

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-008
District Docket Nos. XIV-2011-0114E,
XIV-2011-0120E, and XIV-2011-0334E

IN THE MATTER OF :
YONG-WOOK KIM :
AN ATTORNEY AT LAW :
:

Decision

Decided: May 17, 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 four-count complaint charged respondent with failure to appear for a demand audit and to produce requested documents (RPC 8.1(b)) and, in three separate client matters, knowing misappropriation of client or escrow funds held in his trust account (RPC 1.15(a), RPC 8.4(c), In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985)). We voted to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 2005. He has no prior final discipline. On April 6, 2011, he was temporarily suspended for failure to cooperate with the OAE. In re Kim, 205 N.J. 266 (2011).

Service of process was proper in this matter. On October 5, 2011, and in accordance with R. 1:20-7, an amended formal complaint was sent to respondent at his home address, 45-15 40th Street, #1-R, Sunnyside, New York 11104. On that same date, the complaint was sent to respondent at his last known office address listed in the attorney registration form, 580 Sylvan Avenue, Suite 2-G, Englewood Cliffs, New Jersey 07632. The complaints were sent by certified mail, return receipt requested, and regular mail.

The certified mail sent to respondent's home address was returned marked "Attempted Not Known." The certified mail sent to respondent's office address was returned marked "Not Deliverable as Addressed-Unable to Forward." The regular mail sent to respondent's home address was returned marked "Attempted Not Known." The regular mail sent to his office address was returned marked "Not Deliverable as Addressed-Unable to Forward."

On November 23, 2011, a Disciplinary Notice to Respondent was published in The Record, in Hackensack, Bergen County. The notice informed respondent of the existence of the complaint and instructed him to contact the OAE immediately to secure a copy of it. The notice further informed respondent that an answer had to be filed within twenty-one days from the date of the publication of the notice and that, pursuant to R. 1:20-4(f)(1), his failure to do so would be deemed an admission of the allegations of the complaint. In addition, the matter would be certified directly to us for the imposition of discipline. On November 28, 2011, a similar notice was published in the New Jersey Law Journal.

Respondent never filed an answer.

I. Respondent's Failure to Cooperate With Ethics Authorities

In February 2011, TD Bank notified the OAE of two overdrafts in respondent's trust account.

On February 22 and March 9, 2011, the OAE investigator wrote to respondent, asking for a written explanation of the overdrafts. Respondent failed to comply with the OAE's request. Therefore, on March 11, 2011, the OAE notified respondent that he should appear at the OAE's offices for a March 18, 2011

demand audit and bring with him certain books and records for review. The letter was sent via facsimile, certified and regular mail, and an oral message was left on respondent's voice mail at his place of business. Nevertheless, respondent failed to appear for the demand audit, and failed to produce the client ledger cards, client files and other documentation requested by the OAE. Some documents were later obtained by subpoena.

II. The Jiri and Nohemy Bezruc Matter

Respondent represented Jiri and Nohemy Bezruc in the purchase of property in River Edge, New Jersey. Toward that end, on September 22, 2010, respondent placed their \$63,000 deposit check into his trust account.

On December 3, 2010, three trust account checks unrelated to the Bezruc transaction were cleared for payment: check #2284, dated October 23, 2010, payable to the Borough of North Haledon (\$2,260.72); check #2312, dated November 29, 2010, payable to Moon Massage Therapy LLC (\$22,327.50); and check #2328, dated November 29, 2010, payable to Maria Nieves (\$27,089.54). Those disbursements were unrelated to the Bezruc transaction.

After those checks cleared, as of December 3, 2010, the trust account balance fell to \$49,845.36, an amount \$13,154.64 short of that required to be held for the Bezruc alone.

On December 6, 2010, respondent issued trust account checks #2311, payable to Ziyung Goo (\$39,000), and #2319, payable to Impoc (\$100). On the same date, respondent transferred \$9,000 from his trust account to his business account. None of these disbursements were related to the Bezruc transaction.

Once checks #2311 and #2319 were honored, the balance in respondent's trust account was only \$1,745.36, \$61,254.64 less than the amount required to be held for the Bezruc alone. On February 9, 2011, the Bezruc cancelled the real estate transaction. They never knew about or consented to respondent's use of their funds for anything other than the deposit.

On March 8, 2011, knowing that he did not have sufficient funds in his trust account, respondent issued trust account check #2343 for \$63,000, payable to Maryann Virgona, the Bezruc's subsequent counsel, but advised Virgona not to deposit the check until the next day. When Virgona attempted to negotiate the check the next day, it was returned for insufficient funds.

The complaint alleged that respondent knowingly converted the Bezruc's funds to his own use, without their knowledge or permission, which constituted knowing misappropriation of client funds.

