

Matter of Paul A Shneyer PC
2020 NY Slip Op 30969(U)
March 24, 2020
Supreme Court, New York County
Docket Number: 657375/2019
Judge: Nancy M. Bannon
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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INDEX NO. 657375/2019
MOTION DATE 01/15/2020
MOTION SEQ. NO. 001

In the Matter of
PAUL A SHNEYER PC

Petitioner,

**DECISION + ORDER ON
MOTION**

For an Order Authorizing Deposit of Funds into the Lawyers' Fund for Client Protection Pursuant to 22 NYCRR Part 1200 [Rule 1.15(f)]

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 15, 16, 17 were read on this motion to/for DEPOSIT - LAWYERS FUND

The law firm of Paul A Shneyer PC petitions pursuant to 22 NYCRR Part 1200, Rule 1.15(f), to permit it to deposit \$58,621.15, funds that it currently holds in escrow, into the Lawyers' Fund for Client Protection (the Fund). The petitioner also seeks reimbursement of \$2137.50 in attorneys' fees and \$350.00 in filing fees in relation to this action. No opposition is submitted. The petition is granted to the extent that the petitioner is authorized to deposit the \$58,621.15 into the Fund.

Rule 1.15(f) of the Rules of Professional Conduct (RPC) (22 NYCRR Part 1200, Rule 1.15[f]) provides that:

"Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto."

Prior to April 1, 2009, the effective date of the RPC, the former Code of Professional Responsibility contained the same provision. See former DR 9-102 (F) (former 22 NYCRR 1200.46[f]). A similar provision can be found in the Rules of the Appellate Division, First Department. See 22 NYCRR 603.7(d)(2).

The Fund was created in 1981, with its assets placed in the custody of the State Comptroller. See State Finance Law § 97-t. In providing for such a fund, the Legislature sought “to promote public confidence in the administration of justice and the integrity of the legal profession by reimbursing losses caused by the dishonest conduct of attorneys admitted and licensed to practice law in the courts of New York State.” 22 NYCRR 7200.1. The Fund is administered by a seven-member Board of Trustees, appointed by the Court of Appeals, which is “authorized to adopt regulations for the administration of the Fund and procedures for the ‘presentation, consideration, allowance and payment of claims.’” Clients’ Sec. Fund of State of N.Y. v Grandeau, 72 NY2d 62, 65 (1988), *quoting* State Finance Law § 97-t (5).

The statutes and regulations governing the Fund itself are primarily addressed to remedies for the misappropriation of client funds by dishonest attorneys, and do not expressly address the question of funds belonging to “missing clients.”

Nonetheless, the structure of the statutory and regulatory scheme governing the Fund, read together with RPC Rule 1.15(f) and the Appellate Division's rule concerning the safeguarding of funds of missing clients, permits an inference that a court may, upon request, permit an attorney holding escrowed assets of missing clients to deposit such assets into the Fund. See Matter of Hogan, 143 AD3d 1044 (3rd Dept. 2016) (imposing discipline upon an attorney for his failure to seek a court order permitting him to deposit escrowed assets of missing clients into the Fund); Miszko v Gress, 4 AD3d 575 (3rd Dept. 2004).

Here, the petitioner asserts that on August 4, 1997, he was appointed by the court as receiver in the mortgage foreclosure action entitled Marine Midland Bank v Golden City Realty Corp, pending in the Supreme Court, New York County, under Index No. 107808/1995. Pursuant to a settlement between the parties in that action, the underlying property was sold, after which the petitioner was relieved as receiver. Pursuant to the July 20, 2001 final judgment in that matter, Lex Terrae Ltd. (LT), the title company for the sale of the property, was to hold funds from the sale in escrow and apply up to \$10,000.00 to any of Golden City Realty Corp.'s

outstanding New York State Business Corporation taxes, \$44,350.00 to satisfy any outstanding judgments against Golden City, and \$650.00 for any emergency repairs or liens on the property. Following these payments, LT was then to transfer any remaining funds to Golden City's attorney Paul Kozinn.

Over ten years later, in September 2011, the petitioner received two checks from LT for totaling \$58,621.15, the remaining monies that were held in escrow that were to be paid to Kozinn. After receiving the two checks, the petitioner attempted to contact Kozinn to turn over the escrow funds, but received no response. On October 24, 2014, the petitioner filed a proposed order to show cause in the foreclosure action requesting that the court authorize the transfer of the funds to Golden City or Paul Kozinn, or to permit it to deposit the funds with the County Clerk. The court granted the application to the extent that the petitioner was ordered to pay the funds to Kozinn. In November 2014, the petitioner delivered an escrow account check in the amount of \$58,621.15 to Kozinn's office. Kozinn never cashed the check. According to the petitioner, Kozinn subsequently died in January 2019.

The petitioner provides a printout from the New York State Department of State website, dated December 9, 2019, showing that Golden City was dissolved by proclamation on December 27, 2000, and asserts that its owners can no longer be located or contacted in regard to the funds in the petitioner's possession.

Thus, the petitioner established that it has been holding in its escrow/IOLA account the sum of \$58,621.15, but has been unable to "locate the proper recipients of the funds at issue herein," despite its due diligence. The petitioner fully complied with Rule 1.15(c) of the Rules of Professional Conduct (RPC) (22 NYCRR Part 1200, Rules 1.15[c]), which requires an attorney to promptly take all steps to notify a client of receipt of funds that are to be held in escrow on that client's behalf, maintain complete records of all such funds, and take all steps necessary to promptly pay such funds to the client. Therefore, the petitioner, may deposit the subject monies into the Fund.

However, to the extent the petitioner seeks reimbursement for \$2137.50 in attorneys' fees and \$350.00 in filing fees for bringing this action, it cites no statutory or decisional authority in support of that application. The court cannot authorize such relief.

Accordingly, it is

ORDERED that the petition is granted, without opposition, to the extent that the petitioner shall, within 30 days of this order, deposit the sum of \$58,621.15 with the Lawyers' Fund for Client Protection, payable from its escrow/IOLA account, subject to further order of the court, accompanying such deposit with a copy of this order with notice of entry, served in the manner of a summons.

This constitutes the Decision and Order of the court.

3/24/2020
DATE


NANCY M. BANNON, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	