

IN THE MATTER OF ROBERT J. MOSKAL  
A Member of the State Bar of Michigan,  
Respondent.  
Nos. 34966-A, 35104-A

Decided: May 2, 1979

OPINION

FACTS

The Board has reviewed the record taken before and the documents compiled by the Hearing Panel in this matter and has received oral arguments from counsel for the Grievance Commission and Respondent.

The Respondent had failed to answer the formal complaint within the time prescribed by the former State Bar Grievance Board Rules, and a Default was entered February 8, 1978. The Default was set aside in March of 1978, and a full hearing was eventually conducted by the Hearing Panel No. 1 of the 7th Congressional District. The Panel found that the Grievance Administrator had met the burden of proof in relation to two counts involving allegations of fraudulent conversion and commingling of client funds.

Count I of the formal complaint alleged that Respondent had received approximately \$7,000 of client funds pursuant to a Consent Judgment obtained on behalf of said client against three separate Defendants. These funds were deposited, by Respondent, into his professional account. For his services, Respondent was paid separate, additional amounts of \$2,071 by the client; Respondent asserted a claim to an additional \$760 in disputed legal fees and retained the \$7,000 as a "lien" to secure payment of the additional \$760 in disputed legal fees. Eventually, Respondent did draw a check for payment to the client of part of all of said settlement amount; the check was dishonored upon presentment by the client.

Count II of the complaint was dismissed upon Motion by counsel for the Grievance Administrator.

Count III of the formal complaint alleged that Respondent, in his capacity as attorney for the fiduciary of an estate, induced the fiduciary to lend the sum of \$20,000 ostensibly to an acquaintance of Respondent. The \$20,000 loan was made from the fiduciary's personal funds. Respondent acknowledged having made representations to the client that the money was to be loaned to one Dr. Clifford (Tr before Panel, September 29, 1978, bottom of page 12; see also Exhibit E 28). Dr. Clifford testified that he was acquainted with Respondent but denied requesting or receiving the borrowed monies. (Tr before Panel September 9, 1978, page 8). Furthermore, Respondent executed and delivered to the fiduciary (Executrix of the estate) two separate post-dated checks of his own in the amount of \$11,000 each, apparently representing the principal and interest of said loan; both of said checks have been dishonored by the bank upon presentment by the client. Respondent, in his answer, acknowledged that he had negotiated a promissory note by which he accepted personal

liability in the event that the purported third party recipient of the loan could not pay. Respondent's client has filed suit seeking recovery of the monies and has been listed as a creditor in bankruptcy proceedings.

### FINDINGS BY THE BOARD

The testimony taken before the Hearing Panel disclosed convincing evidence that Respondent dealt with the Executrix of the aforementioned estate in a manner constituting a serious breach of the Canon of Ethics. A preponderance of the evidence supports the claim that the \$20,000 loan was fraudulently obtained and that Respondent failed to make a full disclosure to the client, failed to advise the client to seek independent counsel regarding the advisability of the making of said loan and failed to protect the investment of said client.

Respondent asserted before the Hearing Panel that the facts and circumstances surrounding the making of the loan were not a proper basis for a complaint of misconduct since the loan was not made to Respondent by the client in her capacity as fiduciary of the estate and therefore did not come within the scope of the "professional relationship." We agree with the Hearing Panel that Respondent is held to the same standard of professional conduct in his relationship with the client individually as he was in his professional relationship with said client when she acted as Executrix of her husband's estate.

Although present to argue on behalf of Respondent, attorney Robert L. Segar stated to the Board that he has been unable to contact Respondent since the Hearing Panel rendered its decision. The whereabouts of Respondent are unknown to both the Grievance Administrator and to Mr. Segar at this time.

### DECISION BY THE BOARD

Because of the severity of the misconduct proven by the Grievance Administrator, and in consideration of the aggravating factors throughout the record, it is the Board's decision that the discipline of suspension of two years shall be increased to disbarment.

The following secondary issue was placed before the Board by counsel for the Grievance Administrator, citing GCR 1963, 313.1 and .2.:

"Should Respondent's refusal to answer questions while sworn as a witness before the panel result in a striking of Respondent's prior written answer which contained allegations of fact in Respondent's defense but did not contain an assertion of fifth amendment rights against self-incrimination?"

Striking the answer, of course, would, theoretically at least, result in a default against Respondent pursuant to GCR 1963, 964.4 (b). The issue was well-argued by the attorneys for both parties. However, this procedural aspect of the case does not affect our disposition of this matter; therefore, the Board will decline to address said issue.