

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 10-330  
District Docket No. XB-2009-0017E

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IN THE MATTER OF  
CHRISTOPHER J. McCARTHY  
AN ATTORNEY AT LAW

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Decision

Decided: March 11, 2011

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 District XB Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with having violated RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep the client reasonably informed about the status of the matter), RPC 1.15(b) (failure to promptly deliver funds in which the client or third person has an interest), and RPC 8.1(b)(failure to cooperate with an ethics investigation). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1989. He has no prior discipline.

Service of process was properly made in this matter. On June 14, 2010, the DEC sent a copy of the complaint, by certified and regular mail, to respondent's law office address, 15 South Plaza, 694 Route 15 South, Suite 205A, Lake Hopatcong, New Jersey 07849. The certified and regular mail was returned marked "Unclaimed."

On June 30, 2010, the DEC sent a copy of the complaint to respondent's home address, 6 Jessica Court, Lake Hopatcong, New Jersey 07849, by regular and certified mail. The certified mail receipt was returned signed on July 2, 2010. The signature is illegible. The regular mail was not returned.

On July 29, 2010, the DEC sent respondent a "five-day" letter to his home address, by both certified and regular mail, notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the matter would be certified directly to us pursuant to R. 1:20-4(f). The certified mail was returned marked "Unclaimed." The regular mail was not returned.

Respondent did not file an answer to the complaint.

According to the complaint, in early 2008, Louis and Florence J. Pasquin retained respondent to represent them in the sale of their house in Lake Hopatcong. The buyers were represented by Eric Hausman.

In order to close the sale, the Pasquins provided respondent with a \$250 check for any outstanding bill for water service. The \$250 was held in escrow by Hausman.

The settlement took place on June 30, 2008. A final water reading showed that the Pasquins did not owe any money for water service.

Thereafter, in September 2008, the Pasquins contacted respondent to request the return of their water escrow monies. Respondent told them that he did not have their funds "and implied that [] Hausman had improperly kept them."

Respondent did not offer to contact Hausman to inquire about the return of the funds.

In December 2008, the Pasquins called respondent to again request the return of the water escrow monies. During that conversation, respondent told The Pasquins that he had, in his possession, a \$250 check representing the escrow funds, and that he would send it to them immediately. According to the complaint, respondent received the water escrow funds from

Hausman "in early-to-mid-December 2008." The record contains a copy of Hausman's letter to respondent and a check to the Pasquins for \$250. Both documents are dated December 11, 2008. The record is silent on whether or not respondent negotiated the \$250 check.

Between approximately December 2008 and April 2009, the Pasquins called respondent twenty times to inquire about their escrow funds. In addition, they hand-delivered a letter to respondent requesting the return of their funds (the letter is not in the record).

Respondent failed to reply to the Pasquins' written and telephonic requests for information about the matter and never received the \$250 from respondent.

On February 28, 2009, the Pasquins filed a grievance against respondent. On July 27, 2009, the grievance and a request for a reply were sent to respondent via overnight delivery. Respondent signed for the delivery on July 28, 2009. He did not reply to the grievance.

On August 11, 2009, the grievance and a request for a reply were once again forwarded to respondent via overnight delivery. Respondent signed for the delivery on August 12, 2009. Once again, respondent did not reply.

On January 26, 27, 28, 29, and February 1, 2010, the DEC attempted to reach respondent by telephone, at an undisclosed number, seeking information about the matter. Respondent did not answer the telephone. The DEC was unable to leave a message for him because his voice-mail box was full.

On January 27, 2010, the DEC sent respondent an email requesting his reply to the grievance, but respondent did not reply.

On March 3, 2010, the DEC sent a final letter to respondent by certified mail, to his office address, requesting his reply to the grievance. That letter was returned marked "Undeliverable." Respondent never replied to any of the DEC's requests for information.

In the record is a March 3, 2010 letter from Hausman to the ethics investigator, Leslie Ann Lajewski, enclosing a new check for \$250, made payable to "Louis & Florence Pasquin," with a letter indicating that it represented a full refund of their water escrow.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer 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).

On December 11, 2008, Hausman sent respondent his trust account check for the Pasquins' \$250 escrow. Respondent never forwarded the funds to his clients, despite their many efforts, over the ensuing months, to obtain information from him. Respondent's failure to turn over the escrow funds to his clients violated RPC 1.3 and RPC 1.15(b).<sup>1</sup>

Respondent also failed to reply to the Pasquins' twenty telephone calls and written correspondence, as they attempted to obtain information from him about the water escrow. Respondent's conduct in this regard violated RPC 1.4(b).

Finally, respondent failed to reply to numerous requests from the DEC for information about the case and, later, allowed the matter to proceed to us a default, a violation of RPC 8.1(b).

In all, respondent violated RPC 1.3, RPC 1.4(b), RPC 1.15(b), and RPC 8.1(b).

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<sup>1</sup> It is not known whether the funds were kept intact in respondent's trust account.

Without more, failure to properly deliver funds to clients or third persons (RPC 1.15(b)) has resulted in an admonition. In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney failed to promptly deliver balance of settlement proceeds to client after her medical bills were paid) and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for three-and-a-half years, attorney held in his trust account \$4,800 earmarked for the payment of a client's outstanding hospital bill).

Admonitions have also been imposed for lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, if the attorney did not have a disciplinary record. See, e.g., In the Matter of Howard M. Dorian, DRB 95-216 (August 1, 1995) (attorney did not inform his client that her case had been mistakenly dismissed as settled, did not reply to her inquiries about the matter, and failed to cooperate with the investigation of the grievance; the attorney also failed to withdraws counsel and delayed the return of the file for almost five months) and In the Matter of Richard J. Carroll, DRB 95-017 (June 26, 1995) (attorney lacked diligence in handling a personal injury action, failed to properly communicate with the client, and failed to reply to the

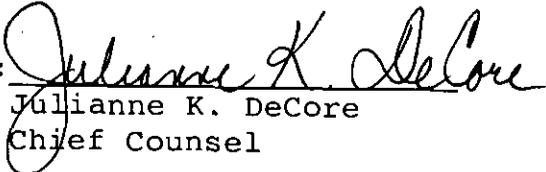
grievance; the attorney also failed to comply with the new lawyer's numerous requests for the return of the file).

For respondent's lack of diligence, failure to communicate with the clients, failure to promptly return their funds, and failure to reply to the grievance, only an admonition might have been sufficient. Here, however, there is the additional element of respondent's default. In a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6).

We, therefore, determine that a reprimand is the appropriate discipline in this case.

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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Christopher J. McCarthy  
Docket No. DRB 10-330

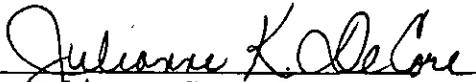
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Decided: March 11, 2011

Disposition: Reprimand

Members	Disbar	Reprimand	Censure	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				

  
Julianne K. DeCore  
Chief Counsel