SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-411 (formerly DRB 10-318, DRB 11-080 and DRB 11-292)
District Docket No. XIV-2011-0520E and VI-2011-0905E (formerly XIV-2011-0321E, XIV-2011-0035E, and XIV-2008-0403E)

IN THE MATTER OF	
KOWANA JOHNSON	
AN ATTORNEY AT LAW	

Decision

Argued: June 20, 2013

Decided: July 3, 2013

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

Respondent did not appear, despite proper notice.[1]

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

This matter was initially before us as a default, which we vacated on respondent's motion and remanded the matter for the

[1] Respondent was served by certified and regular mail. Although the certified mail came back unclaimed, the regular mail was not returned. Respondent was also served by UPS (no delivery confirmation requested).

filing of a verified answer and a hearing (DRB 10-318). Although respondent had filed an answer, it was not verified. We directed that respondent file a verified answer by February 7, 2011.

On March 4, 2011, the OAE re-certified the matter to us as a default, after respondent failed to comply with our direction that she file a verified answer (DRB 11-080). Thereafter, on March 28, 2011, the OAE forwarded to the Office of Board Counsel (OBC) a March 18, 2011 letter from respondent, enclosing her "verification of answer," dated March 4, 2011.[2] On June 23, 2011, on our own motion, we vacated the default and remanded the matter to the OAE for a hearing on the merits.

Instead of proceeding to a hearing, however, the OAE again served respondent with the complaint. When she did not file an answer, the OAE re-certified the matter to us as a default (DRB 11-292). After consultation with the OAE, the OBC administratively dismissed the case, on October 7, 2011, remanding it to the OAE.

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[2] Respondent's answer was not made a part of the record in the matter currently before us.

In March 2012, the District VI Ethics Committee (DEC) conducted the required hearing. Despite proper notice of the hearing, however, respondent did not appear or otherwise communicate with the DEC. Specifically, the panel chair indicated, in the hearing panel report, that notice of the hearing had been sent to respondent by certified and regular mail to her office and home addresses. The certified mail was returned as undeliverable. The regular mail was not returned. The hearing proceeded in respondent's absence. The only witness was Jeanine Verdel, OAE Assistant Chief of Investigations.

The four-count complaint charged respondent with violating RPC 1.15(a) (failure to safeguard client property/knowing misappropriation of trust funds) (counts one and two), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (counts one, two, three, and four)[3] and the principles of In re Wilson, 81 N.J. 79 (1979) (counts one and two), and RPC 1.8(a) (conflict of interest/business transaction with a client) (count one).

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[3] The misconduct charged in count four stems from an alleged misrepresentation to disciplinary authorities, more properly, a violation of RPC 8.1(a).

The DEC recommended that respondent be disbarred, a discipline urged by the OAE. We agree with the DEC's recommendation.

Respondent was admitted to the New Jersey bar in 2003. She has no prior discipline.

According to the report of the New Jersey Lawyers' Fund for Client Protection, respondent has been retired from the practice of law since 2009.

The conduct that gave rise to this matter is as follows:

In August 2008, Gerard D. Miller, Esq., contacted the OAE on behalf of his clients Carolyn Brown, Charisse Jones, and Carly Brown (the grievants). Miller explained that Carolyn Brown, the executor of her mother's estate, had retained respondent to handle a real estate closing. The closing took place in November 2005, with net proceeds of $301,058.84. Respondent deposited the sale proceeds in her trust account on November 25, 2005.[4] Because the account had a negative balance of -$27.56 at the time of the deposit, the grievants' funds were

[4] The buyer's attorney retained $34,748.49 in her trust account for issues surrounding an oil tank on the property. She paid those funds over to respondent on May 9, 2007. The money was deposited in respondent's trust account.

immediately invaded. As of the date of the deposit, respondent's trust account balance was $301,031.28. The only funds in the account belonged to the grievants.

Between December 30, 2005 and January 16, 2006, respondent persuaded the grievants to sign living trusts, which she had prepared. She did not advise them to seek the advice of independent counsel, before they signed the trust agreement. The trust agreements allowed respondent to invest the funds on their behalf. Although respondent was required to provide at least a yearly accounting to the trust beneficiaries, she failed to do so. The grievants sought Miller's assistance, after respondent failed to provide the accountings.

