

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1865 Disciplinary Docket No. 3  
Petitioner :  
: No. 160 DB 2011  
v. :  
: Attorney Registration No. 83480  
ARLIN RAY THRUSH, :  
Respondent : (Columbia County)

ORDER

**PER CURIAM:**

**AND NOW**, this 10<sup>th</sup> day of January, 2013, upon consideration of the Report and Recommendations of the Disciplinary Board dated August 9, 2012, it is hereby

ORDERED that Arlin Ray Thrush 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.

A True Copy Patricia Nicola  
As Of 1/10/2013

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 160 DB 2011
Petitioner	:	
v.	:	Attorney Registration No. 83480
ARLIN RAY THRUSH	:	
Respondent	:	(Columbia 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 September 22, 2011, Office of Disciplinary Counsel filed a Petition for Discipline against Arlin Ray Thrush. The Petition charged Respondent with violations of Rules 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(b), 1.15(e), 8.4(b) and 8.4(c) arising out of allegations that Respondent misappropriated funds from the estates of two decedents, neglected the administration of one estate and failed to communicate with the executor of an estate.

Respondent timely filed an Answer on October 24, 2011 and denied mishandling funds, claiming they were legal fees.

A disciplinary hearing was held on January 27, 2012, before a District III Hearing Committee comprised of Chair Jeffrey T. McGuire, Esquire, and Members Stephen Jennings, Esquire, and Bradley R. Bolinger, Esquire. Respondent represented himself. Petitioner presented the testimony of eight witnesses, including one by telephone and Respondent "as on cross." Petitioner introduced 34 Exhibits. Respondent presented no evidence or argument in his defense and did not testify on his own behalf.

The Hearing Committee filed a Report on May 17, 2012, concluding that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline, and recommending that he be disbarred.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on July 21, 2012.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and 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 Arlin Ray Thrush. He was born in 1965 and was admitted to practice law in Pennsylvania in 1999. On July 1, 2011, he registered Voluntary Inactive with an address of 335 E. Hill Drive, Bloomsburg, PA 17815-6730. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of discipline in Pennsylvania.

4. In February 2005, Respondent was an associate with the law firm of Saba, Endler & Associates, LLC, which dissolved in November 2005 and Respondent became a sole practitioner under the firm name A.R. Thrush, P.C.

5. On February 15, 2005, Catherine A. Schultz died testate in Columbia County, Pennsylvania.

6. Respondent filed a Petition for Probate and Grant of Letters on behalf of the decedent's son, Stephen G. Schultz, who was named the Executor for the Estate. Respondent was retained to represent Mr. Schultz.

7. On October 11, 2005, Louis S. Castello died testate in Columbia County, Pennsylvania.

8. Respondent filed a Petition for Probate and Grant of Letters on behalf of Debra J. Castello and Margaret L. Williams, who were named as Co-Executrices for the Estate. Ms. Castello and Ms. Williams retained Respondent to represent them.

9. Respondent had the Executors of both Estates sign estate checks in blank for Respondent's subsequent use.

10. On November 15, 2005, Respondent filed an Inheritance Tax Return on behalf of the Estate of Catherine Schultz. On Schedule H of the return, Respondent

listed attorney fees payable to Saba Endler and Associates, LLP and A.R. Thrush, P.C. in the amount of \$45,000.

11. In or around May of 2007, Respondent joined the law firm of Dickson, Gordner and Hess and brought the Schultz and Castello Estate matters and his secretary, Shannon Heimbach, with him. The firm became Dickson, Gordner, Hess and Thrush (DGH & T).

12. Respondent maintained the Schultz and Castello files in his office.

13. When taking legal fees relative to both Estates, it was Respondent's usual practice to send the clients an invoice, obtain their approval of the fees, complete a check stub with the date, amount and purpose of the check, and use one of the previously signed checks to either pay himself or his law firm the fees owed.

14. On March 23, 2009, unbeknownst to Ms. Castello and Ms. Williams, without their permission or authority, and without sending them an invoice, Respondent issued check No. 108 on the Castello Estate payable to himself in the amount of \$5,587.50, which Respondent deposited into his Thrush Realty LLC account at M & T Bank. The only information Respondent entered on the check stub for check No. 108 was the amount of \$5,587.50.

