

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-259
District Docket No. XIV-2010-0328E

IN THE MATTER OF
JEFFREY P. SQUITIERI
AN ATTORNEY AT LAW

:
:
:
:
:
:
:
:
:
:

Decision

Argued: November 15, 2012

Decided: January 9, 2013

Missy Urban appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper service.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey. This matter came before us on recommendation for discipline (disbarment) filed by the District V-A Ethics Committee (DEC). In a personal injury matter, respondent was charged with knowing misappropriation of client funds, in violation of RPC 1.15(a) and In re Wilson, 81 N.J. 451

(1979), and In re Hollendonner, 102 N.J. 21 (1985); failure to promptly deliver funds to which the client was entitled (RPC 1.15(b)); false statement of material fact in connection with a disciplinary matter (RPC 8.1(a)); failure to disclose a fact necessary to correct a misapprehension (RPC 8.1(b)); conduct involving dishonesty, fraud, deceit, and misrepresentation (RPC 8.4(c)); recordkeeping violations (RPC 1.15(d) and R. 1:21-6); and failure to cooperate with ethics authorities (RPC 8.1(b)). We recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1994. On November 16, 2010, he received a censure, in a default matter, for misconduct in five matters, including gross neglect, lack of diligence, failure to communicate with clients, and failure to promptly deliver funds to a third party in one of the matters. In re Squitieri, 204 N.J. 219 (2010).

The facts are as follows:

On November 1, 2009, Guillermo Henao was raking leaves when he was struck by an automobile traveling at about fifty miles per hour. He received severe bodily injuries.

On November 5, 2009, Henao's son, Victor, retained respondent to file a personal injury action on his father's behalf. The case was settled for \$100,000, in December 2009.

On December 22, 2009, respondent received a settlement check for \$100,000 from Travelers Insurance Company (Travelers), representing the entire Henao gross settlement proceeds.

Although respondent did not admit it in his answer, he did not deposit the Travelers settlement check into his trust account at JP Morgan Chase Bank (Chase), as he had closed that account two years earlier. Instead, on January 13, 2010, respondent deposited the Travelers settlement check into an attorney trust account that he maintained at NVE Savings Bank (NVE).

OAE investigator Wanda Riddle testified, at the DEC hearing that, when the OAE requested copies of respondent's Chase trust account bank statements, he provided fabricated bank statements:

[W]hen I looked through the statements that he provided I didn't see any deposits in here representing the \$100,000 settlement monies, so then it occurred to me that this account was either not the account that he deposited the monies into or he had fabricated the account in some fashion. So after that I then attempted to try to determine where the Henao settlement monies had been deposited. What I did is I contacted [Travelers] to get a copy of the settlement draft and when I got that settlement draft I couldn't determine based on that where the monies had gone. I then contacted Care One and obtained a copy of the \$12,000 check that respondent disbursed to them and from that check I then

determined that Mr. Squitieri had used an account with NVE Bank. I then subpoenaed those account records and that's when I discovered that the Henao settlement funds had been deposited into the NVE account.

[T138-11 to T139-5.]¹

In September 2010, respondent furnished the OAE with statements alleged to have been from his Chase trust account. Under cover letter from his attorney dated September 27, 2010, those statements covered the period from February 2010 through July 2010. Riddle knew that the statements were false, because the account had been closed since 2007. Respondent did not provide the OAE with bank statements from NVE or disclose its existence to the OAE.

OAE investigator Riddle testified that respondent made only one disbursement from the NVE trust account, on account of the Henao matter: check #1040, dated January 21, 2010, in the amount of \$12,000. The check reflected the payment of an invoice from a medical facility, Care One, where Henao received rehabilitative treatment for his injuries.

¹ "T" refers to the transcript of the May 23, 2012 DEC hearing.

Riddle further testified that, after the \$12,000 payment to Care One, respondent should have been holding \$88,000 in the trust account, on Henao's behalf. However, respondent wrote a number of checks, drawn on those funds, to persons unrelated to the Henao matter. With about \$28,000 remaining in the trust account, respondent wrote a trust account check to himself for \$22,000, and deposited the remaining \$6,000 into his NVE business account. Respondent closed the NVE trust account, on May 17, 2010, with a zero balance.

Respondent then used the remaining \$6,000 through a series of "ATM" withdrawals and payments for "numerous overdrafts on the account." The record does not establish the proper amount of respondent's fee, but Riddle based her analysis on the scenario most generous to respondent -- that he may have been entitled to a one-third legal fee (about \$33,000), based on the gross settlement funds, after which he should have been holding about \$55,000 in the trust account for the Henao matter alone ($\$100,000 - \$12,000 - \$33,000 = \$55,000$).

