

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-084

IN THE MATTER OF
MARC K. BONDS
AN ATTORNEY AT LAW

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

Decided: December 4, 1996

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

Pursuant to R. 1:20-4(f)(1), the District VI Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. Service of the complaint was made by regular and certified mail to respondent's residence and office. All envelopes were returned either "unclaimed" or with a notation indicating that the addressee was unknown. Subsequently, a notice was published in both the New Jersey Lawyer and the New Jersey Law Journal on December 11, 1995, indicating that the DEC vice-chair would certify the record "in an ethics complaint against Mark K. Bonds" directly to the Disciplinary Review Board for imposition of sanctions, unless an answer to the complaint was filed within ten days of the date of the notice. Respondent nonetheless failed to file an answer, and the matter was certified to the Board on December 12,

1995.

The ethics complaint charged respondent with knowing misappropriation in a mortgage refinancing matter. Specifically, the complaint alleged that respondent was retained by Leroy Thompson in or about July 1987 to represent him in the refinancing of his mortgage loan, secured by property located at 31 Lexington Avenue, Jersey City. At the time of the refinancing, the property was encumbered by a \$39,000 mortgage to Inter County Mortgage Corporation. That mortgage was subsequently assigned to the Fleet Real Estate Funding Corporation ("Fleet"). Thompson applied for and received a mortgage commitment from Northeastern Mortgage Company ("Northeastern") for \$60,000.

On July 16, 1987, American Title Insurance Company ("American Title") issued a closing protection letter indemnifying Northeastern in the event respondent failed to follow Northeastern's mortgage closing instructions. The closing instructions specifically required respondent to pay the Fleet mortgage in full and to cancel the mortgage of record. Respondent was instructed not to close the loan unless the Fleet mortgage was paid off and Northeastern received a valid first lien on the property. On or about October 1, 1987, Northeastern's attorney, Michael Beatrice, forwarded to respondent his trust account check representing net loan proceeds in the amount of \$59,180. Respondent deposited the funds into his "business" trust account on October 5, 1987. The back of the check bore both Thompson's and respondent's endorsements.

According to the RESPA, closing on the loan occurred on September 28, 1987. The RESPA statement was prepared by respondent and listed him as settlement agent. Line 109 of the RESPA statement showed a mortgage payoff in the amount of \$38,508 to Fleet Mortgage.

However, Fleet Mortgage never received any mortgage proceeds to satisfy its first lien. The

Office of Attorney Ethics ("OAE") conducted a review of respondent's trust account bank statements from July 1987 through June 1988. None of these records showed any payments towards the Fleet mortgage. In fact, according to the OAE investigative report and the complaint, respondent's trust account records showed that, on December 3, 1987, the account balance fell to \$3,703, well below the \$38,508 needed to satisfy the Fleet mortgage. Furthermore, the account balance did not rise above the Fleet mortgage amount at any time between December 3, 1987 and June 28, 1988, when the account balance was \$23.36. Thus, as of June 28, 1988, respondent had misappropriated \$38,484.64 in Fleet mortgage funds.

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The record contains sufficient evidence that respondent engaged in knowing misappropriation of client trust funds.

Disbarment is the only appropriate discipline in cases involving knowing misappropriation. In re Wilson, 81 N.J. 451 (1979). "Such conduct is of so reprehensible a nature as to permit only one form of discipline." In re Ryan, 60 N.J. 378, 379 (1972). "Maintenance of public confidence in this Court and in the bar as a whole requires the strictest discipline in misappropriation cases." In re Wilson, supra, 81 N.J. at 461.

In light of the foregoing, the Board unanimously determined to recommend that respondent be disbarred. Two members did not participate.

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

Dated: 12/4/96

By: 

Lee M. Hymerling
Chair
Disciplinary Review Board