Count One

On January 6, 2006, respondent transferred $20,000 from her trust account to a personal account at Bank of America. On January 9, 2006, she disbursed an additional $20,000 from her trust account, this time depositing it in a personal account at Chase. The grievants, to whom the funds belonged, did not authorize respondent to make those transfers. Prior to the $20,000 deposit, respondent's balance at Bank of America was -$50.81. The balance at Chase, before the $20,000 deposit, was

$2,792.36. Respondent utilized the funds from her trust account for personal expenses.

As to the transfer of the $40,000 ($20,000 + $20,000) to her personal accounts, during respondent's interview by the OAE she explained that she had a business relationship with an individual named Adalberto Fernandez and that the funds had been taken from a "revolving loan" or "revolving line of credit." Respondent also called the $40,000 payment a "finder's fee" or a "marketing fee," which was repaid by Fernandez, in May 2006, and returned to her trust account.

Contrary to respondent's statement to the OAE, the $40,000 that was deposited into her trust account, in May 2006, came not from Fernandez, but from other clients, David and Lorraine Goodman, for whom respondent had handled a closing. Respondent had persuaded them to allow her to invest their closing proceeds.

When confronted with the information that the $40,000 came from the Goodmans, respondent asserted to an OAE investigator that the Goodmans had loaned Fernandez the funds for an unsecured promissory note and that Fernandez had then given her the money to deposit. In fact, the Goodmans told the OAE that

they did not know about any such promissory note and that they did not know Fernandez.

Count Two

Between November 2006 and September 2007, respondent used at least $43,865.35 of the grievants' funds to pay her American Express bills. The American Express statements reflect that they were "prepared for" KB Investments and Adalberto Fernandez.[5] The cardmember names on the statements, however, are Fernandez and respondent. The American Express statements were sent to respondent's office address.

Respondent's bank statements for her trust account reflect the checks to American Express. The American Express statements show that respondent's purchases were personal in nature – for example, Macy's, Toys 'R' Us, Rite Aid, and Daffy's. Exhibit 20, the "Grievant's Client Ledger Card," prepared by the OAE, reflects "loans" from the grievants' funds. The amounts of the "loans" match respondent's American Express payments.

[5] KB Investments is not identified in the record.

Count Three

Respondent entered into an agreement with John and Margaret Mastropietro to purchase their property located at 781½ Montgomery Street, Jersey City for $212,500. The closing took place in January 2007. Respondent signed the HUD-1 as the settlement agent.[6] Respondent issued a trust account check in the amount of $93,256.74 to the Mastropietros and entered into a letter-agreement, wherein "781½ Montgomery, LLC" assumed the responsibility to pay the balance of the sellers' mortgage at Chase, in the amount of $117,993.26.[7] The $93,256.74 came from the grievants' funds.[8]

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[6] The address on the HUD-1 for the settlement agent is not respondent's but, rather, the address for the Mastropietros' attorney.

[7] The record also refers to the entity as 781½ Montgomery Avenue, LLC or 781½ Montgomery, LLC.

[8] There is a difference of $1,250 between the sale price ($212,500) and the sum of the assumed mortgage payments and the cash to the sellers ($117,993.26 + $93,256.74 = $211,250). A check from respondent's trust account, issued in connection with the purchase of the property on January 27, 2007, which is not discussed in the record, would explain the difference between the sale price and the sum of the cash and mortgage payments.

The grievants did not authorize the disbursement and were unaware that respondent had purchased the property. The HUD-1 lists the borrower as 781½ Montgomery Street, LLC.

