

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-390
District Docket Nos. XIV-2010-0425E,
XIV-2010-0518E and XIV-2010-0581E

IN THE MATTER OF :
: AMEDEO ANTHONY GAGLIOTI :
: AN ATTORNEY AT LAW :
:

Decision

Decided: May 1, 2012

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 three-count amended complaint charged respondent with violating RPC 1.15(a)(knowing misappropriation of trust and escrow funds), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985).

For the reasons expressed below, we recommend that the Court disbar respondent.

Respondent was admitted to the New Jersey bar in 1982. At the relevant time, he maintained law offices in Morristown and Elizabeth, New Jersey.

Although respondent has no history of discipline, he was temporarily suspended on November 16, 2010. In re Gaglioti, 204 N.J. 73 (2010).

Service of process was proper in this matter. According to the certification of the record, on May 24, 2011, the OAE mailed copies of the ethics complaint, by regular and certified mail, to respondent's office addresses at 113 Headquarters Plaza, Suite 113, Morristown, New Jersey 07960, and 317 Christine Street, Elizabeth, New Jersey 07201. The regular and certified mail sent to the Morristown address was returned marked "Return to Sender - Vacant." The regular and certified mail sent to the Elizabeth address was returned marked "Return to Sender - Not Deliverable as Addressed - Unable to Forward."

On July 21, 2011, the OAE also mailed the complaint, by regular and certified mail, to respondent's home address, 419 Otisco Drive, Westfield, New Jersey 07090. The letters sent by regular and certified mail were returned marked "Return to Sender - Not Deliverable as Addressed - Unable to Forward."

On June 24, 2011, the OAE published a notice of the amended complaint in the Daily Record and, on June 27, 2011, in the New Jersey Law Journal.

On August 30, 2011, the OAE mailed copies of an amended complaint, by regular and certified mail, to respondent's Morristown, Elizabeth, and Westfield addresses. The regular mail sent to the Morristown address was returned marked "Return to Sender - Not Deliverable as Addressed - Unable to Forward." The certified mail was returned marked "Other - Vacant."

As of the date of the certification of the record, October 24, 2011, the regular mail sent to the Elizabeth address had not been returned. However, the certified mail sent to that address was returned marked "Return to Sender - Insufficient Address." The letters sent by regular and certified mail to respondent's home address were returned; each was marked "Return to Sender - Not Deliverable as Addressed - Unable to Forward."

Once again, notice by publication was made in the Daily Record and New Jersey Law Journal, on September 6, 2011 and September 12, 2011, respectively.

As of the date of the certification of the record, October 24, 2011, respondent had not filed an answer to the ethics complaint.

We now turn to the facts of this matter.

Respondent maintained attorney trust and business accounts at Capital One Bank in Jersey City, New Jersey.

THE COLE TO CALDERON MATTER (DOCKET NO. XIV-2010-0425E)

Respondent represented Javier William Calderon in the purchase of property located in Elizabeth, New Jersey. The seller, Johnnie Cole, was represented by Bill Fenstermaker. The closing took place on July 9, 2010.

Calderon had given respondent a \$9,000 check, dated May 7, 2010, representing a portion of the \$10,000 deposit/earnest money. On May 10, 2010, respondent deposited the check into his trust account.

Prior to May 18, 2010, respondent had a \$1,991.26 negative balance in his business account. On that date, he wire-transferred \$9,000 from his trust account into his business account, thereby bringing his trust account balance to \$2,201.81. By May 25, 2010, he had dissipated the entire \$9,000 deposit by making unauthorized disbursements from his business account that were unrelated to the Cole-to-Calderon real estate transaction.

In connection with the transaction, respondent also received a \$62,340.85 check from Vilma Callan, dated July 7, 2010.¹ On July 7, 2010, he deposited the check into his trust account.

¹ The amended complaint does not identify Callan's relationship to the parties or involvement in the transaction.

The HUD-1 settlement statement showed a tax lien of \$15,282.36, which respondent failed to pay. Instead, without authorization, he used \$15,282 for his personal purposes.

On July 22, 2010, respondent had a \$678.16 negative balance in his trust account.

