

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-260
District Docket No. IX-03-032E

IN THE MATTER OF
ROBERT J. HANDFUSS
AN ATTORNEY AT LAW

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

Decided: November 22, 2004

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

Pursuant to R. 1:20-4(f), the District IX Ethics Committee ("DEC") certified the record in this matter directly to us for the imposition of discipline, following respondent's failure to file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1984. His last known office address was 731 Highway 34, Matawan, New Jersey 07747. According to the ethics complaint, he does not currently maintain an office for the practice of law.

In 2000, respondent was reprimanded for gross neglect, lack of diligence, and failure to communicate with a client. In re Handfuss, 165 N.J. 569 (2000). Respondent was suspended for three months in 2001, for gross neglect, lack of diligence, failure to communicate with a client, failure to promptly deliver property to a client, failure to turn over a file and provide an accounting, failure to cooperate with disciplinary authorities, and misrepresentation. In re Handfuss, 169 N.J. 591 (2001). Most recently, in 2002, respondent was reprimanded for failure to promptly turn over third-party funds and failure to cooperate with ethics authorities. In re Handfuss, 174 N.J. 403 (2002). All of these matters proceeded as defaults.

On December 16, 2003, the DEC sent a copy of the complaint to respondent at his home address in Marlboro, New Jersey, by regular and certified mail, return receipt requested. The certified mail was returned unclaimed. The regular mail was not returned. Respondent did not file an answer.

On March 19, 2004, the DEC sent a second copy of the complaint to respondent by regular and certified mail, return receipt requested. Again, the certified mail was returned unclaimed and the regular mail was not returned. Respondent did not file an answer.

The DEC sent another letter to respondent on April 21, 2004, by certified and regular mail, notifying him that he had five days to file an answer to the complaint or his silence would be deemed an admission of the charges and the record would be certified to us for the imposition of discipline. The certified mail was returned unclaimed. The regular mail was not returned. Respondent did not file an answer to the complaint.

The two-count complaint charged respondent with violations of RPC 1.15(b) (failure to promptly deliver funds to a third person) and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

Respondent represented Diones and Beata Lazides as the purchasers of property from Leszek and Bozena Lesniowski. The closing occurred on December 14, 2001, at respondent's office.

As of the date of the closing, the Lesniowskis had not received their final water bill. Respondent, therefore, held in escrow \$250 from the sales proceeds to cover the estimated amount of the bill. The sellers agreed that respondent would hold the money in his trust account pending verification from them that they had paid the final water bill. The HUD-1 settlement statement showed the "water escrow" at line 516 under "Adjustments for Items Unpaid by Seller."

Shortly after the closing, Mrs. Lesniowski paid the final water bill and contacted respondent to have the funds disbursed. Respondent did not reply. Thereafter, on April 3, 2002, Mrs. Lesniowski forwarded to respondent a written printout from the water company showing that she had made the final payment. Mrs. Lesniowski requested that respondent send the escrowed funds to her at her new address. As of the date of the complaint, December 11, 2003, Mrs. Lesniowski had not heard from respondent.

According to the complaint, respondent failed to reply to the DEC's letters of October 15 and November 5, 2003, requesting a response to the grievance. Respondent was given an extension of time to reply, but still failed to do so. Finally, on November 17, 2003, the DEC left a telephone message requesting a reply to the grievance, to no avail. As of the date of the complaint, December 11, 2003, respondent had not submitted a reply to the grievance.

Service of process was properly made in this matter. The complaint contains sufficient facts to support a finding of the charged violations. Because of respondent's failure to file an answer to the complaint, the allegations are deemed admitted. R. 1:20-4(f)(1).

Respondent's failure to return the escrow funds to the Lesniowskis violated RPC 1.15(b) and his failure to reply to the DEC's requests for information about the grievance violated RPC 8.1(b). Significantly, respondent was disciplined (a reprimand) for identical violations in 2002. In re Handfuss, 174 N.J. 404 (2004). Respondent's misconduct in that matter arose from a real estate transaction in September 2000, in which he acted as the settlement agent. There, too, he failed to pay certain real estate charges and failed to cooperate with the DEC. The transaction in this matter occurred more than two years later. Thus, respondent has not learned from his mistakes and continues to ignore his professional responsibilities as well as the ethics system.

In that prior matter, we stated that failure to promptly turn over third-party funds generally results in the imposition of an admonition. See, e.g., In the Matter of E. Steven Lustig, Docket No. DRB 02-053 (April 19, 2002) (admonition where an attorney, while representing a party to a matrimonial action, failed to promptly turn over funds he had been holding in his trust account to satisfy an outstanding hospital bill; the attorney held the funds in his trust account for three and one-half years; he also practiced law while on the ineligible list and committed recordkeeping violations); In the Matter of Philip

J. Moran, Docket No. DRB 01-411 (February 11, 2002) (admonition where, in a real estate transaction, the attorney failed to turn over funds due to both the sellers and the buyers; the attorney also demonstrated a lack of diligence by not timely paying charges due after the closing; finally, he failed to return his clients' telephone calls); and In the Matter of Craig A. Altman, Docket No. DRB 99-133 (June 17, 1999) (admonition where the attorney failed to pay a medical provider out of settlement proceeds, despite having sent a letter of protection to the provider and being aware that the bill was outstanding).


We imposed a reprimand in respondent's prior matter because of his ethics history and the default nature of those proceedings. These same considerations apply here. An attorney's prior history and the default nature of the proceedings have served as aggravating factors warranting increased discipline. See In re Annenko, 167 N.J. 603 (2001) (six-month suspension in a default matter, where the attorney accepted a fee from her client to file a motion to re-open a bankruptcy petition but then did no work in the matter, failed to refund the retainer, and failed to keep the client informed about the status of the matter; the attorney had two private reprimands, a temporary suspension, a three-month suspension and a six-month suspension); and In re Breingan, 165 N.J. 538 (2000) (six-month

suspension in a default matter for failure to cooperate with disciplinary authorities and an ethics history that included a private reprimand, a reprimand, and two three-month suspensions).

It is unquestionable that respondent continues to ignore the ethics process. This is his fourth default in four years. Based on his total indifference to the disciplinary system, five members voted to impose a one-year suspension. Chair Mary J. Maudsley and Member Robert C. Holmes, Esq. determined that a six-month suspension sufficiently addresses respondent's ethics transgressions. Vice-Chair William J. O'Shaughnessy, Esq. and Member Matthew P. Boylan, Esq. did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

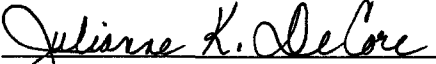
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Robert J. Handfuss
Docket No. DRB 04-260

Decided: November 22, 2004

Disposition: One-year suspension

Members	One-year Suspension	Six-month Suspension	Admonition	Disqualified	Did not participate
Maudsley		X			
O'Shaughnessy					X
Boylan					X
Holmes		X			
Lolla	X				
Pashman	X				
Schwartz	X				
Stanton	X				
Wissinger	X				
Total:	5	2			2


Julianne K. DeCore
Chief Counsel