

Law Client Protection Funds



Bibliography

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New York State Lawyers' Fund for Client Protection
National Client Protection Organization, Inc.¹

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Ainsworth v. State Bar of California, 762 P.2d 431 (Cal. Sup. Ct. 1988). California Supreme Court sustains referee's exercise of discretion in dismissing claims to client security fund, without prejudice, until conclusion of lawyer's disciplinary proceeding. Lawyer's due process rights were not violated.

Alvarado Community Hospital v. Superior Ct., et al, 173 Cal. App. 3d 476 (Cal. Ct. App. 1985). Law client who has received an award of reimbursement from California client security fund is estopped from pursuing a civil recovery against the lawyer whose dishonest conduct resulted in the client's award.

Am. Asset Fin., LLC v. Trustees of Client Prot. Fund of Bar of Maryland, 216 Md. App. 306, 86 A.3d 73 (2014). Assignee of attorney's settlement interests lacked standing to seek payment from Client Protection Fund because the assignee had no attorney-client or fiduciary relationship with the attorney.

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Court holds that the discharge of a lawyer's debt in bankruptcy does not relieve the lawyer from his restitution obligations to the California client security fund.

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Clients' Security Fund v. Grandeau, 526 N.E.2d 270 (N.Y. 1988). New York Court of Appeals holds that lawyers' fund for client protection has standing, as subrogee of reimbursed law clients, to pursue negligence causes of action against the law partner of a dishonest lawyer.

Clients' Security Fund v. Security Title and Guaranty Co., 634 A.2d 90, (N.J. 1993) New Jersey Supreme Court articulates standards of liability for thefts in mortgage refinancings involving title insurance. Court reviews client protection fund's policy relating to collateral sources. Companion case to Sears Mortgage Corp. v. Rose, *infra*.

Cousins v. Lawyers' Fund (Albany County, 2016). Court denied former attorney's request for Fund records under FOIL (Freedom of Information Law) holding that the New York Lawyers' Fund is an agency which performs judicial functions in the discharge of its duties and exempt from FOIL.

Florida Bar v. Rogowski, 399 So.2d 1390 (Fla. 1981). Disciplinary court lacks authority to impose monetary sanction against lawyer, payable to the client security fund, where lawyer's misconduct did not involve the loss of law client money, or result in an award from the fund.

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Forbess v. Minnesota Supreme Court, et al, No. 4-88-216 (D. Minn. March 22, 1988). Federal District Court rejects lawyer's motion to restrain implementation of Minnesota clients' security fund.

GE Capital Mortg. Servs., Inc. v. New Jersey Title Ins. Co., 333 N.J. Super. 1, 754 A.2d 558 (App. Div. 2000). Mortgage company could not bring court action to compel client protection fund to compensate it for funds misappropriated by attorney.

Goldberg v. New Jersey Lawyers' Fund for Client Protection, 932 F.2d 273 (3d Cir. 1991). In disbarred lawyer's Chapter 7 bankruptcy proceeding, debts owed to title insurer and client protection fund are held to be non-dischargeable. Federal Court of Appeals directs a pro-rata sharing of proceeds remaining in the lawyer's trust account to reimburse losses of title insurer and client protection fund.

Haskins v. Lawyers Fund for Client Prot., 286 A.D.2d 440, 729 N.Y.S.2d 499 (2001). Determination made by board of trustees of the Lawyers' Fund for Client Protection, denying claimant's application for reimbursement of funds allegedly misappropriated by attorney, was not arbitrary or capricious.

Healthcare Recoveries, Inc. as Agent for United Healthcare of Arkansas v. Arkansas Client Sec. Fund, 363 Ark. 102, 107, 211 S.W.3d 512, 516 (2005). Health care provider claim denied by Client Security Fund for unpaid medical bills it believed should have been satisfied from settlement escrow misappropriated by patient's attorney. The health care provider argued that a fiduciary trust was created for the benefit of the health care provider when settlement proceeds for the minor were deposited with her attorney.

Hersh v. State Bar of California, 496 P.2d 1201 (Cal. 1972). California Supreme Court upholds statute which authorizes assessment from bar dues to support a client security fund.

Hippard v State Bar of California, 782 P.2d 1140 (Cal. 1989). California Supreme Court holds that a lawyer's failure to attempt restitution to client security fund is grounds to deny the lawyer's application to be reinstated to the bar.

Indeck v. Clients' Sec. Bd., 450 Mass. 379, 879 N.E.2d 57 (2008). Decision by Clients' Security Board on reimbursement from Client Security Fund was not subject to certiorari review; client did not have a justiciable or material right to any payment from Fund, board's decision did not give rise to substantial injury or injustice, and it did not reflect substantial error of law.

In re Cater, 887 A.2d 1 (D.C. 2005). Court rules permit a restitution as a requirement to law client victims in attorney disciplinary proceedings where the attorney's sureties reimbursed clients, but restitution to the sureties was not required as a condition of reinstatement.

In Re Clients' Security Fund, 493 S.W.2d 422 (Ark. 1973). Arkansas Supreme Court establishes a clients' security fund.

In re Crews, 389 S.C. 322, 342, 698 S.E.2d 785, 795 (2010). In disbarment opinion, Supreme Court of South Carolina ordered both restitution to former clients, as well as to the Lawyers' Fund for anticipated future claims to be made.

In re Disciplinary Proceedings Against Teasdale, 2005 WI 137, 286 Wis. 2d 1, 703 N.W.2d 372. Attorney was required to pay the Wisconsin Lawyers' Fund for Client Security as a sanction in attorney disciplinary proceeding where the Fund approved reimbursement of unearned fees to three of attorney's clients.

