

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-088
District Docket No. XIV-04-131E

IN THE MATTER OF
ANDE R. ABRAHA
AN ATTORNEY AT LAW

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

Decided: June 23, 2005

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

This matter was before us on a certification of default
filed by the Office of Attorney Ethics ("OAE") pursuant to R.
1:20-4(f).

Respondent was admitted to the New Jersey bar in 1993. At
the relevant times, respondent practiced law from his home at 34
Park Terrace, West Orange, New Jersey 07040. Presently, he

resides at 316 Hoover Avenue, Unit 53, Bloomfield, New Jersey 07003.

Since May 7, 2004, respondent has been temporarily suspended pending final determination of all grievances pending against him and until further order of the Supreme Court. In re Abraha, 179 N.J. 509 (2004). Respondent has no disciplinary history.

On February 1, 2005, the OAE transmitted a copy of the complaint to respondent's Bloomfield home via regular and certified mail, return receipt requested. The signature on the return receipt card is illegible. The letter sent to respondent via regular mail was not returned. Respondent did not file an answer to the complaint.

On February 28, 2005, the OAE sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the OAE would certify the record directly to us for imposition of sanction. The certified letter, the green card, and the letter sent to respondent via regular mail have not been returned. Respondent did not file an answer.

On March 16, 2005, the OAE certified the record directly to us for the imposition of discipline pursuant to R. 1:20-4(f).

The one-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.5(b) (failure to communicate the basis or rate of the fee in writing), RPC 1.15(a) (commingling; failure to hold client funds in a separate account maintained in a financial institution in New Jersey; knowing misappropriation), the principles set forth in In re Wilson, 81 N.J. 451 (1979), RPC 1.15(b) (failure to promptly deliver to the client or third person funds that the client or third person was entitled to receive), RPC 1.15(d) (failure to comply with R. 1:21-6), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

On June 4, 2003, Samuel Oliveros and Northern Region Developers, LLC (Northern) entered into a contract of sale for the purchase of a West Orange single-family home. The purchase price was \$312,000. The agreed-upon deposit was \$15,600, \$1000 of which was paid by check at the time the agreement was signed. The remaining \$14,600 was to be placed in the trust account of Oliveros's attorney.

Oliveros retained respondent to represent him in the purchase. Respondent did not regularly represent Oliveros and

did not provide Oliveros with a writing setting forth the basis or the rate of the fee. Jonathan Mehl represented Northern. The closing took place on September 5, 2003.

Respondent did not maintain an attorney trust account in New Jersey, as required by R. 1:21-6. Instead, all monies related to the Oliveros transaction that respondent received in connection with the transaction, including the down payment, were deposited into respondent's personal checking account, which he shared with his wife, Jerusalem Gabreselassie. Between June 20 and October 2, 2003, a total of \$317,905.66 was deposited into respondent's account in connection with the Oliveros transaction.

As of July 1, 2003, respondent had received \$16,600¹ directly from Oliveros, and his checking account balance was \$16,782.85. Ten days later, respondent's checking account balance was \$14,646.51 as a result of respondent's invasion of the deposit funds.

In addition, on August 11, 2003, respondent received \$485 for the Oliveros transaction. From July 3, 2003 through the closing date of September 5, 2003, respondent's account balance

¹ The sum represents the \$1000 binder and \$15,600 deposit.

remained below the \$17,085 (\$16,600 + \$485) required to be held in trust for Oliveros. The invasion of these funds occurred when respondent issued personal checks and made debit card purchases and ATM withdrawals that totaled approximately \$2000.

As stated previously, the deal closed on September 5, 2003. Because respondent did not know how to prepare the HUD-1 Uniform Settlement Statement, Mehl prepared it instead. After the form was completed and the closing documents were signed, respondent tendered to Mehl his personal check in the amount of \$284,376.40, which was the amount due to the seller.² Mehl refused to accept the check. Instead, Mehl instructed respondent to deposit the gross amount due from the buyer (according to the settlement statement) directly into Mehl's attorney trust account.

According to the complaint, the gross amount due from the buyer was \$305,191.40.³ Yet, when Mehl inquired of respondent's bank, he learned that the balance in respondent's account was \$303,573.60, or short by \$1,617.80. On September 6, 2003, the

² The settlement statement shows that \$268,776.40 was due to the seller. The difference is the \$15,600 deposit.