Riddle also testified that the account dropped below the minimum \$55,000 that respondent should have been holding for Henao: "Yes. The accounts were zeroed out. The business account had overdrafts in it. The \$55,000 that was the Henaos' money was

not held intact and a trust account was not -- it was not taken from the trust account to the business account. Those monies were fully depleted."

Meanwhile, in a civil action brought by Henao's new counsel, Patrick Whalen, captioned Guillermo Henao v. Jeffrey P. Squitieri, respondent was ordered to turn over \$87,500 of the Henao settlement funds, on or before January 21, 2011.

Whalen testified at the DEC hearing as follows:

Q. With regard to the funds, just to be clear, have you and/or the family received anything with regard to the settlement?

A. No. I had an Order to Show Cause entered against Jeffrey Squitieri at the Bergen County Superior Court. Judge Polifroni compelled him to turn over those settlement funds. That was in January of 2011. That Order was not complied with. He retained the services of a respected firm up in Hackensack, Harwood Lloyd, Jeffrey did, and they eventually left the case. He never complied. We had default entered into and the Squitieris have never provided the funds.

Q. Let's just direct your attention to P-7, if you could.

A. Yes. That's the Order.

Q. You had mentioned--

A. P-7 is the Order entered by Judge Polifroni.

Q. This was in a civil matter?

A. Yes.

Q. And the amount that was ordered to be paid was how much?

A. It was slightly off. It was 87,500. It should have been 88,000. There was a little confusion over whether Care One got paid 12,000 or 12,500. It should have probably been 88,000, but the Order was 87,500.

[T101-2 to T102-4.]

On July 13, 2010, the OAE notified respondent that he was required to appear at the OAE offices, on July 28, 2010, for a demand audit of his attorney trust and business accounts. Respondent was required to produce for the OAE the original client file in the Henao matter, as well as trust and business account records.

On July 23, 2010, respondent retained counsel, as a result of which the audit was postponed. On July 27, 2010, counsel turned over a photocopy of a portion of the Henao client file, but did not release respondent's trust and business account records to the OAE.

On September 21, 2010, respondent's counsel advised the OAE that respondent was unable to produce the requested records. The next day, counsel sent the OAE a letter from respondent, dated

September 20, 2010. In it, respondent promised to produce the requested financial documents by September 27, 2010.

On November 16, 2010, respondent's counsel wrote to the OAE, requesting that the November 17, 2010 audit be postponed for one week. The OAE denied that request, requiring respondent to appear the next day, as scheduled.

Respondent did neither appear at the November 17, 2010 audit, nor produce bank statements, checks, deposit slips or other requested documents pertaining to his NVE trust and business accounts.

Henao testified briefly at the DEC hearing. He stated that he did not recall ever having met respondent, that he was unaware of any settlement of his accident claims, never personally authorized a settlement, and did not sign a release of his claims.

Henao's wife, Adela, testified that she was distraught about her husband's injuries and had relied upon their son, Victor, to handle all of the financial matters pertaining to the accident. She met respondent only once, when she signed papers at the hospital. The hospital wanted her to take Henao home, but she could not do so "because he was like a vegetable" and "could not move." She wanted money to place him in another facility and

understood, from the hospital meeting with respondent, that the settlement funds would be used solely for Henao's medical treatment.

Victor Henao also testified. Victor recalled taking action, when asked by his mother to take charge of the medical and legal situation. He signed the medical authorizations for the treatment of his father at the hospital and retained respondent, on behalf of this father.

Victor also signed the \$100,000 release on behalf of his father, while his mother signed as the witness. Victor then placed his father's initials on the letter, which purported to be Henao's acknowledgment that he understood the proposed settlement and that the \$100,000 was in full settlement of all claims. Victor testified, however, that respondent had advised him that the money wouldn't "stop there," indicating that more could be claimed later.

By March 2010, Victor had contacted respondent at least twice, asking about the whereabouts of the \$100,000. He received no reply. According to Victor, the family never received any portion of the settlement funds. When shown a copy of the settlement check that respondent deposited in his trust account, Victor denied having ever seen it or having signed it.

