

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Dianne T. Renwick,
Barbara R. Kapnick
Ellen Gesmer
Manuel J. Mendez
Julio Rodriguez III,

P.J.,

JJ.

Motion No.	2023-05705
Case No.	2023-06716

In the Matter of
ANDREW JACKSON DANCY,
An attorney and counselor-at-law:

ATTORNEY GRIEVANCE COMMITTEE FOR THE
FIRST JUDICIAL DEPARTMENT,
Petitioner,

ANDREW JACKSON DANCY,
(OCA ATTY. REG. NO. 4003000),
Respondent.

Disciplinary proceedings instituted by the Attorney Grievance Committee for the First Judicial Department. Respondent, Andrew Jackson Dancy, was admitted to the Bar of the State of New York at a Term of the Appellate Division of the Supreme Court for the First Judicial Department on September 17, 2001.

Jorge Dopico, Chief Attorney,
Attorney Grievance Committee, New York
(Louis J. Bara, Esq., of counsel), for petitioner.

Respondent pro se.

IN THE MATTER OF ANDREW JACKSON DANCY, AN ATTORNEY

PER CURIAM

Respondent Andrew Jackson Dancy was admitted to the practice of law in the State of New York by the First Judicial Department on September 17, 2001. Respondent does not have a registered business address on file with the Office of Court Administration; however, this Court retains continuing jurisdiction over him as the Judicial Department in which he was admitted to practice (Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.7 [a] [2]). Respondent is also delinquent in his attorney registration, having last been due to register in July 2023.

By order entered September 17, 2021, the Supreme Court of Tennessee adopted a hearing panel's order, which recommended approval of respondent's conditional guilty plea, and publicly censured respondent based on professional misconduct that he committed in the course of handling a Pennsylvania foreclosure.

By notice dated December 21, 2023, petitioner Attorney Grievance Committee (AGC) moves, under the doctrine of reciprocal discipline as set forth in 22 NYCRR 1240.13 and Judiciary Law § 90 (2), to discipline respondent on the basis of the discipline imposed on him in Tennessee, and to direct him to demonstrate, under 22 NYCRR 1240.13 (a) and (b), why discipline should not be imposed for the underlying misconduct in the form of a reciprocal public censure. In the alternative, the AGC requests a sanction that this Court deems just and proper.

According to the petition for discipline of the Board of Professional Responsibility of the Supreme Court of Tennessee (Board), served December 10, 2020, respondent is an attorney admitted by the Supreme Court of Tennessee to practice law

in Tennessee, and was licensed to practice law in Tennessee in 2002. Although respondent is not licensed to practice law in Pennsylvania, he had an arrangement whereby he would work with a Pennsylvania-licensed attorney on foreclosure matters in that state.

On January 8, 2019, a Pennsylvania resident hired respondent to represent her in the pending foreclosure of her home. She electronically signed a fee agreement with “Dancy & Associates, LLC” and agreed to pay a \$3,900 fixed fee. The fee agreement listed a Pennsylvania address and phone number, as well as the name of the Pennsylvania-licensed attorney. The agreement further noted that the fee was to be deposited into respondent’s escrow account. The foreclosure client authorized her credit card to be charged in four installment payments for the \$3,900 fee, and although the payments were completed by February 28, 2019, they were not deposited into respondent’s trust account.

Respondent did not notify the Pennsylvania-licensed attorney about the pending foreclosure, which was set for April 24, 2019. As a result, the Pennsylvania-licensed attorney was not associated with the work on the case, did not provide any professional services to the foreclosure client, and did not receive the fee that had been paid.

On April 19, 2019, respondent’s office sent a “notice of representation” letter to the mortgage holder on the property; the closing signature of that letter bore respondent’s name. Two days later, on April 21, 2019, respondent’s office sent the mortgagor a “qualified written request,” a letter under federal law requesting that the foreclosure be continued for 60 days. Nonetheless, three days later, on April 24, 2019, the home was sold at a sheriff’s sale.

