

1 Case No: 01-028-0064

FILED

JAN 08 2003

P. Poswell
STATE BAR OF NEVADA

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SOUTHERN NEVADA DISCIPLINARY BOARD

5 STATE BAR OF NEVADA,)

6 Complainant,)

7 vs.)

8 ANDRAS F. BABERO, ESQ.,)

9 Respondent.)

CONDITIONAL GUILTY PLEA
IN EXCHANGE FOR A
STATED FORM OF DISCIPLINE

PUBLIC REPRIMAND

11 TO: ANDRAS F. BABERO

12 You were longtime friends of Zamir and Jane Tarmu. From approximately 1997
13 through 2000, you performed various legal matters for them, including litigation, zoning
14 matters, a formation of a limited liability company, and various matters, including traffic
15 citations and a homestead filing. While the traffic citations and homestead matters were
performed at no cost, the other matters were subject to a contract between the parties.
However, there was no written fee agreement.

16 During this time, you were retained to defend them against a materialman's lien on
17 their house. You successfully completed an appeal to the Nevada Supreme Court of an
18 adverse award of attorney's fees in November 1998 and the matter was remanded to District
19 Court. Over several months in multiple hearings, the trial court considered and denied both
sides' motions for fees. However, in February 2000, Plaintiff moved for reconsideration of
the denial of Plaintiff's fees.

20 Prior to the hearing, you requested a continuance in order to file an Opposition.
21 Although counsel agreed to a two-week continuance, you failed to file an Opposition and
failed to appear at the hearing. Furthermore, you failed to inform your clients of the hearing
or the fact that you did not oppose it or appear at it.

22 The court granted Plaintiff's motion to reconsider and increased the award of
23 attorneys' fees to Plaintiff. The Final Judgment for Plaintiff included principal, pre-judgment
24 and post-judgment interest, costs, and attorneys' fee. In late May 2001, Plaintiff's lead
25 counsel communicated to you a sum of \$17,934.62 as the total amount owed on the Final
Judgment. However, you represented to the Tarmus that the judgment was or could be for a
higher sum, approximately \$28,000.00. You failed to inform your clients of the actual amount
Plaintiff demanded.

1 It was agreed that each client would pay 50% of the Final Judgment. Jane Tarmu
gave you a check for \$13,967.31, which you deposited into your trust account. It was agreed
that you would negotiate with opposing counsel to pay Jane Tarmu's half and either get a
3 complete release for her, or additional time for the entire amount to be satisfied. Instead of
forwarding the monies to Plaintiff's counsel, you later withdrew the funds and applied them to
4 the outstanding balances owed by your clients for past and ongoing legal work, for which the
Tarmus had not paid any fees or costs.

5 In or around September 2000, you met with your clients after they discovered that you
had never attended the hearing on Plaintiff's motion to reconsider. Zamir Tarmu wanted to
6 appeal the decision. He also objected to your bill for approximately \$35,000.00 in legal fees.

7 The Tarmus then retained another firm. Ultimately, after further negotiations, Zamir
Tarmu paid the sum of \$10,540.98, in full satisfaction of the Final Judgment. Subsequently
8 you filed a civil action against your clients for unpaid legal fees. An arbitrator found in your
favor, but granted your clients an offset for the monies Jane Tarmu gave you. This matter
9 was settled pursuant to the terms of the arbitration award.

10 By failing to oppose or even appear at Plaintiff's Motion to Reconsider, you violated
SCR 153 (Diligence). This violation is compounded by the fact you were granted an
11 extension of time to file an Opposition and a continuance of the hearing. By failing to inform
your clients of the pending motion or your failure to address it, you violated your duty under
12 SCR 154 (Communication) to keep your clients informed of the status of their case.

13 In misrepresenting the amount of the Final Judgment, you demonstrated a lack of
14 candor to your clients and engaged in misconduct involving dishonesty or misrepresentation,
violations of SCR 154 (Communication) and 203(3) (Misconduct).

15 Finally, you held client monies in trust for a particular purpose. You later withdrew
16 those monies and applied them to an outstanding balance you asserted the clients owed to
you. There is no evidence that you gave the clients proper notice of your decision or that you
17 provided your clients with a timely accounting of the monies originally held for that purpose.
Despite the outcome in the civil action, your conduct violated SCR 165 (Safekeeping
18 property).

19 The Hearing Panel found that this was a unique situation and not the typical case
involving trust account violations. The Panel further considered the fact that you had not
20 been paid for your legal services as a mitigating factor in imposing the appropriate sanction.
The Panel also considered your candor and honesty before the Panel and took into
21 consideration your longevity of practice (22 years) without any prior discipline, as well the
fact that the misconduct was isolated to a single client with whom you have a long-standing
22 relationship.

23 Based upon the foregoing, you are hereby **PUBLICLY REPRIMANDED**.
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