

OPINIONS OF THE SUPREME COURT OF OHIO

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Office of Disciplinary Counsel v. Istok.

[Cite as Disciplinary Counsel v. Istok (1994), Ohio St.3d .]

Attorneys at law -- Misconduct -- Indefinite suspension -- Misappropriation of funds from corporate pension plan account.

(No. 93-2540 -- Submitted January 23, 1994, -- Decided April 20, 1994.)

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 93-18.

On April 19, 1993, relator, Office of Disciplinary Counsel, filed a complaint against respondent, James M. Istok of Dallas, Texas, Attorney Registration No. 0041174, with the Board of Commissioners on Grievances and Discipline of the Supreme Court. The complaint alleged that, while serving as General Counsel and Secretary for Pizza Inn, Incorporated, respondent misappropriated \$34,310.20 from the pension plan account of one of Pizza Inn's subsidiaries, Branch Cheese Company, Inc. In addition, the complaint alleged that respondent removed from the Pizza Inn corporate office the checkbook, check register, bank statements, and tax information concerning the pension plan and attempted to conceal the existence of the pension plan account by redirecting bank statements to a private post office box.

The complaint charged that respondent violated DR 1-102(A)(3) (engaging in illegal conduct involving moral turpitude); 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and 1-102(A)(6) (engaging in conduct that adversely reflected on his fitness to practice law).

On May 12, 1993, respondent filed an answer, wherein he denied misappropriating the \$34,310.20, or having custody of the tax records, checkbook, check register, or bank statement or ever removing them from the corporate offices. On September 27, 1993, respondent and relator agreed to stipulate to several allegations. Respondent admitted that he misappropriated \$34,310.20 from the pension plan account over a period of approximately six months, concealed the existence of the

account by redirecting the bank statements to a private post office box, and removed information concerning the pension plan from the Pizza Inn corporate offices.

The hearing before the panel was set for October 6, 1993. Respondent did not attend the hearing and was not represented by counsel. The panel granted respondent thirty days to submit a written statement concerning the charges before a final sanction would be issued. The panel found that the respondent had made partial restitution in the amount of \$22,875 to the pension fund in May and June 1992.

After respondent failed to submit a written statement in mitigation, the panel found that respondent had committed the violations alleged and recommended that he be indefinitely suspended from the practice of law. The board adopted the findings and recommendation of the panel and further recommended that the costs of the proceedings be taxed to respondent.

Geoffrey Stern, Disciplinary Counsel, and Alvin E. Mathews, Assistant Disciplinary Counsel, for relator.

Per Curiam. We concur in the findings and recommendation of the board. Respondent, James M. Istok, is hereby indefinitely suspended from the practice of law in Ohio. Costs taxed to respondent.

Judgment accordingly.

Moyer, C.J., A.W. Sweeney, Douglas, Wright, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.