SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-162
District Docket No. XIV-2010-0152E

IN THE MATTER OF	
KENNETH H. BROOKMAN	
AN ATTORNEY AT LAW	

Decision

Decided: November 1, 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 Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with having violated RPC 1.15(a) and RPC 8.4(c) (knowing misappropriation of trust account funds). We determine to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1956. He has no prior discipline. He has been temporarily suspended from the practice of law since July 8, 2010. In re Brookman, 202 N.J. 144 (2010).

Service of process was proper in this matter. On July 15, 2010, the OAE filed an ethics complaint against respondent. On August 6, 2010, respondent filed a verified answer admitting certain factual allegations, but leaving the complainant to its proofs regarding knowing misappropriation. Following a pre-hearing conference, a case management order was entered on October 25, 2010. Thereafter, on December 2, 2010, the OAE submitted a pre-hearing report, along with a proposed exhibit list. On December 20, 2010, respondent sent the special master a letter withdrawing his answer to the complaint. He gave no explanation for his action. On February 8, 2011, the special master certified the matter directly to us for the imposition of discipline, pursuant to R. 1:20-4(f)(2).

On July 7, 2011, Office of Board Counsel (OBC) sent a letter to respondent, advising him that the matter had been certified directly to us and giving him an opportunity, until July 27, 2011, to file a motion to vacate the default. The letter was sent to respondent by certified mail at his home address, listed in the attorney registration records as 27 Eton Drive, North Caldwell, New Jersey 07006. The certified mail green card was signed by a person named "Brookman," on July 11, 2011.

Thereafter, on July 25, 2011, OBC published a notice in the New Jersey Law Journal, giving respondent notice that this matter had been scheduled for our review pursuant to R. 1:20-4(f). The notice further advised respondent that he had until August 8, 2011 to file a motion to vacate the default. Both the notice and the July 7, 2011 letter to respondent advised him that, if he did not act, the matter would proceed on the existing record for the imposition of discipline. Finally, the notice and letter advised respondent that, generally, in a default matter, the discipline is enhanced to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor (citing In re Kivler, 193 N.J. 332, 338 (2008)).

Respondent did not file a motion to vacate the default or otherwise contact OBC.

I. The Belford Estate

Count one of the complaint charged respondent with knowing misappropriation of client funds and/or escrow funds, in violation of RPC 1.15(a), RPC 8.4(c), and In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985).

On an undisclosed date, respondent was retained to

represent the estate of Leonard Belford, who died on July 28, 2003. Belford's last will and testament placed his estate in a testamentary trust for the benefit of his wife. Upon her death, the trust assets were to be disbursed pursuant to the will.

Mrs. Belford died on March 19, 2007. All of the Belford estate funds ($161,581.03) were deposited into respondent's trust account by May 16, 2008.

On July 31, 2008, respondent wrote to June Jaeger, a beneficiary of the Belford estate, advising her that she was entitled to a $74,539.07 bequest. Respondent enclosed a refunding bond and release form, as well as a consent form, waiver and release of trustee form for Jaeger's signature. Respondent advised Jaeger that he would make the distribution to her once all beneficiaries returned their respective executed documents to him.

On September 8, 2008, Jaeger signed and returned the documents to respondent. He promised Jaeger that she would receive her share of the funds by April 30, 2009.

Later, in a July 23, 2009 letter to Jaeger, respondent informed her that, due to "unforeseen circumstances," he had not made the April 2009 distribution. He assured her that she would absolutely receive the funds by October 15, 2009, a date he

called the "drop dead" date for payment.

When Jaeger did not receive her bequest, she contacted respondent, who advised her that he would definitely make payment, with interest, by December 31, 2009. When he failed to do so by January 2010, Jaeger contacted him again. Respondent then moved the distribution date to February 19, 2010.

According to the complaint, respondent never gave Jaeger her share of the estate funds. Rather, he admitted that he had used Jaeger's funds to pay for his own personal and business expenses. Jaeger never authorized respondent to use the funds.

On November 30, 2008, when respondent should have been holding Jaeger's $74,539.07 in the trust account on her behalf, his trust account balance was only $44.19. On April 19, 2010, the balance in that account fell to a mere $29.91.

Between May 2008 and July 15, 2010, the date of the formal ethics complaint, respondent regularly issued trust account checks payable to himself. According to the complaint, he did not replace the embezzled funds.

II. The Skinder to Bannworth Matter

Count two of the complaint charged respondent with knowing misappropriation of client funds and/or escrow funds, in

violation of RPC 1.15(a) and RPC 8.4(c), and the principles of In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21.

At an undisclosed time, respondent was retained to represent Richard and Sondra Skinder in the sale of a Millburn property to Leigh Mary Bannworth. The sale contract required Bannworth to provide respondent with a $17,600 deposit, to be held in his trust account, pending the February 5, 2010 closing of title.

On January 12, 2010, Bannworth's attorney sent respondent the deposit, which he placed in his trust account on January 14, 2010. Prior to the deposit, respondent's trust account balance was $14.91.

Between the deposit date and the February 5, 2010 closing date, respondent made the following eight disbursements from his trust account:

a) January 19, 2010, check #9412 to PNC Bank for $3,000;

b) January 21, 2010, check #9413 to respondent for $600;

c) January 25, 2010, check #9414 to respondent for $600;

d) January 27, 2010, check #9415 to respondent for $225;

e) January 28, 2010, check #9416 to respondent for $250;

f) January 29, 2010, check #9417 to respondent for $500;

g) February 2, 2010, check #9418 to respondent for $850; and

h) February 3, 2010, check #9419 to respondent for $1,000.

[C¶23;Ex.13.][1]

Respondent did not use the above funds, totaling $7,025, for the real estate transaction. Rather, he converted them to his own personal use. According to the complaint, Bannworth, the buyer, did not authorize respondent to utilize the funds, other than for the real estate transaction.

Respondent failed to replace the Bannworth deposit money or "to pay the seller all of the funds due."

The facts recited in the complaint support the charges of unethical conduct. Respondent's withdrawal of his answer and subsequent failure to file a motion to vacate the default in this matter are tantamount to 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).

In the Belford estate matter, respondent was supposed to hold $74,539.07 in his trust account on behalf of beneficiary

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[1] "C" refers to the July 15, 2010 formal ethics complaint.

Jaeger, but converted those funds for his own personal use. Only $29 remained in the trust account on behalf of Jaeger, at the time the complaint was filed.

In the Skinder to Bannworth real estate transaction, respondent was obligated to keep a $17,600 buyer's deposit inviolate in his trust account, pending closing of title. Nevertheless, he wrote eight checks to himself from those funds, totaling $7,025. His use of the funds was unauthorized.

In these two matters, respondent stole $81,535.07 ($74,510.07 plus $7,025) in client and escrow funds held in his attorney trust account for the benefit of clients and third parties. In so doing, he violated RPC 1.15(a) and RPC 8.4(c), and the principles of In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21.

The theft of client funds constitutes knowing misappropriation. In re Wilson, supra, 81 N.J. at 455 n.1 (misappropriation "means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom"). In 1985, the Court expanded the Wilson rule to include escrow funds. In re Hollendonner, supra, 102 N.J. 21.

Here, respondent converted $81,535.07 in client and escrow funds to his own use. In so doing, he violated the principles of Wilson and Hollendonner, for which he must be disbarred. We so recommend to the Court.

Members Stanton and Clark did not participate.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kenneth H. Brookman
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Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Clark						X
Doremus	X					
Stanton						X
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	7					2

By Julianne K. DeCore
Chief Counsel