15. At the time, Respondent was not entitled to \$5,587.50 in additional fees from the Castello Estate.

16. Also on March 23, 2009, unbeknownst to Mr. Schultz, without his permission or authority, and without sending him an invoice, Respondent issued check No. 277 on the Schultz Estate payable to himself in the amount of \$21,735 which Respondent deposited into his Thrush Realty LLC account at M & T Bank. The only information Respondent entered on the check stub for check No. 277 was the amount of \$21,735.

17. At the time, Respondent was not entitled to \$21,735 in additional fees from the Schultz Estate.

18. Respondent's March 23, 2009 deposit of both the Castello and Schultz Estate checks totaling \$27,322.50 was on a balance of only \$221.53 in his Thrush Realty LLC account from which account Respondent made three payments on lines of credit to Citicorp Financial totaling \$25,015 on March 27, 2009.

19. On June 18, 2010, Respondent filed an Inheritance Tax Return on behalf of the Estate of Louis S. Castello. On Schedule H of the return, Respondent listed attorney fees payable to Dickson, Gordner, Hess and Thrush in the amount of \$6,000. Of that amount, \$1,122.88 had been paid to A.R. Thrush, P.C. and \$3,715 had been paid to DGH&T, with the balance of \$1,162.12 to be paid to DGH&T upon concluding the administration of the Castello Estate. The \$5,587.50 Respondent took on March 23, 2009 was not included.

20. In or about September 2010, the Columbia County Register of Wills sent DGH&T an invoice for additional probate fees due on the Castello Estate.

21. On September 22, 2010, Shannon Heimbach, Respondent's secretary, attempted to retrieve a check for the additional probate fees due on the Castello Estate.

22. When Ms. Heimbach reviewed the file and estate checkbook for the Castello Estate, she noticed that check no. 108 had been issued in the amount of \$5,587.50, but the check stub did not indicate the date, payee or reference. She further noticed that check stub No. 109 was blank and the check missing from the checkbook.

23. Ms. Heimbach found this to be unusual as all of the other check stubs had been completed. Ms. Heimbach then reviewed the monthly bank statements in the Castello Estate file and discovered that the monthly bank statements were missing for the

period from December 1, 2008 through September 30, 2009. She then contacted First Keystone National Bank and requested copies of checks 108 and 109.

24. Check No. 108 had been made payable to Respondent and check No. 109 had been used to obtain a cashier's check for tax claim purposes which was a legitimate Estate expense.

25. Ms. Heimbach was suspicious of the nature of the checks and the missing bank statement in the Castello Estate file. She requested the assistance of another employee of DGH&T, Jenny Gause, who handled bookkeeping matters for the firm.

26. In their investigation, Ms. Heimbach and Ms. Gause found that check number 277 from the Schultz Estate had been issued in the amount of \$21,735, however, the check stub did not indicate the date, the payee or the nature of the disbursement. Check No. 278 had been issued in the amount of \$320 but did not indicate a date, payee or nature of the disbursement on the check stub. Ms. Heimbach and Ms. Gause then checked the monthly bank statements for the Schultz file and subsequently determined that the monthly statements were missing for the period January 1, 2009 through April 1, 2009. They determined that check No. 278 in the amount of \$320 had been issued to the U.S. Treasury which was a legitimate Estate expense.

27. Ms. Heimbach obtained a copy of check No. 277 from the Schultz Estate file and noticed that it was made payable to Respondent in the amount of \$21,735 and was dated March 23, 2009. She further noticed that the check did not contain the nature of the disbursement on the memo portion of the check.

28. Ms. Heimbach and Ms. Gause brought the check irregularities to the attention of John H. Gordner, Esquire, a partner in DGH&T. Mr. Gordner confronted

Respondent on September 30, 2010, and accused him of stealing from the Castello and Schultz Estates.

29. Respondent claimed that the monies were for legal fees that Respondent had earned prior to joining DGH&T in 2007.

30. After his meeting with Respondent on September 30, 2010, Mr. Gordner changed the lock on the front door to the firm. Respondent was terminated from the DGH&T law firm.