³ In addition to the \$284,376.40 due the seller, \$18,240 was due two realtors, and \$2575 was due Mehl.

day after the closing, respondent requested and received from Oliveros \$3000 and then deposited into Mehl's trust account a bank counter check in the amount of \$305,191.40.

Later, on September 12 and October 2, 2003, respectively, respondent requested and obtained from Oliveros additional sums of \$7,001.49 and \$3,333.39. Against these funds, respondent paid his personal bills and made withdrawals for his own personal purposes, thereby invading and misappropriating the additional funds provided by Oliveros.

According to the OAE's investigation, respondent received a total of \$317,905.66 from or on behalf of Oliveros with respect to the transaction. Of this amount, respondent disbursed \$311,754.84 in connection with the transaction. Thus, respondent received \$6,150.82 more than he disbursed on behalf of his client. The complaint charged respondent with knowing misappropriation of those funds.

During the OAE's investigation, respondent acknowledged that he had deposited Oliveros's funds into his personal checking account. Respondent stated that he controlled the account's checkbook. However, respondent did not keep canceled checks, receipts from ATM transactions, or "evidence of any

other bank transactions." Moreover, respondent did not keep a register of the transactions or reconcile the account.

Also, respondent admitted, during the OAE's investigation, that he did not completely understand real estate matters in general or RESPA forms in particular. Indeed, since his admission to the bar in 1993, respondent had handled approximately ten landlord/tenant cases, all of which had been resolved. Respondent is licensed to practice law in New York, where he had handled about five immigration law matters since his admission to the New York bar.

As of September 2003, respondent's only open matter was the Oliveros transaction. This was the only real estate matter that respondent had ever handled, and he had handled no other matter that required him to place client funds into an attorney trust account.

During the OAE's investigation, respondent admitted that he commingled personal and client funds. He also acknowledged that, between July 1 and September 8, 2004, he invaded Oliveros's funds that were intended for the real estate closing. Respondent conceded that he was not competent to handle the Oliveros transaction and that he should have had an attorney trust account to hold the client's money.

Finally, respondent admitted that he collected the \$6,150.82 from Oliveros for the closing, that he did not disburse the funds in connection with the closing, and that he did not refund the monies that he took.

Respondent was properly served when the OAE mailed the complaint to his address on February 1, 2005. Inasmuch as respondent failed to file a verified answer to the complaint, the allegations are deemed admitted. R. 1:20-4(f). Moreover, the allegations set forth in the complaint support a finding that respondent engaged in unethical conduct.

Respondent violated RPC 1.5(b) inasmuch as he had not regularly represented Oliveros, and he did not communicate in writing the basis or rate of the fee for the real estate transaction either before or within a reasonable time after commencing the representation. In addition, respondent violated RPC 1.15(a) when he commingled his personal funds and the funds that were to be used for the Oliveros transaction and when he failed to hold client and third-party funds separately from his own in a separate bank account maintained in a New Jersey financial institution.

Respondent further violated RPC 1.15(a), RPC 8.4(c), and the rules set forth in In re Wilson, 81 N.J. 451, 455 n.1, 461

deliver them. With respect to RPC 1.15(d), respondent cannot be held responsible for recordkeeping violations pertaining to an attorney trust account inasmuch as he had no such account but used his personal checking account instead.

We conclude also that respondent did not violate RPC 1.1(a). Notwithstanding respondent's admission that he was not competent to handle a real estate transaction, respondent's handling of the Oliveros matter did not amount to gross neglect. The settlement statement was completed correctly (albeit by Mehl), and the closing went forward as planned on September 5, 2003. Thus, we dismiss the RPC 1.1(a) charge.

In sum, respondent violated RPC 1.5(b), 1.15(a), RPC 8.4(c), and the rules set forth in Wilson and Hollendonner.

In light of respondent's knowing misappropriation of client and escrow funds, we recommend that he be disbarred under Wilson, supra, 81 N.J. at 455 n.1, 461; Hollendonner, supra, 102 N.J. at 26-27.

We require respondent to reimburse the Disciplinary Oversight Committee for the costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

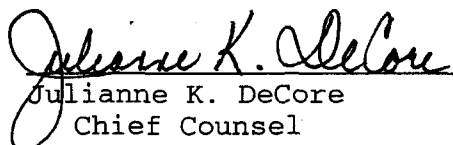
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X					
O'Shaughnessy	X					
Boylan	X					
Holmes	X					
Lolla	X					
Neuwirth	X					
Pashman	X					
Stanton	X					
Wissinger	X					
Total:	9					


Julianne K. DeCore
Chief Counsel