

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE DISCIPLINE OF
CHARLES A. PRICE.

No. 36488

FILED

JAN 19 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF DISBARMENT

This is an automatic appeal from a decision and recommendation of a Northern Nevada Disciplinary Board hearing panel. The panel found that Price had violated SCR 165 (safekeeping property) and SCR 203(3) (misconduct involving dishonesty, fraud, misrepresentation or deceit) by misappropriating approximately \$600,000 from a client's trust of which he was the trustee. The panel further found three aggravating circumstances, specifically: (1) prior disciplinary history, (2) dishonest or selfish motive, and (3) pattern of misconduct. No mitigating circumstances were found. Based on its findings, the panel recommended that Price be disbarred.

Although the recommendations of the disciplinary panel are persuasive, this court is not bound by the panel's findings and recommendation, and must examine the record anew and exercise independent judgment. See *In re Kenick*, 100 Nev. 273, 680 P.2d 972 (1984). Ethical violations must be proven by clear and convincing evidence, which this court has described as evidence which "need not possess such a degree of force as to be irresistible, but there must be evidence of tangible facts from which a legitimate inference . . . may be drawn." *In re Stuhff*, 108 Nev. 629, 635, 837 P.2d 853, 856

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(1992) (quoting Gruber v. Baker, 20 Nev. 453, 477, 23 P. 858, 865 (1890)).

The record reflects that in late 1993, Price was asked to prepare a Charitable Remainder Annuity Trust ("CRAT") for his client, Jo Ann McGivern. At this time, McGivern was married to Gerhard Rossbach. Price prepared the trust document, which was executed on March 7, 1994, and which named Price as trustee. Under the terms of the CRAT, McGivern and Rossbach were to receive a percentage of the initial principal amount each year. After either McGivern or Rossbach died, the survivor was to continue to receive this percentage for his or her lifetime. Upon the second death, the trust assets were to be distributed among various charities according to stated percentages.

Price requested that the trust be funded with cash, and so McGivern's investment advisor liquidated some of McGivern's assets, held in a family trust of which Price was also the trustee, in order to fund the trust with \$600,000 in cash. This sum was wire-transferred to Price's client trust account. A few days later, Price purchase five \$100,000 certificates of deposit in his own name, with no designation that he held the funds as trustee; the remaining \$100,000 stayed in his trust account. Price eventually cashed the certificates of deposit and withdrew the \$100,000 from his trust account. It appears that over half of these funds were converted to Price's personal use, including the remodeling of his house, and the rest were commingled with his wife's revocable trust.

Price testified before the panel that at about this time, he and his wife planned to extensively remodel their home. In order to fund the remodeling, Price and his wife had planned to liquidate assets in Mrs. Price's revocable trust,

which was worth over \$1 million. Price stated that liquidating these assets would result in adverse tax consequences to him and his wife. Rather than incur these tax consequences, Price decided to use the CRAT funds to pay for the remodeling, and mentally allocated \$600,000 of Mrs. Price's revocable trust to the CRAT. Price asserted that he executed a promissory note in favor of the CRAT, to be secured by a deed of trust on his residence. However, no deed of trust was recorded at the time, and Mrs. Price, who was trustee of her revocable trust, did not sign the promissory note or otherwise obligate her revocable trust to the CRAT.

Over the next several years, Price made annual annuity payments to McGivern, apparently by using funds from his wife's trust. In 1998, McGivern and Rossbach divorced. In an effort to determine the assets to be distributed in the divorce, McGivern's divorce lawyers contacted Price and requested information about the CRAT. Price failed to provide complete information regarding the CRAT assets.

At McGivern's direction, her divorce lawyers filed an action in district court demanding that Price turn over the trust assets and resign as trustee, and that he submit an accounting for the CRAT. As a result of orders entered in that case, Price resigned as trustee and submitted an accounting, and turned over \$652,000, which was based on Price's calculations of the trust's assets. He also signed a deed of trust on his residence, which has been properly recorded, to secure any additional amounts found to be owed. It appears that the adequacy of the accounting and the accuracy of Price's figures remain to be determined in the district court action.

We conclude that clear and convincing evidence supports the panel's findings that Price violated SCR 165

(safekeeping property) and SCR 203(3) (misconduct involving dishonesty, fraud, deceit or misrepresentation), as well as the aggravating circumstances found by the panel. We further conclude that the discipline recommended by the panel is appropriate in light of the egregious nature of Price's misconduct, as well as his lack of remorse or acceptance of responsibility for his wrongdoing. Accordingly, we adopt the recommendation of the panel, and disbar Price. In addition, Price must promptly pay any additional amounts found to be owed by the district court. Price must pay the costs of the disciplinary proceeding. Price and the state bar shall comply with the provisions of SCR 115.

It is so ORDERED.¹

Maupin, C.J.
Maupin

Young, J.
Young

Shearing, J.
Shearing

Rose, J.
Rose

Leavitt, J.
Leavitt

Becker, J.
Becker

¹The Honorable Deborah A. Agosti, Justice, voluntarily recused herself from participation in the decision of this matter.

cc: James Bradshaw, Chair,
Northern Nevada Disciplinary Board
Rob W. Bare, Bar Counsel
Wayne Blevins, Executive Director
Dee Shore, Admissions Office, U.S. Supreme Court
Charles A. Price