31. In exchange for agreements by the Executors of the Castello and Schultz Estates not to bring criminal charges, Respondent obtained sufficient funds from his parents and refunded the sum of \$27,322.50 to the Estates in a letter dated October 15, 2010.

32. For approximately the last year that Respondent represented Mr. Schultz, Mr. Schultz would frequently call Respondent inquiring as to the status of the administration of the Estate, as he believed it should have been concluded shortly after the Inheritance Tax Return was filed in 2005. Respondent did not return the calls.

33. The \$5,587.50 that Respondent took from the Castello Estate account and the \$21,735 that he took from the Schultz Estate account were not earned legal fees. Respondent misappropriated funds because he was in severe financial difficulty at the time and used the misappropriated funds to pay the obligations of his realty company.

34. Respondent placed a piece of yellow note pad paper with purported legal work and hours on it in the Castello Estate file. This action was an attempt by Respondent to substantiate his false claim for attorney fees.

35. Respondent expressed no remorse.



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 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

3. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

4. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

5. RPC 1.15(e) – 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, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive.

6. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as lawyer in other respects.

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

#### IV. DISCUSSION

This matter is before the Board upon a Petition for Discipline alleging that Respondent misappropriated funds from two estates in the amount of \$27,322.50, and that he did not reasonably and properly advise his client, Mr. Schultz, of the status of the Estate, nor did he respond to communications from Mr. Schultz. Respondent denied misappropriating funds and claimed they were legal fees.

Petitioner has the burden of proving professional misconduct by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981) Review of the record fully supports the conclusion that Respondent violated each Rule of Professional Conduct charged in the Petition for Discipline, and therefore committed serious professional misconduct.

The evidence overwhelmingly shows that Respondent was having significant financial problems in March of 2009. On March 23, 2009, Respondent misappropriated a total of \$27,322.50 from the Schultz and Castello Estate accounts and then used the funds to satisfy three personal lines of credit that he had with Citicorp Financial. There were no time records or invoices for these amounts despite the fact that it was Respondent's usual practice to keep time records and to send invoices before any legal fees were taken in regard to his work on the Schultz and Castello files. Respondent attempted to conceal his actions by not completing the check stubs in the Estate checkbooks, making sure that the appropriate bank statements were missing from the respective files, and then placing a yellow sheet of note paper with purported legal services and hours done in the Castello Estate file. When confronted by a partner at Respondent's law firm, Respondent attempted to justify his actions by saying the amounts taken were for legal fees. He later admitted to another partner that he "messed up." Respondent ultimately repaid the

Estates all of the funds he had misappropriated, in exchange for an agreement by the executors that they would not bring criminal charges against Respondent.

The remaining issue for the Board to determine is the appropriate discipline to address Respondent's misconduct. The Supreme Court of Pennsylvania has held that misappropriation of entrusted funds is a serious offense that may warrant disbarment. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (PA. 1983); Office of Disciplinary Counsel v. Monsour, 701 A.2d 556 (Pa. 1997). 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. Respondent took and used funds that did not belong to him, and he did not present any evidence or testimony to prove that the funds he misappropriated were for legitimately earned legal fees, as he claimed in his Answer to the Petition for Discipline. Respondent expressed no remorse and did not provide any indication or assurance that he appreciated the seriousness of the misconduct. While Respondent has no history of discipline, he has engaged in misconduct which clearly shows that he lacks the most fundamental qualifications and fitness necessary to practice law in this Commonwealth.

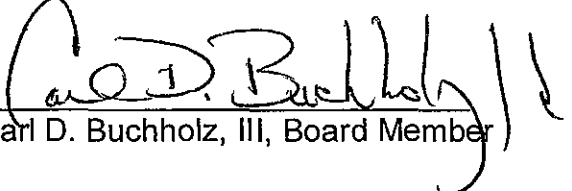
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Arlin Ray Thrush, be Disbarred from the practice of law.

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: August 9, 2012

Board Member Momjian did not participate in the adjudication.