

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-445

: IN THE MATTER OF :
: :
: DONALD V. POHLMAYER :
: :
: AN ATTORNEY AT LAW :

Decision
Default [R.1:20-4(f)(1)]

Decided: June 4, 1997

To the Honorable Chief Justice and Associate Justices of the
Supreme Court of New Jersey.

Pursuant to R. 1:20-4(f)(1), the Office of Attorney Ethics
("OAE") certified the record in this matter directly to the Board
for the imposition of discipline, following respondent's failure to
file an answer to the formal ethics complaint.

Service of the ethics complaint was attempted by both regular
and certified mail at respondent's last-known New Jersey office
address, his last listing in the New Jersey Lawyers' Diary and his
last known office address in New York City. All of those attempts
were unsuccessful. Thereafter, the OAE arranged for publication of

the disciplinary notice in the New Jersey Law Journal for three consecutive weeks, beginning on October 14, 1996 and concluding on October 28, 1996. In that notice, respondent was advised that failure to file an answer to the ethics complaint would be deemed an admission to the charges in the complaint and that the matter would proceed directly to the Board for the imposition of discipline. The ethics complaint charged respondent with knowing misappropriation of client funds, in violation of RPC 1.15(b), and In re Wilson, 81 N.J. 451(1979), as well as with conduct involving dishonesty, fraud, deceit, and misrepresentation, all in violation of RPC 8.4(c).

Respondent was admitted to the New Jersey bar in 1980. He was temporarily suspended on March 21, 1995, based on allegations of misappropriation of estate funds.

As stated in the ethics complaint, at some point in March 1989 respondent was retained by Deborah L. Hauptman, the executor for the estate of William Hauptman, her father. Mrs. Hauptman transferred the estate files and estate funds to respondent at that time. Beginning in 1993, Mrs. Hauptman attempted to pursue a grievance against respondent for his failure to return her telephone calls and to turn over funds allegedly belonging to the estate. Her initial attempt to file a grievance was declined by

the secretary of the District VI Ethics Committee, based upon representations made by respondent that the dispute had been resolved. Thereafter, on January 12, 1994, Deborah Hauptman again filed a grievance with the District VI Ethics Committee, alleging that respondent had failed to communicate with her, to pursue the estate matter diligently, and to forward to her approximately \$30,000 plus interests that he was allegedly holding for the estate. Following inquiry by the District VI Ethics Committee Chair, Claudette St. Romaine, respondent forwarded to St. Romaine correspondence enclosing trust account check No. 1271 in the amount of \$35,985.49, payable to the estate of William Hauptman. According to respondent, that check represented the balance of the estate funds plus interest. Ultimately, St. Romaine returned the check to respondent. Because, however, St. Romaine was concerned about serious problems in the estate matter, she eventually referred the case to the OAE for a demand audit. As outlined in the complaint, respondent did not appear at the audit scheduled at his office, inasmuch as he had moved his law offices to his home in Rockaway, New Jersey. Thereafter, both by telephone and in person, respondent advised the OAE that for a variety of reasons he could not produce the balance of his attorney books and records. Respondent's excuses included that the records were still packed in

boxes, that his computer had broken down in January, February and June 1994, that his accountant had retained many of his records and that he and his accountant, who was also his landlord, had an ongoing dispute. These various representations were made between November 1994 and February 1995. Thereafter, on February 22, 1995, respondent notified the OAE by telefax that some of his records had been destroyed in a sewage pipe accident, and that he was leaving for a business trip to Washington, D.C. As a result of the above problems in scheduling the audit, the OAE filed a motion for respondent's temporary suspension from the practice of law, based on his failure to cooperate with the investigation. Respondent was thereafter temporarily suspended by order dated March 21, 1995. He had failed to appear on the return date of May 1, 1995 and, on that same day, the court ordered the continuation of respondent's temporary suspension.

Despite respondent's lack of cooperation, the OAE was able to review certain of respondent's records, and to determine that respondent had a significant trust account shortage from disbursements of client funds to his own benefit. Specifically, beginning as early as September 1994, respondent's trust account carried a balance of \$26,288.79, rather than the \$35,985.46 that should have been held on behalf of Hauptman alone. Respondent was,

thus, out of trust by \$9,696.67. In fact, the amount by which respondent was out of trust continued to escalate over the next three months. By December 31, 1994, respondent's trust account held only \$323.36, which represented a shortage, in the Hauptman matter alone, of \$35,662.10. The analysis provided by the OAE indicates that respondent expended the bulk of the funds for his personal use, including payments to his landlord, Ming Jaw.

In addition to knowingly misappropriating the Hauptman funds, respondent attempted to cover up his misconduct by claiming that he was forwarding both the file and the Hauptman funds to Deborah Hauptman's new attorney, although he never did so. In addition, the complaint reflects that respondent's theft of the Hauptman funds continued while the OAE's demand audit was ongoing. Specifically, on November 8, 1994, respondent disbursed \$5,000 to himself by way of check No. 3419. On November 10, 1994, an additional personal disbursement was made by check No. 3434 in the amount of \$3,250. Similarly, on December 7, 1994, respondent issued check No. 1328 to himself for \$2,500. Again, on December 14, 1994, respondent issued check No. 1329 to himself in the amount of \$4,000. The December disbursements did not reference any client matters.

Notice of the demand audit was given on November 4, 1994, while the initial demand audit was held on November 21, 1994, and was followed by numerous communications. On November 30, 1995, the New Jersey Lawyers' Fund for Client Protection ("CPF") issued a check to Deborah Hauptman in the amount of \$35,960.33, following its determination that respondent had engaged in dishonest conduct. Although the CPF had forwarded a copy of grievant's claim to respondent with a request that he submit a reply, respondent never communicated with the CPF. As noted previously, respondent was charged with knowing misappropriation of client funds, in violation of RPC 1.15(b) and dishonesty, fraud, deceit and misrepresentation, in violation of RPC 8.4(c).

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The Board was satisfied that respondent had appropriate notice of the pendency of the ethics complaint and that the record contained sufficient evidence of respondent's unethical conduct. Specifically, respondent was guilty of knowing misappropriation of client funds,

in violation of RPC 1.15(b), and RPC 8.4(c). As to the issue of discipline, it is clear from the documentation that respondent took the Hauptman funds and did so knowingly and intentionally. This is further confirmed by respondent's actions during the pendency of the OAE audit, when he misappropriated additional trust funds. Under these circumstances, he was clearly aware of the existence of this grievance and of the OAE audit, in which he participated to a limited extent. Indeed, he made every attempt to frustrate that audit while, at the same time, continuing to steal the Hauptman funds. Pursuant to Wilson, disbarment is the only appropriate remedy. The Board has, therefore, unanimously determined to recommend that respondent be disbarred for his knowing misappropriation of the Hauptman funds.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 6/4/97



LEE M. HYMERLING
Chair
Disciplinary Review Board