

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-251
District Docket Nos. XIV-2011-0056E
and XIV-2011-0127E

IN THE MATTER OF
TIMOTHY J. PROVOST
AN ATTORNEY AT LAW

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Decision

Decided: December 20, 2011

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter came before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The three-count complaint charged respondent with violating RPC 1.15(a) (failure to safeguard client funds); RPC 1.15(b) (failure to promptly deliver funds to a client or third person); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority); and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985). We recommend that the Court disbar respondent.

Respondent was admitted to the New Jersey bar in 1980. At the relevant times, he practiced law at Provost & Colrick, P.A., 77 West Main Street, Freehold, New Jersey. He has no history of discipline. However, he was temporarily suspended, on March 8, 2011, for failure to cooperate with the OAE's investigation. In re Provost, 205 N.J. 89 (2011). He remains suspended to date.

Service of process was proper in this matter. According to the certification of the record, on May 10, 2011, the OAE mailed copies of the ethics complaint, by regular and certified mail, to respondent at Provost & Colrick, P.A., 77 West Main Street, Freehold, New Jersey 07728 and to 8 Michael Court, Englishtown, New Jersey 07726.¹ The regular mail sent to the Englishtown address was returned on May 23, 2011. The certified mail sent to the same address was returned on May 16, 2011, stamped "return to sender, no such number/street."

The regular mail sent to the Provost & Colrick address was not returned. The certified mail sent to the same address was returned on May 19, 2011, stamped "return to sender, unable to forward."

On May 20, 2011, the OAE sent copies of the complaint by regular and certified mail to 8 Michael Court, Millstone

¹ According to the ethics complaint, the Englishtown address was respondent's last known home address.

Township, New Jersey 07726. The regular mail was not returned. The certified mail receipt indicates delivery of the certified mail on May 29, 2011. The signature of the recipient is illegible. Respondent did not file an answer within the required time.

By letter dated June 23, 2011, sent to the above three addresses, and apparently sent only by regular mail, the OAE informed respondent that, if he did not file an answer to the ethics complaint within five days, the allegations of the complaint would be deemed admitted, the matter would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b).

The letter sent to the Englishtown address was returned stamped "return to sender, no such street, unable to forward." The letters sent to the Provost & Colrick and Millstone addresses were not returned.

As of the date of the certification of the record, July 8, 2011, respondent had not filed an answer to the ethics complaint.

We now turn to the facts of this matter.

COUNT ONE

The Lewis Refinancing

Respondent represented Latonya Lewis in the refinancing of the first mortgage on her house, acted as the settlement agent, and prepared the HUD-1 settlement statement for the December 31, 2010 closing.

In connection with the refinancing, on December 31, 2010, Jersey Mortgage Company wire-transferred \$122,863.82 into respondent's Amboy Bank trust account.² According to the complaint, Lewis's client trust ledger showed that, on December 31, 2010, respondent issued check no. 1777 to Wells Fargo, in the amount of \$119,239.80, to pay off Lewis's existing mortgage.³ The HUD-1 settlement statement also showed that the pay-off amount was transmitted to Wells Fargo.

Respondent, however, did not remit the check to Wells Fargo. Wells Fargo confirmed that it had not received the pay-off funds and that the mortgage had never been paid off.

On January 31, 2011, respondent's trust account balance was \$30,039.55, reflecting a shortage of approximately \$90,000 for the Lewis matter alone. Respondent used Lewis's refinance funds

² Exhibit 2, page 3, lists the bank as "1st Constitution Bank F/B/O."

³ The entry on Exhibit 3 appears to be \$119,329.80 rather than \$119,239.80.

for matters unrelated to Lewis's matter. Respondent was not authorized to use of the funds for any purpose, other than her refinancing.

On February 1, 2011, David Golub, Senior Vice President of Chicago Title Insurance Company (CTIC), contacted respondent about his failure to pay off the existing mortgage. As a result of their conversation, CTIC's counsel, Melissa Popkin, sent a letter to the OAE, dated February 1, 2011, expressing her belief that respondent may have misappropriated funds in two transactions for which CTIC had received claims. Popkins's letter was appended to Golub's February 1, 2011 certification. According to the complaint, Golub's certification stated the following:

- 1) Respondent admitted that there were shortages in his attorney trust account and that there was only \$70,000-\$80,000 in the trust account.
- 2) Respondent stated that he understood that, as a result of his actions, he was going to lose his license to practice law.
- 3) Respondent acknowledged that he did something wrong with respect to the two homeowners (Lewis and Poli) who had presented claims to CTIC and he understood that they were angry. He stated that he was trying to borrow money from friends and family to make up the shortfall in his trust account and he hoped and/or expected that he

would be able to make all parties whole within a month.