The complaint charged respondent with knowingly misappropriating \$24,282 of client and escrow funds, that is, the \$9,000 deposit and the \$15,282 from the unpaid taxes.

THE CHI CORPORATION MATTER (DOCKET NO. XIV-2010-0581E)

CHI Corporation (CHI) agreed to lend LB Investment I (LB) \$542,310 to purchase property, in Orange, New Jersey, from Main Bell, LLC. The purchase price was \$850,000. Within a few weeks after that purchase, LB planned to resell the property to Making a Difference, LLC for \$1,400,000.

LB executed a note, promising to pay CHI \$657,432 on or before July 28, 2010, the proposed closing date for the sale to Making a Difference. The parties intended that, once the sale to Making a Difference was consummated, LB would repay the loan from CHI from the sale proceeds. LB executed a mortgage in favor of CHI to secure the note. Respondent notarized the mortgage document.

Respondent was the escrow agent for both transactions. In correspondence dated May 14, 2010, directed to "Whom it May

Concern," respondent acknowledged that he was holding, in his trust account, \$500,000 in earnest money on behalf of Making a Difference. In correspondence dated June 21, 2010, also to "Whom it May Concern," respondent acknowledged holding \$335,000 in earnest money on behalf of LB.

On July 27, 2010, CHI, through its agent Old School Title, wire-transferred \$542,310.01 into respondent's Capital One trust account. The purchase of the property from Main Bell, however, was never consummated. Respondent did not return the \$542,310.01 to CHI. Instead, on July 27, 2010, without authorization, he disbursed \$15,000 to himself. In addition, from July 27, 2010 to July 30, 2010, he made seven additional unauthorized disbursements, totaling \$533,507.01, to individuals not related to the transaction.

In an August 31, 2010 email to CHI, respondent admitted that he was not holding \$500,000 in escrow, as he had previously certified. The email claimed that, for the past two years, he had "been working with the FBI mortgage fraud Unit."

The complaint charged respondent with the knowing misappropriation of escrow and client trust funds.

THE BURWELL MATTER (DOCKET NO. XIV-2010-0518E)

Respondent was the settlement agent for an August 5, 2010 closing for the sale of an East Orange property from La Wanda

Burwell to Kemp Midgett. Burwell was to receive \$226,950 from the sale.

On August 5, 2010, mortgage proceeds totaling \$230,804.69 were wire-transferred into respondent's Capital One Bank trust account. On August 6, 2010, respondent made two wire transfers to Burwell, totaling \$144,385.98 (\$115,000 and \$29,385.98), but failed to disburse the \$82,564.02 balance due to her. That amount did not remain intact in his trust account. On August 9, 2010, respondent transferred \$77,000 from his trust account into his business account, leaving a balance of only \$42,919.11 in his trust account. Respondent then used the \$77,000 for his own purposes, without being authorized to do so. As of August 31, 2010, respondent's business account balance was \$15.72.

As of the date of the amended complaint, August 30, 2011, Burwell had not received the funds to which she was entitled, \$82,564.02. Moreover, as of August 30, 2011, respondent's trust account balance was zero.

According to the amended complaint, altogether, respondent knowingly misappropriated a minimum of \$640,156.39 of client and escrow funds (CHI - \$542,310.01; Cole to Calderon - \$15,282.36; and Burwell - \$82,564.02).

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

The complaint alleged facts that clearly support a finding that respondent misappropriated client and escrow funds in each of the three matters, violations of RPC 1.15(a) and RPC 8.4(c). Under In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21, we recommend that he be disbarred for his knowing misappropriation of client and escrow funds.

Chair Pashman 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
Bonnie C. Frost, Vice Chair

By: 
Julianne K. DeCore
Chief Counsel

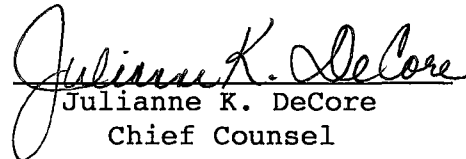
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Amedeo A. Gaglioti
Docket No. DRB 11-390

Decided: May 1, 2012

Disposition: Disbar

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman						X
Frost	X					
Baugh	X					
Clark	X					
Doremus	X					
Gallipoli	X					
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	8					1


Julianne K. DeCore
Chief Counsel