During respondent's interview with the OAE, she stated that she had never discussed the formation of the LLC with the grievants. In fact, there is no 781½ Montgomery, LLC registered with the State of New Jersey.[9]

Beginning in August 2008, respondent was unable to make the payments on the Mastropietros' Chase mortgage. In October 2008, to avoid a foreclosure proceeding, respondent borrowed $125,000 from Emigrant Bank, in the name of Adalberto Fernandez, whom she identified as the "managing member" of 781½ Montgomery Street, LLC. Respondent acted as the settlement agent.[10] According to the complaint, respondent submitted to Emigrant Bank a certification of formation, which she notarized, to document

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[9] Verdel testified that, at some point during the ethics investigation, respondent presented a document indicating that 781½ Montgomery Street LLC was registered in Delaware. According to Verdel, although the OAE investigated the New Jersey records for the LLC, "[they] didn't check Delaware."

[10] The signature on the attorney's or settlement agent's certification is illegible. The complaint identified respondent as the closing attorney or settlement agent.

that "781½ Montgomery, LLC" was a viable entity. Respondent paid off the Mastropietros' mortgage with the funds from Emigrant Bank.

During the ethics investigation, respondent told the OAE that she had refurbished the property with the intention to sell it, but added that the collapse of the housing market had made it difficult to obtain the fair value of the property.

Count Four[11]

During the ethics investigation, respondent gave the OAE a false document. Specifically, she provided a document to the OAE purporting to represent that the grievants owned "781½ Montgomery, LLC."

The DEC found clear and convincing evidence that respondent had misappropriated client funds by converting them for her own use and had commingled funds in the purchase of real estate.[12] In addition she failed to cooperate with disciplinary

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[11] This count of the complaint was not discussed in detail, at the DEC hearing.

[12] The basis for the DEC's determination that respondent commingled funds is unclear.

authorities, submitted fabricated documents to the OAE and made false statements to the investigator.

The DEC determined that "each and every count as contained has been supported." The DEC found that respondent violated RPC 1.15(a) in counts one and two and RPC 8.4(c) in counts one, two, three, and four. The DEC did not mention RPC 1.8(a) in its report or in its findings, placed on the record at the conclusion of the DEC hearing.

In connection with the third count, the DEC stated:

> As it deals to this particular property, it was thereafter determined that there was a gentleman by the name of Adelberto [sic] Fernandez that was the sole owner or shareholder of this fictitious corporation. This panel further finds that there may also be monies belonging to the Brown transaction that was commingled with the subsequent transaction for the property at 781½ Montgomery Street, Jersey City, New Jersey. This panel further finds that Kowana Johnson's actions and improperly commingling the funds during this transaction had impacted at the time of the Mastropietros original Chase mortgage, which had not been properly satisfied.
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> [HPR at 3.][13]

As indicated previously, the DEC recommended that

[13] HPR refers to the hearing panel report.

respondent be disbarred.

Following a de novo review of the record, we find that the conclusion of the DEC that respondent was guilty of unethical conduct was fully supported by clear and convincing evidence.

Respondent admitted that she used the grievants' funds without advising them of her actions. That the three trust agreements permitted respondent to invest their funds is not disputed. The documents are clear on their faces. Equally clear, however, is that grievants did not intend for their funds to be "invested" in respondent's American Express bills. Respondent had no right to pay her personal expenses with their money.

Even accepting as true respondent's argument that she earned a $40,000 "finder's fee" from Fernandez, she took her "fee" from the grievants' funds, not from Fernandez. Moreover, the funds that she claimed belonged to Fernandez belonged, instead, to the Goodmans, who clearly knew nothing about the use of their money. Respondent has not defended herself against these allegations, which remain proven. She, therefore, must be disbarred, under In re Wilson, 81 N.J. 451 (1979), and its progeny.

Because respondent's knowing misappropriation of client funds mandates that she face the ultimate sanction of disbarment, we do not address the charged violations of RPC 1.8(a) and RPC 8.4(c) in connection with her alleged misrepresentation to the OAE (the document purporting to represent that the grievants owned 781½ Montgomery, LLC).

Member Doremus 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 Frost, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kowana Johnson
Docket No. DRB 12-411

Argued: June 20, 2013

Decided: July 3, 2013

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Clark	X					
Doremus						X
Gallipoli	X					
Yamner	X					
Zmirich	X					
Total:	6					1

Julianne K. DeCore
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Chief Counsel