

[J-12-2009]
IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1409 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 177 DB 2006
v.	:	
	:	Attorney Registration No. 10731
	:	(Allegheny County)
ARTHUR LOUIS BLOOM,	:	
Respondent	:	Argued: March 3, 2009

ORDER

PER CURIAM:

DECIDED: MARCH 23, 2009

Upon consideration of the Report and Recommendations of the Disciplinary Board dated July 14, 2008, and following oral argument, it is hereby

ORDERED that Arthur Louis Bloom be and he is disbarred from the Bar of this Commonwealth and he shall comply with all the provisions of Rule 217, Pa.R.D.E. It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

Mr. Justice Baer did not participate in the consideration or decision of this case.

Judgment Entered March 23, 2009


Deputy Prothonotary

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 177 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 10731
	:	
ARTHUR LOUIS BLOOM	:	
Respondent	:	(Allegheny County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On November 1, 2006, Office of Disciplinary Counsel filed a Petition for Discipline against Arthur Louis Bloom, Respondent. The Petition charged Respondent with professional misconduct arising out of allegations that he mishandled an estate and misappropriated estate funds. Respondent filed an Answer to Petition for Discipline on November 27, 2006.

A disciplinary hearing was held on October 22, 2007 before a District IV Hearing Committee comprised of Chair David P. Andrews, Esquire, and Members Robert Jaeger Behling, Esquire and Evan E. Adair, Esquire. Respondent was represented by John E. Quinn, Esquire. At the time of the hearing, the parties provided the Hearing Committee with Stipulations of Fact. Additionally, the parties provided Stipulations wherein Respondent admitted the specific amounts he misappropriated from the Estate of Louise Lowe and admitted his violations of the Rules of Professional Conduct as charged in the Petition for Discipline. Respondent testified on his own behalf and offered the testimony of six witnesses. Respondent offered via deposition transcript the testimony of Dr. Charlotte Hoffman, his treating psychiatrist. Petitioner offered the testimony of Dr. Robert M. Wettstein.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on March 14, 2008, finding that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline and recommending that he be disbarred.

This matter was adjudicated by the Disciplinary Board at the meeting on May 21, 2008.

Respondent filed a Motion to Reopen Record on June 5, 2008 to which Petitioner filed an Answer on June 13, 2008.

By Order of the Disciplinary Board dated June 20, 2008, the Board denied the Application to Reopen Record. The Board found that the evidence Respondent was seeking to introduce was evidence that Respondent and his attorney were well aware of at the time of the Disciplinary Hearing on October 22, 2007, and should have been offered as

evidence at the time of the hearing, or at the very least prior to the deadline for filing post-hearing briefs.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Arthur Louis Bloom. He was born in 1937 and was admitted to practice law in the Commonwealth in 1965. His attorney registration mailing address is Suite 530, Grant Building, 310 Grant Street, Pittsburgh PA 15219. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior history of discipline. He was suspended for three years by Order of the Supreme Court dated March 5, 1979, following a guilty plea to 114 counts of Theft by Deception. As an officer of an insurance company, over a four year period, Respondent forged salvage receipts from subrogation claims and deposited them into his own account, to the total amount estimated to be \$50,000. He was reinstated to the practice of law in 1981.

4. On March 3, 2003, Respondent received an informal admonition from Disciplinary Counsel for violations of RPC 1.3 and 1.4(a) in two separate matters.

5. On January 12, 2001, Louise Lowe died testate in Butler County, Pennsylvania.

6. The Decedent's Will directed, among other things, that:

(a) all furniture, furnishings, household goods, collections, books, jewelry, clothing and other articles of personal adornment owned by her at the time of her death should be distributed to Respondent and Craig Whitaker in accordance with the provisions of a certain Memorandum of even date with the Will;

(b) Mars United Presbyterian Church was specifically bequeathed \$1,000.00;

(c) all the rest, residue and remainder of her estate, whether the same be real or personal of any nature whatsoever was to be evenly divided between Respondent and his daughter, Mara Ashley Bloom;

(d) Respondent was appointed Executor of Decedent's Last Will and Testament; and

(e) Mellon Bank, N.A. was to be appointed Guardian of the Estate of any beneficiary who had not attained the age of 28 prior to the Decedent's death, with respect to all or any property passing to, or vesting in, such person by reasons of her death, whether under the terms of the Will or otherwise.

7. At the time of the Decedent's death, Mara Bloom was under 28 years of age.

8. Mellon Bank declined to accept the guardianship for the estate and Respondent failed to seek a successor appointment.

9. On January 18, 2001, Bruno A. Muscatello, Esquire, the attorney for Decedent's estate, filed a Petition for Probate and Grant of Letters for the estate, which was filed in Butler County, Pennsylvania, and Letters Testamentary were granted to Respondent as Executor of Decedent's estate.

