

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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A. GAIL PRUDENTI, P.J.
WILLIAM F. MASTRO
REINALDO E. RIVERA
ROBERT A. SPOLZINO
PETER B. SKELOS, JJ.

2009-01777

OPINION & ORDER

In the Matter of John H. Schunke, Jr., admitted as
John Henry Schunke, Jr., an attorney and counselor-at-law.

Grievance Committee for the Tenth Judicial District,
petitioner; John H. Schunke, Jr., respondent.

(Attorney Registration No. 1794411)

Application by the petitioner, the Grievance Committee for the Tenth Judicial District, pursuant to 22 NYCRR 691.3, to impose discipline on the respondent based on disciplinary action taken against him by the Supreme Court of the State of New Jersey. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on March 18, 1970, under the name John Henry Schunke, Jr.

Rita E. Adler, Hauppauge, N.Y. (Michele Filosa of counsel), for petitioner.

PER CURIAM. On September 13, 2004, while representing the sellers in a real estate transaction, the respondent received a \$50,000 deposit check from the buyer, Garden State Land and Commercial, LLC (hereinafter Garden State), payable to the sellers. The respondent deposited those funds into his attorney trust account on September 22, 2004. Although the transaction never reached fruition, the respondent was obligated to hold the deposit money intact.

August 25, 2009

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MATTER OF SCHUNKE, JOHN H., JR.

The respondent also represented Richard Forlenza in several business enterprises. On July 25, 2006, Forlenza gave the respondent the sum of \$1,717,536.80 to be held in his attorney trust account pending disbursements related to several upcoming real estate transactions. After disbursing funds on behalf of Forlenza in connection with a closing and two refinancings, the respondent was to retain \$32,107 in his attorney trust account to pay off obligations such as title insurance premiums, transfer fees, and recording fees. The respondent failed to make those disbursements.

The respondent should therefore have been maintaining the total sum of at least \$82,107 in his attorney trust account. However, on March 12, 2007, that account had a balance of only \$166.37. From October 5, 2004, through February 5, 2007, the respondent disbursed numerous checks from his attorney trust account to the Upper Montclair Country Club for his personal expenses totaling \$23,839.52. From November 22, 2004, through February 16, 2007, the respondent disbursed several checks from that account representing payoffs of a personal loan totaling \$17,098.89. Between October 8, 2004, and February 12, 2007, the respondent disbursed several checks from his attorney trust account payable to a longtime companion totaling \$75,313.00. Total payments from his attorney trust account to these payees during this period were \$116,251.41.

Between October 7, 2004, and March 12, 2007, the respondent also made several disbursements from his attorney trust account in checks payable to himself or to cash for personal business expenses such as payments to Cingular, American Express, Rite Aide, Met Life, AT&T and healthcare providers totaling \$46,850.27. None of those disbursements were made on behalf of his clients, and were done without the knowledge or permission of his clients.

Such conduct constitutes knowing misappropriation of client funds, and the New Jersey Office of Attorney Ethics recommended the respondent's disbarment. After receiving a copy of the complaint, the respondent wrote to that office on October 17, 2008, and indicated that he was not in a position to refute the allegations of the complaint. By order of the Supreme Court of the State of New Jersey dated December 9, 2008, the respondent was disbarred on consent, his name was stricken from the roll of attorneys, and he was permanently restrained and enjoined from practicing law in that state.

On February 20, 2009, the Grievance Committee for the Tenth Judicial District served the respondent by mail with a notice pursuant to 22 NYCRR 691.3. The respondent neither asserted any of the enumerated defenses nor requested a hearing. There is thus no impediment to the

imposition of reciprocal discipline at this juncture. Based on the admitted acts of misappropriation, the respondent is disbarred in New York based on the discipline imposed upon him in New Jersey.

PRUDENTI, P.J., MASTRO, RIVERA, SPOLZINO and SKELOS, JJ., concur.

ORDERED that the petitioner's application is granted; and it is further,

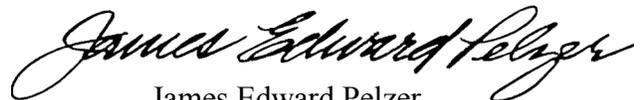
ORDERED that pursuant to 22 NYCRR 691.3, effective immediately, the respondent, John H. Schunke, Jr., admitted as John Henry Schunke, Jr., is disbarred and his name is stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that the respondent, John H. Schunke, Jr., admitted as John Henry Schunke, Jr., shall promptly comply with this court's rules governing the conduct of disbarred, suspended, and resigned attorneys (*see* 22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, the respondent, John H. Schunke, Jr., admitted as John Henry Schunke, Jr., is commanded to desist and refrain from (1) practicing law in any form, either as principal or as agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and it is further,

ORDERED that if the respondent, John H. Schunke, Jr., admitted as John Henry Schunke, Jr., has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency, and he shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 691.10(f).

ENTER:



James Edward Pelzer
Clerk of the Court