a partial replacement of the cash which he had received.

At the hearing, Mr. Furcron claimed that the cash which he had received over the years from Mr. Turner remained, uncounted, in an envelope in his desk drawer. The panel noted, however, that he was unable to supply an accurate account and that a portion of the funds paid to Turner in 1986 were in the form of a personal check rather than from the cash which was allegedly available in the desk drawer. The record further reflects a request for an adjournment of the discipline proceedings by Respondent's counsel on the grounds that Mr. Furcron was expecting payment for legal services for the City of Detroit and that he would like to have "the funds [from the City of Detroit,] turned

over so that we can make the individuals involved whole". We infer from the request that Respondent was not then in possession of the funds received from Turner.

The record clearly supports the panel's findings that the Respondent undertook a fiduciary responsibility with regard to the handling of the land contract payments from Turner to Gregory and that he violated those duties by failing to notify Gregory of the receipt of those funds and failing to keep an account of the funds in his possession. More importantly, the evidence supports the panel's findings that the Respondent used some or all of the cash which should have been remitted to the seller. Finally, the Respondent does not deny that he failed to answer the Request for Investigation.

This case may be distinguished from other misappropriation cases. Respondent did not forge or attempt to cash the money orders or checks received from the land contract purchaser but simply kept them in his desk. While the evidence supports the inference drawn by the panel that some or all of the cash was invaded, there is no evidence which sheds light on the length of time the funds were held by Mr. Furcron. While Respondent informed neither the buyer or the seller that he was holding the funds, he did not take affirmative action to conceal that fact but admitted it openly when confronted by the purchaser. Taken together, the somewhat unique circumstances in this case suggest a carelessness in the handling of funds belonging to others which may be characterized as gross negligence but which falls short of a calculated scheme to misappropriate funds. The distinction between careless misuse of funds and knowing misappropriation should not be used to excuse or defend Respondent's conduct.

Misappropriation of client funds is any unauthorized use of clients' funds entrusted to an attorney including not only stealing, but unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom. Matter of Steven J. Lupiloff, DP 34/85, Board Opinion, March 23, 1988, citing In Re: E. David Harrison, A2d 1034 (1983)

We believe, however, that such a distinction is relevant to a determination of the appropriate level of discipline which should be imposed, especially when considered with the mitigating effect of Respondent's thirty-one years of unblemished practice as a lawyer and his obvious remorse.

In a recent case involving similar mitigating circumstances, this Board raises a ninety-day suspension imposed by a panel to a suspension of 180 days in a case involving the commingling and unauthorized use of client funds. See Matter of David A. Nelson, DP 127/86; DP 165/86, (Brd. Opn. March 27, 1987). In that case, we noted that in the absence of special mitigation, the discipline to be imposed for improper handling of client funds would have been more severe. We concluded that, at the very least, Respondent's handling of those funds exhibited a lack of understanding of the standards imposed on members of the Bar and raised questions as to whether or not he could safely be recommended to the public and the legal profession as a person fit to be consulted in matters of trust and confidence. In this case, we believe that the panel's decision to suspend Mr. Furcron's license for 180 days and to require that he establish his eligibility for reinstatement in proceedings before a new hearing panel adequately protects the public and legal profession while addressing those concerns which his misconduct has raised.

Opinion of Robert S. Harrison, Remona A. Green, Patrick J. Keating, Theodore P. Zegouras.

DISSENTING OPINION

By Hanley M. Gurwin

I agree with the majority's conclusion that the evidence has established that this Respondent's actions were primarily the result of negligence rather than a knowing intent to convert the funds entrusted to him. In such cases, it may not be appropriate to invoke an inflexible rule requiring disbarment and the Board may consider the absence of any prior discipline during a lengthy legal career. Nevertheless, the fact remains that Respondent must have known that he was not entitled to use the funds delivered to him by the land contract purchaser. His use of those funds, whether negligent or intentional, constitutes an unauthorized misappropriation for which a minimum suspension of one year would be appropriate.