10. On April 23, 2001, Attorney Muscatello filed a Certification of Notice which indicated that the following people were beneficiaries to Decedent's estate:

- (a) Respondent;
- (b) Mara;
- (c) Craig Whitaker;
- (d) Mellon Bank; and
- (e) Mars United Presbyterian Church.

11. On various occasions in 2001 and 2002, Attorney Muscatello contacted Respondent to obtain financial information regarding Decedent's estate so that he could file an inheritance tax return and complete the administration of Decedent's estate.

12. Respondent did not provide Attorney Muscatello with the financial information that he needed to file the inheritance tax return and to complete the administration of the estate.

13. During the period of February 2001 through February 1, 2006, Respondent made various disbursements from the estate checking account for estate costs, including miscellaneous service charges, which totaled approximately \$9,528.53.

14. During the time period between February 6, 2001 and May 5, 2005, Respondent withdrew approximately \$151,412.06 from the estate checking account, which consisted of 30 checks and withdrawals for his own personal use.

15. The \$151,412.06 sum withdrawn by Respondent also included a wire transfer dated June 25, 2003, in the amount of \$65,000.00 to Correspondent Services Corporation, which was deposited into his wife's IRA.

16. Additionally, during the period of April 2001 through January 2002, Respondent issued three checks and made a withdrawal from the estate checking account totaling \$17,598.00, which were purportedly for the benefit of Mara:

(a) By check dated April 6, 2001, in the amount of \$7,500, drawn on the estate checking account, made payable to Respondent and annotated "reimburse Mara - one year tuition Indiana.", Respondent paid himself funds from the estate account;

(b) By check dated August 20, 2001, in the amount of \$1,924.00, drawn on the estate checking account, made payable to Sigma Delta Tau Sorority, and annotated "Mara - Edu," Respondent paid this expense on behalf of Mara;

(c) By check dated December 31, 2001, in the amount of \$3,174.00, drawn on the estate checking account, made payable to

Sigma Delta Tau Sorority, and annotated "Mara Bloom - second 2001," Respondent paid another expense on behalf of Mara; and

(d) By check dated May 5, 2004, drawn on his PNC Bank personal account, Respondent paid Mara \$5,000.00. On May 6, 2004, Respondent withdrew \$5,000.00 from the estate checking account.

17. On March 10, 2003, Attorney Muscatello presented in the Court of Common Pleas of Butler County a Motion to Withdraw as Counsel for the Executor, stating therein Respondent's lack of cooperation as the reason.

18. The Motion stated:

(a) The estate had approximately \$67,000.00 in assets, including a savings account at Mars National Bank in the amount of \$48,000.00, a savings account at Mellon Bank in the amount of \$5,100.00, and miscellaneous U.S. Savings Bonds in the amount of \$6,466.00; and

(b) In addition, the estate owned real estate situated in Adams Township, Butler County, Pennsylvania.

19. The Motion to Withdraw as Counsel was not opposed by Respondent and was granted by the Court by Order of March 10, 2003.

20. Thereafter, Respondent did not take any action of record to complete the administration of Decedent's estate or to file an inheritance tax return on behalf of the

estate. Even though the real estate was sold on June 2, 2003, Respondent thereafter took no action to finalize the estate until he retained John E. Quinn, Esquire, to do so.

21. On February 2, 2001, Respondent opened a money market account for the estate at PNC.

22. Between February 2, 2001 and December 31, 2001, Respondent made deposits into Decedent's estate PNC checking account, including funds from the estate money market account, totaling \$68,180.46.

23. By April 3, 2003, Respondent had transferred all funds from the money market account (\$57,915.64) into the estate checking account, leaving the balance at zero.

24. On June 20, 2003, the closing was held on the sale of Decedent's real estate in Adams Township. The HUD-1 settlement sheet for the sale indicated, among other things, that:

(a) Raymond R. Goehring, Jr., was the settlement agent;

(b) The sale price was \$134,900.00;

(c) Deposit or earnest money in the amount of \$5,000.00

was paid by Larry and Amy Werner, the borrowers; and

(d) Cash to Decedent's estate was \$105,361.31.

25. By check dated June 20, 2003, in the amount of \$105,361.31, made payable to "Arthur Bloom, executor of the Estate of Louise M. Lowe," and drawn on the mortgage account to Raymond R. Goehring, Jr. and annotated "Werner," the settlement proceeds were distributed to Respondent.

26. On or about June 30, 2003, Respondent negotiated or caused to be negotiated the \$105,361.31 check and deposited the funds into Decedent's estate checking account.