In re Johnson, 380 S.C. 76, 668 S.E.2d 416 (2008). In ordering restitution, the Supreme Court directed that the Lawyers' Fund must be repaid before the client can receive any additional restitution from the attorney.

In re Judah, 282 Ga. 55, 644 S.E.2d 858 (2007). The Supreme Court held that attorney satisfied

procedural and legal requirements for readmission, even though he had not completely reimbursed the Client Security Fund.

In Re Kennedy, 442 A.2d 79 (Del. 1982). Delaware Supreme Court holds that the client protection fund's random audit program does not violate lawyer's constitutional privacy right or attorney-client privilege. A lawyer entrusted with law client funds is a fiduciary subject to reasonable government regulation.

In Re Member of the Bar, 257 A.2d 382 (Del. 1969), *app. dis.*, 396 U.S. 274 (U.S. 1969). Delaware Supreme Court rejects constitutional challenge to court rule establishing the Delaware clients' security trust fund, and assessing lawyers for its support. Rule is within the court's inherent power to regulate the legal profession.

In re Reis, 291 A.D.2d 185, 739 N.Y.S.2d 148 (2002). Award from Lawyers' Fund preceded default disbarment of attorney. Restitution not ordered since disbarment was based on respondent's default, and not a Court finding of willful misappropriation or misapplication of client funds.

In re Stacy, 164 N.H. 706, 62 A.3d 885 (2013). Supreme Court of New Hampshire held that client was not entitled to reimbursement under Public Protection Fund because he failed to prove by the preponderance of the evidence that attorney's conduct amounted to defalcation.

Jewell v. Fletcher, 2010 Ark. 195, 377 S.W.3d 176 (2010). Award from Client Security Fund was considered a "collateral source," wholly independent from respondent attorney, and thus client's claims against attorney's law firm in dissolution proceeding was not be reduced by award received from Client Security Fund.

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Lawyers' Fund for Client Prot. of the State of N.Y. v. Gateway State Bank, 239 A.D.2d 826, 658 N.Y.S.2d 705 (1997), Summary judgment granted, 181 Misc.2d 660, 692 N.Y.S.2d 583. (1999) Lawyers' Fund for Client Protection had standing as assignee and subrogee, to sue depository bank for conversion, breach of contract for money had and received, breach of debtor-creditor relationship, and unjust enrichment.

Lawyers' Fund for Client Protection v. Manufacturer's Hanover Trust Co., 153 Misc. 2d 133 (N.Y. Sup. Ct. 1992). In an action against a depository bank to recover for its payment over a forged settlement draft, court holds that an attorney does not have the apparent authority to negotiate or endorse a check which is payable to a law client.

Matter of Cooper, 168 A.D.2d 695 (N.Y. App. Div. 1990). First disciplinary court decision invoking court's statutory authority to order lawyer to make restitution to law clients, or to the lawyers' fund for client protection as subrogee, enforceable as civil judgments.

Matter of Douglas, 764 P.2d 1 (Ariz. 1988). Arizona Supreme Court holds that Disciplinary court has no authority to require a dishonest lawyer to pay sanctions to the clients' security fund for a loss which was reimbursed by the lawyer's malpractice insurer.

Matter of Gans, 75 B.R. 474 (Bankr. S.D.N.Y. 1987). In a Chapter 7 adversary proceeding which challenges the dischargeability of a debt based on a lawyer's fraud or deceit, Bankruptcy Court holds that the client-creditor's burden of proof is "clear and convincing".

Matter of Estate of Sheridan, 149 Misc. 2d 519 (N.Y. Surr. Ct. 1991). New York lawyers' fund for client protection may invoke the state's sovereign prerogative right to priority over other unsecured creditors of a deceased lawyer's estate.

Saferstein v. Lawyer's Fund For Client Prot., 298 A.D.2d 726, 748 N.Y.S.2d 438 (2002). Denial of client's claim for reimbursement of funds allegedly misappropriated by his former attorney became final and binding, and four-month limitations period for filing Article 78 proceeding began to run when client signed for and received letter from the Lawyer's Fund for Client Protection notifying him that denial of his claim was "final."

Matter of Saferstein v Lawyers' Fund for Client Protection, 30 A.D.3d 653, 815 N.Y.S.2d 787 (2006). In an Article 78 proceeding, Court determined that client failed to state a viable claim for reimbursement and was not entitled to recover from Lawyers' Fund for Client Protection for attorney's alteration of mortgage instrument.

Matter of Spagnoli, 559 A.2d 1352 (N.J. 1989). New Jersey Supreme Court cites finding of "dishonest conduct" by clients' security fund in disbaring lawyer.

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New Jersey Lawyers' Fund For Client Prot. v. First Fid. Bank, N.A., 303 N.J. Super. 208, 696 A.2d 728 (App. Div. 1997). As subrogee and assignee of claimant's rights, the Lawyers' Fund is entitled to seek reimbursement from collateral sources other than the defrauding attorney, and does not need to distinguish between morally "innocent" or "culpable" collateral sources.

New Jersey Lawyers' Fund for Client Prot. v. Stewart Title Guar. Co., 203 N.J. 208, 1 A.3d 632 (2010). Supreme Court of New Jersey held that no agency relationship existed between attorney and the title insurer at the time attorney misappropriated his client's funds, therefore, the insurer was not liable for the misappropriation by the attorney.

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