Respondent’s office informed the foreclosure client that she could hire Dancy &

Associates, LLC — his firm — to vacate the sheriff's sale of the home. The client then paid respondent an additional \$2,500 in installments to stop the sale. There was no written fee agreement for this portion of the representation, and the fee was not deposited into trust. Despite receiving the fee, respondent took no action with respect to the sheriff's sale. Respondent's office then communicated with the client about negotiating a lease with the new owner of the home.

Under Tennessee Supreme Court Rule 8, Tennessee Rules of Professional Conduct (RPC) rule 8.5 (b) (2), for conduct that does not concern a matter pending before a tribunal, "the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct." In accordance with this rule, the Board charged respondent with violating Pennsylvania Rules of Professional Conduct rule 1.3 ("Diligence," which states, "A lawyer shall act with reasonable diligence and promptness in representing a client"); rule 1.4 ("Communication," which requires lawyers to keep clients informed about their cases); rule 1.15 (b), (e), (f), (g), (i), (k), and (m) ("Safekeeping Property and Funds," which regulates lawyers' possession of funds or property entrusted to lawyers in the course of their practice); rule 5.5 (b) and (c) ("Unauthorized Practice of Law; Multijurisdictional Practice of Law," which regulates attorneys not admitted to practice in Pennsylvania and who are admitted in another U.S. jurisdiction); and rule 7.1 ("Communications Concerning a Lawyer's Services," which states, "A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services").

As aggravating factors, the Board alleged that respondent had a pattern of misconduct, acted with a dishonest or selfish motive, and had substantial experience in

the practice of law. The Board also noted the vulnerability of respondent's client, respondent's refusal to acknowledge the wrongful nature of his conduct, and his indifference to making restitution.

Respondent served an answer dated March 1, 2021, admitting many of the allegations against him. He then entered a conditional guilty plea, dated August 16, 2021, in which he agreed to admit that he violated Tennessee RPC rule 1.15 ("Safekeeping Property and Funds") and rule 5.3 ("Responsibilities Regarding Nonlawyer Assistance") in exchange for a public censure and an order directing that he make restitution to the client in the amount of \$6,400. Of that amount, \$4,000 was to be paid before September 7, 2021, and the rest in three monthly installments of \$800 on or before the 15th of October, November, and December 2021.

A hearing panel recommended approving respondent's conditional guilty plea in an order entered August 26, 2021. In an order entered September 17, 2021, the Supreme Court of Tennessee approved the hearing panel's order, adopted the panel's order recommending approval of respondent's conditional guilty plea, publicly censured respondent, and ordered him to pay costs and make restitution to the foreclosure client.

The AGC moves to impose reciprocal discipline based on respondent's censure in Tennessee.¹ It argues that none of the defenses available to respondent under 22 NYCRR 1240.13 (b) apply to this case. First, respondent was given proper notice and had an opportunity to answer the allegations in the Tennessee proceedings, as shown by his guilty plea. Second, respondent has no basis to raise an infirmity-of-proof defense, as he

¹ The AGC represents that respondent did not notify it of his public censure in Tennessee, and that "there is no indication that he notified the Court." "Instead, the [AGC] was made aware by way of a blog post of the Tennessee Bar Association."

admitted the alleged misconduct in his guilty plea and the Tennessee petition was supported both witness testimony and documentary evidence. Third, the AGC notes that, by failing to deposit client funds into an IOLTA account and to adequately supervise his staff, respondent's Tennessee misconduct also violated New York Rules of Professional Conduct (22 NYCRR 1200.0) rule 1.15 ("Preserving identity of funds and property of others; fiduciary responsibility; commingling and misappropriation of client funds or property; maintenance of bank accounts; record keeping; examination of records") and rule 5.3 ("Lawyer's responsibility for conduct of nonlawyers").

Respondent has submitted a letter, filed January 26, 2024, stating that he does not contest the AGC's motion.

On the issue of entitlement to reciprocal discipline, the AGC is correct that respondent is precluded from raising any defenses except:

"(1) that the procedure in the foreign jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

"(2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duties, accept as final the finding in the foreign jurisdiction as to the respondent's misconduct; or

"(3) that the misconduct for which the respondent was disciplined in the foreign jurisdiction does not constitute misconduct in New York."