Respondent did not appear at the DEC hearing, although his appearance was required. R. 1:20-6(c)(2)(D). He was given advance written notice of the hearing, on several occasions. The OAE confirmed the time and place of the hearing, in a letter to respondent, dated April 19, 2012. According to the hearing panel report,

On May 1, 2012, the panel chair received an email from respondent in which respondent said he would not be "opposing any action that [Urban] will be setting forth in the attempts to effectuate my disbarment in the State of New Jersey." (P-35). On May 3, 2012, the panel chair served the Case Management Order (C-3) on respondent by email and confirmed that "The hearing will be held on May 23 and 24, 2012 beginning at 10:00 a.m. in the Essex County Courthouse, Hall of Records." (P-36).

[HPR2.]²

The DEC found that respondent had to know that he was required to keep the Henao net settlement funds intact in his trust account. When, on March 15, 2010, Whalen wrote to him, challenging the entire settlement, respondent was on notice that the funds were in dispute. Yet, by May 2010, respondent had

² "HPR" refers to the June 19, 2012 hearing panel report.

"raided" the trust account of all of the Henao funds, using them for purposes other than for the Henao settlement and closing his NVE trust account with a zero balance.

With the exception of the \$12,000 check to Care One, none of respondent's disbursements of the settlement funds were made on behalf of the Henao matter. Respondent offered no explanation for his misuse of the funds.

Several factors led the DEC to conclude that respondent had stolen the Henao funds: (1) at least \$55,000 of the Henao funds were unaccounted for; (2) respondent deliberately hid from ethics authorities the existence of the NVE trust account into which he had deposited the settlement funds; (3) he fabricated phony trust account statements for the long-since closed Chase trust account, in order to mislead the OAE; (4) he sought to delay the OAE audit; and (5) he failed to appear at the DEC hearing.

The DEC concluded that respondent's deceit, in preparing the phony Chase trust account statements and failing to disclose the existence of the NVE trust account, violated RPC 8.1(a) and RPC 8.4(c) and that his delays and ultimate failure to appear at the DEC hearing violated RPC 1.15(d) and RPC 8.1(b).

Finally, the DEC found respondent guilty of knowingly misappropriating at least \$55,000 of the Henao settlement proceeds, after giving him credit for having taken a \$22,000 legal fee.³

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

In December 2009, respondent obtained a \$100,000 settlement in Henao's personal injury matter. Henao was rendered comatose during part of his hospitalization. Therefore, his son, Victor handled the negotiations on behalf of his father, all with the approval of Henao's wife, Adela. There is no suggestion that Victor was unauthorized to act for Henao.

Having received no settlement funds or information from respondent by March 2011, Victor became suspicious of respondent and tried to obtain from him information about the settlement check. Respondent did not reply to those inquiries.

³ As noted earlier, the \$55,000 figure is actually based on a one-third legal fee on the gross settlement, or \$33,000.

Thereafter, Victor retained a new attorney to pursue the funds from respondent. In January 2011, attorney Whalen obtained a court order for the turnover of the settlement funds, but respondent did not do so.

Respondent claimed to have maintained a trust account with Chase during the time in question. Meanwhile, however, he had actually deposited the Travelers settlement check into a different trust account that he maintained at a different bank, NVE.

On January 21, 2010, respondent made a single payment to Care One, a medical provider, for \$12,000. After that check, he should have been holding \$88,000 in the NVE trust account, on behalf of the Henao matter alone.

According to the OAE investigator who reconstructed respondent's NVE trust account from records obtained directly from that bank, after subtracting the \$12,000 payment to Care One and a \$22,000 legal fee to respondent, the trust account should still have held at least \$55,000 on behalf of Henao. It did not. Instead, respondent systematically emptied the trust account from January to May 2010. None of the disbursements related to the Henao matter. Respondent finally wiped out the trust account, when he took the last \$6,000 and placed it in his

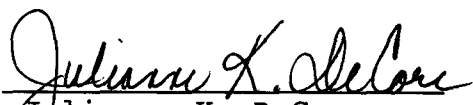
business account, from which he made ATM withdrawals and paid delinquent bank fees and penalties.

In addition, once the OAE investigated his actions, respondent employed deliberate delaying tactics to evade the demand audit. Next, he prepared and delivered to the OAE phony Chase bank statements, purporting to show activity in his Chase trust account for months in 2010, when, in fact, he had closed that account in 2007. He failed to disclose to the OAE the existence of the NVE trust account, which was only discovered through the efforts of the OAE investigator.

For respondent's knowing misappropriation of Henao's funds, he must be disbarred, under In Wilson, supra, 81 N.J. 451. We so recommend to the Court.

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 Jeffrey P. Squitieri
Docket No. DRB 12-259

Argued: November 15, 2012

Decided: January 9, 2013

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: | 9 | | | | | |


Julianne K. DeCore
Chief Counsel