- 4) Respondent said he did not steal the money. Rather, he told Golub that he used the money to pay obligations of another client that he should not have paid.

(Certification of David Golub – Exhibit 5)

[CII-12.]⁴

The complaint charged that respondent knowingly misappropriated trust funds, failed to safeguard trust funds, failed to promptly deliver funds to a client or third person, and engaged in dishonesty, fraud, deceit and misrepresentation.

COUNT TWO

The Poli Refinancing

Respondent represented Barbara Poli in refinancing the first mortgage on her house. He acted as the closing agent and prepared the HUD-1 settlement statement for the January 11, 2011 closing.

On January 11, 2011, the Emigrant Mortgage Company wire-transferred \$227,551.86 into respondent's Amboy Bank trust account.

The HUD-1 settlement statement showed that respondent was to disburse \$215,392.63 to Barbara Poli. The Poli client trust

⁴ C refers to the ethics complaint, dated May 4, 2011.

ledger showed that on January 18, 2011, respondent issued check no. 1825 to Poli, in that amount. However, Poli never received the funds that she was entitled to receive from her closing.

On January 31, 2011, respondent's trust account balance was \$30,039.55, a shortage of approximately \$185,000 for the Poli matter alone. Respondent used the Poli refinance funds for matters unrelated to Poli's refinancing. Respondent was not authorized to use those funds for purposes other than Poli's refinancing.

The complaint charged that respondent knowingly misappropriated trust funds, failed to safeguard trust funds, failed to promptly deliver funds to a client or third person, and engaged in dishonesty, fraud, deceit and misrepresentation.

COUNT THREE

Failure to Cooperate with Ethics Authorities

On February 4, 2011, by facsimile transmission and UPS overnight mail, the OAE scheduled respondent's appearance for a demand audit of his attorney trust and business account records. Respondent did not reply to the OAE's correspondence, contact the OAE to request an adjournment, or appear for the scheduled demand audit.

On February 17, 2011, the OAE left a message on respondent's cell phone number (which had been provided by his

former partner), requesting that he return the call concerning his failure to appear at the OAE audit. Respondent did not call the OAE.

The complaint charged respondent with violating RPC 8.1(b) for his failure to reply to a lawful demand for information from a disciplinary authority.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent misappropriated funds in both the Lewis and Poli matters, which had shortages of \$90,000 and \$185,000, respectively. In both matters, respondent used the funds for purposes other than the refinancing of his clients' existing mortgages. Respondent's use of the funds was not authorized. He, therefore, is guilty of knowing misappropriation of trust funds and failure to promptly deliver funds to a client or third person, thereby violating RPC 1.15(a), RPC 1.15(b), and RPC 8.4(c). He also failed to cooperate with the OAE's investigation, a violation of RPC 8.1(b).

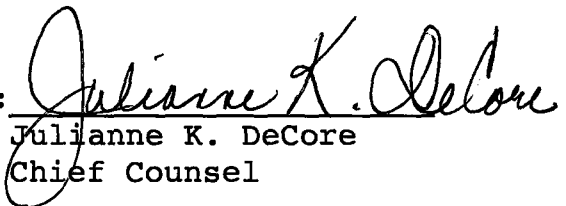
Under In re Wilson, supra, 81 N.J. 451 and In re Hollendonner, supra, 102 N.J. 21, we recommend that respondent

be disbarred for his knowing misappropriation of trust funds.

Members Stanton and Yamner did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

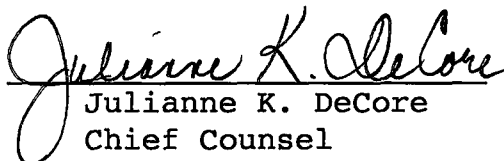
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Timothy J. Provost
Docket No. DRB 11-251

Decided: December 20, 2011

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Clark	X					
Doremus	X					
Stanton						X
Wissinger	X					
Yamner						X
Zmirich	X					
Total:	7					2


Julianne K. DeCore
Chief Counsel