(22 NYCRR 1240.13 [b]). Respondent does not assert any of these defenses in response to the AGC's motion, and in any event the defenses are inapplicable for the reasons that the AGC has stated in its moving papers.

As to the sanction to be imposed, the AGC correctly observes that this Court generally defers to the sanction imposed by the jurisdiction where the charges were originally brought, and that this Court deviates from that general rule only on rare

occasions. Here, the AGC submits that there is no reason to depart from that general rule in this case, as a public censure is commensurate with discipline imposed by this Court for both a nonvenal failure to use an IOLTA account (*see e.g. Matter of Novofastovsky*, 204 AD3d 15 [1st Dept 2022] [public censure by consent of attorney who negligently misappropriated funds]; *Matter of Guillorn*, 114 AD3d 134 [1st Dept 2013] [public censure of attorney whose escrow violations reflected poor judgment rather than dishonesty]) and failure to appropriately supervise nonlawyer staff (*see Matter of Deitch*, 109 AD3d 1 [1st Dept 2013] [reciprocal public censure of attorney who overdrafted his attorney trust account after attorney's nonlawyer wife was able to embezzle funds without the attorney's knowledge because of deficiencies in his record keeping and supervision]). In this respect, the cases cited by the AGC support its position that a public censure is an appropriate reciprocal sanction (*see e.g. Matter of Sandler*, 96 AD3d 129 [1st Dept 2012] [publicly censuring attorney who was publicly reprimanded in Florida for misusing his attorney trust account]).

The AGC and respondent, however, fail to fully acknowledge the gravity of respondent's misconduct. Respondent's client retained him to prevent the loss of her home to foreclosure. Respondent then negligently mishandled the matter by taking no action, respondent's client lost ownership of her home, and respondent then told her that she should remit a further fee so that respondent could fix his own mistake. Furthermore, even after she paid the further fee, respondent still did nothing to fix the situation, ultimately telling her that she could simply try to lease her home from its new owner. This Court has previously suspended an attorney for such misconduct (*Matter of McHale*, 162 AD3d 117 [1st Dept 2018] [in reciprocal discipline matter, suspending attorney for three months after she practiced in federal Bankruptcy court without

authorization, and noting that “the flagrant mishandling of [the debtor’s] bankruptcy case lost her the opportunity to try and save her home where she lived with her four children and grandchild, which was her stated goal in filing for bankruptcy relief”). In view of the aggravating circumstances described, this matter presents the rare occasion wherein the sanction of the original jurisdiction ought to be departed from.

Accordingly, the AGC’s motion for reciprocal discipline predicated on discipline imposed by the Supreme Court of Tennessee should be granted to the extent that respondent is suspended from the practice of law in the State of New York for a period of three months and until further order of this Court, effective June 24, 2024.

All concur.

It is Ordered that the Attorney Grievance Committee’s motion for reciprocal discipline pursuant to Judiciary Law § 90(2) and 22 NYCRR § 1240.13, predicated upon similar discipline imposed by the Supreme Court of Tennessee, is granted, and respondent Andrew Jackson Dancy is suspended from the practice of law in the State of New York for a period of three months effective June 24, 2024, and until further order of this Court, and

It is further Ordered that pursuant to Judiciary Law § 90, respondent Andrew Jackson Dancy is: (1) commanded to desist and refrain from the practice of law in any form, either as principal or agent, clerk or employee of another, or from holding himself out in any way as an attorney and counselor-at-law; (2) forbidden to appear as an attorney or counselor-at-law before any court, Judge, Justice, board or commission or other public authority; and (3) forbidden to give another an opinion as to the law or its application or advice in relation thereto, and

It is further Ordered that respondent Andrew Jackson Dancy is to fully comply with the rules governing the conduct of disbarred or suspended attorneys (see 22 NYCRR § 1240.15), which are made a part hereof, and

It is further Ordered that if respondent Andrew Jackson Dancy has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith.

Entered: May 23, 2024

A handwritten signature in black ink, appearing to read "Susanna Molina Rojas". The signature is fluid and cursive, with the first name being the most prominent.

Susanna Molina Rojas
Clerk of the Court