

IN THE MATTER OF DONALD G. HUBER,
A Member of the State Bar of Michigan,
Respondent,
File No. DP-40/82 & DP-89/82

Argued: May 26, 1983

Decided: July 29, 1983

OPINION OF THE BOARD

The hearing panel, after a lengthy hearing process caused by numerous requests for continuance, suspended Respondent's license for one year pursuant to a finding of misconduct including conversion of client funds and a conflict of interest. The Grievance Administrator has appealed. Because of the severity of the misconduct, and in consideration of the aggravating factors found in the record, Respondent's discipline should be increased and his license revoked.

The facts in this case are undisputed. In July 1980 Respondent created a trust for the complainants. Respondent, as legal advisor to the trust, induced the co-trustees to invest \$15,000 from the corpus of the trust in a short term loan to Arthur Heideman who was an acquaintance of the Respondent. Respondent did not disclose to the co-trustees that he had financial interests which conflicted with those of the trust's in that Heideman had owed Respondent \$22,000 for over a year. The co-trustees required, and Respondent agreed, that Respondent would "guarantee" the loan, thereby becoming a joint obligor. Respondent did not advise the co-trustees to seek independent counsel, and prepared the loan documents himself. The documents did not reflect the due date and interest rate the co-trustees had agreed upon. Respondent did not investigate Heideman's ability to repay the loan, and did not search the titles to the property Heideman was using to secure the loan.

When the note became due and it became apparent that Heideman was not going to be able to pay, Respondent arranged for the sale of the property which was, in fact, encumbered by tax liens. Respondent deposited the proceeds from the sale in the sum of \$23,700 into his own account. When the co-trustees asked for an accounting of the proceeds approximately three months later, they were informed that Respondent had spent the entire amount for personal expenses including stock investments and vacations.

As its counsel, Respondent owed certain duties to the trust regarding the investment he recommended. He had a duty to investigate Heideman's financial condition. He had a duty to disclose to the co-trustees the conflict of interest resulting from Heideman's financial obligations to the Respondent. He had a duty to search the titles of the property offered as security. He was required to prepare accurate documents reflecting the actual agreement between the parties. He also should have advised the co-trustees to consult a qualified third person regarding the investment. Each of these duties was breached by the Respondent.

The several aforementioned improprieties aggravate the most disturbing aspect of this case -- Respondent's commingling and conversion of the client funds. The situation is further aggravated by evidence that Respondent was not entirely truthful before the hearing panel, and by Respondent's attitude toward these discipline proceedings as evidenced by the fact that neither he nor his attorney appeared for the hearing before the Board.

The hearing panel set aside the Respondent's default and granted several extensions requested by him; Respondent was afforded every opportunity to assert a defense notwithstanding his failure to file a timely Answer to the Formal Complaint. The record discloses that Respondent was evasive and uncooperative throughout the hearing. The hearing panel report makes it quite apparent that part of Respondent's testimony was not credible and directly conflicts with that of the Grievance Administrator's witnesses.

In evaluating the appropriate degree of discipline the Board will consider, in addition to the nature of the offenses, the attitude and demeanor of the Respondent and any mitigating factors. See, Schwartz v Floyd, 1 Mich Dis Rptr 398 (1981); Freed v Schwartz, 1 Mich Dis Rptr 243 (1980). There is little in the record before us which might mitigate the serious misconduct found by the panel.

Respondent has engaged in conduct in violation of the Canons of Ethics and the Michigan General Court Rules. He has offered nothing to mitigate the serious charges against him, other than his agreement to repay the money to the trust. Regarding Respondent's basic attitude and character we have only negative impressions in the record which serves to exacerbate the underlying offense of conversion, misrepresentation and breach of fiduciary duties.

The facts in this case are similar to those of In re Moskal, 1 Mich Dis Rptr 113 (1979). In that case the Respondent induced a fiduciary for an estate to loan \$20,000 an acquaintance of the Respondent. Respondent "guaranteed" the loan. Actually Moskal's acquaintance never requested, nor did he receive the money and the funds were converted. The respondent in Moskal failed to disclose the circumstances surrounding the loan and did not advise the fiduciary to seek independent counsel. He also was uncooperative and did not appear at the hearing before the Board; the discipline was revocation of license.

Respondent's license is revoked. The order of discipline will require restitution of the converted funds to the trust. Respondent must be recertified by the Board of Law Examiners before possible reinstatement to the practice of law pursuant to GCR 1963, 972.3.

All concur, except Board Member Leo A. Farhat, who did not participate in the hearing or decision of this matter.