SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-464

IN THE MATTER OF	:
MELVIN D. LuSANE	:
AN ATTORNEY AT LAW	:

Decision
Default [(R. 1:20-4(f)(1)]

Decided: June 29, 1998

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

The record in this matter was certified by the District VA Ethics Committee directly to the Disciplinary Review Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

Respondent has an extensive discipline history. Since his admission to the bar in 1972, he has been twice privately reprimanded (1981 and 1988) for violations of RPC 1.3 and RPC 1.4(a). Thereafter, he was publicly reprimanded for failure to answer an ethics complaint, as well as for violation of RPC 1.4(a) and RPC 1.16(d). In re LuSane, 124, N.J. 31 (1991). In addition, respondent was temporarily suspended on September 25, 1992, based on the alleged misappropriation of funds in the within case. On March 3, 1998, the Board forwarded a recommendation to the Court in Docket No. DRB 97-094 for respondent's

disbarment. That pending Supreme Court case concerned fourteen separate grievances, where respondent had agreed to represent clients and failed to pursue the matters. Disbarment, the ultimate discipline, has already been recommended and obviously cannot be imposed more than once. The Board has, nonetheless, concluded its review of this misappropriation case and is hereby supplementing its prior recommendation.

* * *

The complaint in this matter was mailed to respondent by regular and certified mail on September 25, 1997. The cover letter advised respondent that his failure to file an answer would constitute an admission of the charges and that the matter would proceed directly to the Board for the imposition of sanction, pursuant to R. 1:20-4(f). The certified mail was accepted on September 29, 1997 and bears a signature that appears to read "Evelyn LuSane." Although a second letter was sent on November 14, 1997, again requesting an answer to the complaint, there is no indication that respondent received that letter. However, the fact that the certified copy of the September 25 letter was received provides adequate assurance that service was properly made in this matter.

* * *

The underlying ethics matter charged respondent with knowing misappropriation of client funds in two instances. First, while acting as attorney for the East Orange Board of Water Commissioners, respondent accepted and deposited a check for $80,500 from Transcontinental Pipe Line Company. That check was deposited into his attorney trust

account on September 29, 1989. The Board of Water Commissioners did not demand the release of the escrow funds until July 1, 1992. The entire $80,500 was due at that time. In the nearly three years during which respondent held the funds in question, significant invasions of the trust account occurred. As an example, within seven months of the deposit, the balance in respondent's trust account was only $2,346.43.

When the Board of Water Commissioners demanded the release of the escrow funds, respondent did not comply with their instruction; his trust account did not contain sufficient funds to disburse the $80,500 at that time. By March 1993, criminal charges had been lodged against respondent who was arrested. Payment of the $80,500 was thereafter made from what the complaint describes as an "outside source." According to the complaint, when asked for an explanation for the apparent misappropriation of client funds, respondent admitted that he had "no extremely good reason" for removing the money from his trust account.

In a second matter, respondent represented William and Dorothy Hall in the purchase of real estate in Newark, New Jersey. The Halls gave respondent a check for $7,500 as a deposit, pursuant to the contract of sale. The check bore the reference "escrow deposit." When their mortgage application was rejected, the Halls requested the return of their money from respondent. Respondent neither returned the deposit nor communicated with the Halls. By November 4, 1992, respondent's trust account balance was at zero. At that time respondent should have held both $7,500 for the Halls and $80,500 for the Board of Water

Commissioners. He was, thus, out of trust by $88,000 on that date.

The Halls were later reimbursed by the Lawyers' Fund for Client Protection for the full $7,500.

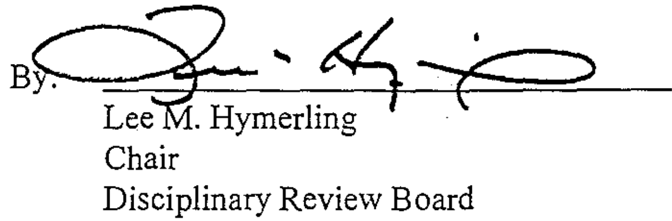
In both the Board of Water Commissioners matter and the Hall matter, respondent was charged with knowing misappropriation, in violation of RPC 1.15(a); dishonesty, deceit and misrepresentation, in violation of RPC 8.4(c); failure to safeguard client's funds, in violation of RPC 1.5(c); as well as violation of the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985).

* * *

Pursuant to R. 1:20-4(f), the allegations of the complaint are deemed admitted in light of respondent's failure to answer. The complaint properly supports the charged violations. Respondent violated RPC 1.15(a) and (c) and RPC 8.4(c) in both the Hall and the Board of Water Commissioners matters. Knowing misappropriation has been admitted by virtue of the default rule. There is no choice but to disbar respondent. In re Wilson, 81 N.J. 451 (1979); In re Hollendonner, 102 N.J. 21 (1985). Disbarment is, therefore, again unanimously recommended. As noted above, this recommendation supplements the Board's recommendation in DRB 97-094: under either DRB 97-094 or DRB 97-464, disbarment is the appropriate resolution. When both cases are considered simultaneously, disbarment is unavoidable.

The Board further determined to request respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 6/29/98

By: 
Lee M. Hymerling
Chair
Disciplinary Review Board