

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,**

**ARTHUR JOSEPH MORBURGER,
Bar No. 001499**

Respondent

PDJ 2022-9066

**ORDER OF DISBARMENT
BASED ON RECIPROCAL
DISCIPLINE**

FILED NOVEMBER 28, 2022

By order filed September 15, 2022, the Presiding Disciplinary Judge (PDJ) directed the parties to submit memoranda based on the Supreme Court of Florida's disbarment order dated August 25, 2022. *See* Rule 57(b), Ariz. R. Sup. Ct. Having reviewed the parties' submissions, the PDJ finds no basis for declining to impose identical discipline in Arizona.

Rule 57(b)(3), provides, in pertinent part:

[T]he presiding disciplinary judge shall impose the identical or substantially similar discipline, unless bar counsel or respondent establishes by a preponderance of the evidence, through affidavits or documentary evidence, or as a matter of law by reference to applicable legal authority, or the presiding disciplinary judge finds on the face of the record from which the discipline is predicated, it clearly appears that:

- A. the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- B. there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the presiding disciplinary judge could not, consistent with its duty, accept as final the other jurisdiction's conclusion on that subject; or
- C. the imposition of the same discipline would result in grave injustice; or

D. the misconduct established warrants substantially different discipline in this state.

Unless one of the grounds set forth in Rule 57(b)(3)(A)–(D) is established by a preponderance of the evidence, “a final adjudication in another jurisdiction that a lawyer has been found guilty of misconduct shall establish conclusively the misconduct for purposes of a discipline proceeding in this state.” Rule 57(b)(5).

After an evidentiary hearing in Florida, a referee determined that:

Respondent . . . received funds that he was court ordered to hold in trust. When the court ordered those funds to be dispersed to the appropriate party, Respondent did not comply with that order. Rather, Respondent, either through his direct actions, or by his failure to take any reasonable steps to safeguard the escrowed funds, facilitated the misappropriation of same to a company owned by his friend . . . Moreover, Respondent made misrepresentations regarding these events in sworn deposition testimony, to the Bar (in his written responses) and to the undersigned Referee in his testimony during the Final Hearing in this matter.

The Florida Supreme Court adopted the hearing referee’s report in its entirety.

In his submissions in these proceedings, Respondent attempts to re-litigate the issues resolved in Florida. He may not do so. *See Hancock v. O’Neil*, 253 Ariz. 509 (2022); *see also In re Fuchs*, 905 A.2d 160, 164 (D.C. App. 2006) (“reciprocal disciplinary proceedings are not a forum to reargue the foreign discipline.”); *In re Sibley*, 61 A.D.3d 85, 86-87 (N.Y. App. 2009) (respondent lawyer may not “relitigate the issues raised and determined the courts of a sister state.”).

The misconduct Respondent committed in Florida would also warrant disbarment in Arizona -- particularly given the numerous aggravating factors found by the Florida authorities. *See ABA Standards for Imposing Lawyer Sanctions*, Standards 5.11(b), 7.1.

See also In re Varbel, 182 Ariz. 451, 454 (1995) (lying during disciplinary proceedings “is one of the most serious ethical violations an attorney can commit and, absent mitigating circumstances, warrants the ultimate sanction of disbarment.”).

IT IS THEREFORE ORDERED that Respondent Arthur Joseph Morburger, Bar No. 001499, is disbarred and stricken from the rolls of lawyers authorized to practice law in Arizona, effective immediately.

IT IS FURTHER ORDERED that Respondent pay the State Bar’s costs and expenses in the sum of \$1,200.00.

DATED this 28th day of November, 2022.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing e-mailed
this 28th day of November, 2022 to:

Arthur J. Morburger
5255 Collins Avenue
Apartment 5J
Miami, FL 33140-2577
Email: amorburger@bellsouth.net

Maret Vessella
Chief Bar Counsel
State Bar of Arizona
4201 North 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: LRO@staff.azbar.org

by: SHunt