27. Respondent deposited the Werner check in the amount of \$5,000.00, dated May 29, 2003, into the estate checking account on July 3, 2003.

28. At that time, Respondent was entrusted with a total of \$178,541.77 on behalf of the estate.

29. As of January 13, 2006, the balance in the estate checking account was zero.

30. Respondent failed to:

(a) Distribute to Mars United Presbyterian Church the \$1,000.00 specifically bequeathed to it;

(b) Take action to ensure appointment of a Trustee to receive distribution of that share of the estate due to Mara, which according to the terms of the Will, she should have received \$84,006.62 of the gross residual estate assets, less inheritance tax and any additional proper costs of administration;

(c) Pay the inheritance taxes due;

(d) File and/or provide to beneficiaries copies of an inventory and inheritance tax return or otherwise take action to complete the administration of the Decedent's estate.

31. The total amount available for distribution from the estate funds entrusted to Respondent was approximately \$169,013.24, before payment of inheritance taxes.

32. Even crediting Respondent with the \$17,598.00 in payments he made purportedly for Mara's benefit, he misappropriated approximately \$63,500.33 from the estate, representing money due to the church and to Mara.

33. Respondent issued a check on October 20, 2007 to pay restitution in the form of money due to Mara from the estate.

34. At the October 22, 2007 disciplinary hearing, Respondent had not paid the church its \$1,000.00.

35. Respondent testified on his own behalf.

36. Respondent has been married to his third wife, Jude, since 1999. The relationship between Jude and Respondent's daughter Mara from his second marriage was very strained and was the reason why Respondent and Jude sought counseling at various stages of their marriage.

37. Respondent's own relationship with Mara was becoming strained as well, due to the tension between Mara and Jude. These tensions involved money in particular. While Respondent paid for many of Mara's expenses, he did not tell his wife as he felt it would create more turmoil. Respondent stated he was trying to please his wife and his daughter at the same time.

38. Respondent and Jude saw Dr. Stephen Schachner and Dr. Stacey Wettstein on a periodic basis for assistance with these family issues.

39. Respondent thought of his misappropriation as benefiting his daughter who would ultimately receive the funds from the estate.

40. Respondent explained that his reason for waiting until the eve of the disciplinary hearing to make restitution as far as Mara's portion of the funds was that he expected income from his practice to replace the funds, and that did not occur when he thought it would.

41. Respondent expressed an intention to pay the Mars United Presbyterian Church its funds from his personal funds. There is no evidence he has done so.

42. Charlotte Hoffman, M.D., is a licensed psychiatrist in Pennsylvania. She provided testimony in a deposition in November 2007 on behalf of Respondent as his treating psychiatrist. Respondent first met with Dr. Hoffman in July 2006. Respondent sought help regarding the distress he was feeling over family issues.

43. Dr. Hoffman observed that Respondent's mood was depressed and his affect blunted, but he was articulate.

44. Dr. Hoffman diagnosed Respondent with major depression and opined that he was still depressed at the time her deposition was taken in November 2007.

45. Dr. Hoffman opined that she believes Respondent's depression began in 1999. She further opined that Respondent was emotionally overwhelmed by his situation of trying to please his wife and his daughter and his behavior was a reflection of that impossible situation.

46. Dr. Hoffman described Respondent as being "careless" in the mechanisms he used to get money for his daughter and made decisions under time pressure and emotional pressure.

47. Dr. Robert M. Wettstein testified on behalf of Petitioner. He was asked to perform an evaluation of Respondent and to that end he met with Respondent on three occasions in the summer of 2007 for a total of ten and a half hours. Dr. Wettstein reviewed treatment records of Respondent's other medical providers and he interviewed Respondent's current wife and Mara Bloom on separate occasions.

48. Dr. Wettstein concluded that Respondent was suffering from a major depression at the time of the evaluation. He further opined there was no basis for concluding that Respondent suffered from depression prior to the time the disciplinary complaint was brought against him.

49. Dr. Wettstein opined that in his experience depression does not trigger acts of dishonesty.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.15(a) - (in effect through April 22, 2005) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate

account maintained in the state where the lawyer's office is situated, or elsewhere with consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be preserved for a period of five years after termination of the representation.

3. RPC 1.15(a) - (in effect since April 22, 2005) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

4. RPC 1.15(b) - (in effect through April 22, 2005) - Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

5. RPC 1.15(b) - (in effect since April 22, 2005) - Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property that the client or third person is entitled to receive and, upon

request by the client or third person, shall promptly render a full accounting regarding such property.

6. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

7. Respondent has not met his burden of proof as to a causal connection between his psychiatric illness and his misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989)

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the Petition for Discipline filed against Respondent, Arthur Louis Bloom. Respondent is charged with numerous violations of the Rules of Professional Conduct arising out of allegations that he mishandled an estate and misappropriated estate funds. Respondent admitted that he violated Rules 1.3, 1.15(a), 1.15(b), and 8.4(c) of the Rules of Professional Conduct. Respondent contends that his misconduct was caused by his psychiatric illness, specifically his depression, and the discipline to be imposed may be mitigated, pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

In order for a psychiatric illness to be considered in mitigation of an attorney's violations of the Rules of Professional Conduct, the attorney must establish by clear and convincing evidence that the diagnosed disorder was a causal factor producing the misconduct. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). To prove a causal connection between his diagnosed depression and his professional misconduct, Respondent submitted the testimony of his psychiatrist, Dr. Charlotte

Hoffman. Dr. Hoffman began treating Respondent's depression in July 2006. This was approximately six months after Respondent received notice of the allegations of misconduct from Petitioner, and long after Respondent misappropriated funds from the Louise Lowe estate. Dr. Hoffman diagnosed Respondent as suffering from major depression and expressed her belief that Respondent had suffered from depression since 1999. While Dr. Hoffman opined that there was a causal relationship between Respondent's misappropriation of estate funds and his depression, she specifically noted that there was a great deal of tension in Respondent's household between his current wife and Mara, his daughter from a prior marriage. This tension involved money and the expert opined that Respondent made decisions involving estate money under emotional pressure, instead of using logical problem solving skills.

Petitioner offered the testimony of Dr. Robert M. Wettstein, who evaluated Respondent on three occasions, administered diagnostic inventories to Respondent and conducted interviews of Respondent's wife and his daughter. While Dr. Wettstein opined that Respondent currently suffers from depression, he found no basis to conclude that Respondent had a major depression prior to the time the complaint was filed by Petitioner. Furthermore, he opined that depression does not ordinarily cause individuals to commit acts of theft or other crimes.

The Hearing Committee weighed the testimony of both experts and concluded that Respondent did not meet the Braun standard. After a careful review of the record, the Board reaches the same conclusion. The evidence presented by Respondent is not clear and convincing that Respondent actually suffered from depression at the time of the misconduct, nor is it clear that a causal connection existed between such

depression and the misconduct. Respondent's expert opined that Respondent's tension-filled household provoked his acts of misappropriation, as he was searching for a way to appease his daughter without his wife's awareness that he was providing money to Mara. While it is clear from the record that the relationship between Respondent's wife and daughter was traumatic and troublesome to Respondent, we do not believe Respondent met his burden that his misconduct was the result of a psychiatric illness.

Respondent's misappropriation of funds is a serious breach of the fiduciary duty he owed to the estate. He engaged in a fundamentally dishonest act. In a last attempt to justify his misconduct, Respondent explained that he misappropriated funds because of pressure brought about by his strained relationship with his daughter, Mara. He asserts that Mara essentially pushed him into taking money from the Lowe Estate to pay for certain of her educational and personal obligations. We do not find Respondent's assertions regarding his daughter being responsible for his misappropriation of the funds to be credible or compelling, as he had misappropriated at least \$62,500.00 of funds belonging to his daughter, and Respondent had also taken other funds from the estate that had nothing to do with his daughter. Respondent was in control of the funds and made a deliberate choice to misuse them.

Having considered Respondent's proffered evidence of mitigating circumstances, the Board also must consider any aggravating circumstances. Respondent did not diligently pay restitution. After being notified of Petitioner's investigation in January 2006, he waited until literally the eve of the disciplinary hearing to pay the full amount owed to his daughter. Respondent still has not paid the Mars United Presbyterian Church the

\$1,000.00 it was owed. Respondent was unable to explain his reason for failing to pay the money owed to the church.

Respondent has a prior record of discipline. The most serious aspect of his record was his conviction of theft by deception and his resulting three year suspension imposed in 1979. The underlying facts of the conviction pertained to the misappropriation of insurance proceeds. While the Board recognizes that Respondent's suspension occurred 30 years ago, it is a serious incident of misconduct and remains relevant to the instant proceedings.

The Supreme Court has held that attorneys who engage in the conversion of entrusted funds should be subject to a lengthy suspension or disbarment. Office of Disciplinary Counsel v. Kanuck, 535 A. 2d 69 (Pa. 1987). The mishandling of entrusted monies is a serious breach of the public trust that cannot be tolerated. Office of Disciplinary Counsel v. Lewis, 426 A.2d 1138 (Pa. 1981). The Board recommends that Respondent be disbarred.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Arthur Louis Bloom, be Disbarred from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

Carl D. Buchholz, III, Board Member

Date: July 14, 2008

Board Members Pietragallo and Gentile recused in this matter.

Board Member Baer did not participate in the adjudication.