III. The Chang Sun Lim Matter

In December 2010, Chang Sun Lim retained respondent to represent him in the purchase of property in Ridgewood from Barbara Malungu and Alexa Mbowa. The closing was held on December 14, 2010.

On the closing date, the lender wired \$393,785.59 into respondent's trust account for the transaction. Of those funds, \$265,954.84 was supposed to be paid to Citibank, on account to the Malunga and Mbowa mortgage. Respondent, however, failed to pay Citibank. From December 14 through December 23, 2010, he invaded the trust account funds on nine separate occasions, using \$118,714.23 of the funds for his own purposes.

From December 28, 2010 to February 10, 2011, respondent invaded the trust account twenty-one more times, in amounts totaling \$170,000, and then placed the funds in his business account. From there, he converted the funds to his own personal

use, including making personal payments to the Borgata and Taj Mahal casinos in Atlantic City.

By March 9, 2011, respondent had completely depleted his trust account. His use of the funds was unauthorized.

From December 14, 2010 through March 9, 2011, all of the funds in respondent's trust account belonged to clients/third parties. According to the complaint, respondent's unauthorized use of the trust funds amounted to knowing misappropriation.

IV. The Sam Jung Lee Matter

Respondent represented Sam Jung Lee in the sale of property located at 310 Thornton Court, Edgewater. The buyer, Meng Ru, was represented by Frank Atchenson.

On December 14, 2010, Atchenson sent Ru's deposit (\$59,500) to respondent, which he placed in his trust account. On December 28, 2010, Ru gave respondent an additional \$1,000 toward the purchase price, which monies respondent did not deposit in either his trust or business account.

From December 14, 2010 until January 10, 2011, respondent made twenty electronic transfers, totaling \$170,000, from his attorney trust account to his business account, which he then used for personal expenses and at the Borgata and Taj Mahal

casinos, in Atlantic City. After those electronic transfers, on January 10, 2011, the trust account balance was \$56,146.95, or \$4,353.05 less than that required to be held for Ru alone.¹

Between January 10 and 20, 2011, respondent made five transfers, totaling \$42,000, from his trust account to his business account. He then converted the funds to his own use to pay the Borgata and Taj Mahal casinos.

Respondent appeared at the closing on March 8, 2011, without Ru's \$60,500 down payment. Instead, he presented Atchenson, the buyer's attorney, three business checks totaling \$17,780.31, which Atchenson refused to accept. Respondent then left the closing, not to return.

By March 9, 2011, respondent had totally depleted his trust account to a zero balance, \$60,500 less than was required to be held for Ru alone. On that same date, his business account was also completely depleted.

The complaint alleged that respondent knowingly converted the trust funds to his own personal use.

¹ The complaint figure (\$3,353.05) does not take into account the \$1,000 payment that respondent received, but did not deposit into the trust account.

According to the complaint, respondent's conduct constituted knowing misappropriation of escrow funds.

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).

In three matters, between September 2010 and March 2011, respondent knowingly misappropriated hundreds of thousands of dollars of both client and escrow funds from his trust account. In the Bezruc matter, respondent received a \$63,000 down payment from his clients for the purchase of a property in River Edge. In the Lim matter, as attorney for the buyer of a property in Ridgewood, respondent received \$393,785.59, representing the loan proceeds for the purchase. Finally, in the Lee matter, as attorney for the seller of a property in Edgewater, respondent received \$60,500 from the buyer to be held in trust as a down payment on the purchase.

None of the clients or parties whose funds respondent held in trust in these three matters knew about or authorized him to use their funds for purposes other than the real estate transactions at hand. The funds that respondent received on

account of the above three transactions (\$63,000 + \$393,785.59 + \$60,500), totaling \$517,285.59, were to be held inviolate in the trust account, pending completion of the transactions.

Yet, between the Bezruc retention (September 2010) and the Lee retention (March 2011), respondent wrote numerous trust account checks to pay for personal expenses unrelated to these transactions. He also made scores of improper transfers of client and escrow funds into his business account, from which he converted the funds to his own use to pay for personal expenses, including large payments for his own debts to two New Jersey casinos.


As of March 9, 2011, respondent had completely emptied both his trust and business accounts, converting \$517,285.59 of client and escrow funds to his own use. For his knowing misappropriation of client and trust funds, respondent must be disbarred. In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21. We so recommend to the Court.²

Member Doremus did not participate.

² In addition, respondent failed to cooperate with the OAE investigation and allowed these matters to proceed to us as a default. In so doing, he violated RPC 8.1(b).

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

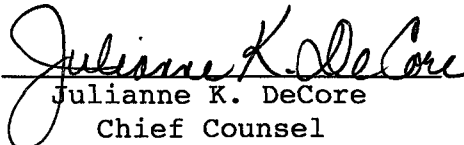
In the Matter of Yong-Wook Kim
Docket No. DRB 12-008

Argued: March 15, 2012

Decided: May 17, 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