

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-029

IN THE MATTER OF
SUSAN DINICOLA-TAPIA
AN ATTORNEY AT LAW

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

Decided: September 18, 2000

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

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

On November 10, 1999 the OAE sent a complaint by regular and certified mail to respondent's last known address, 7551 Bergenline Avenue, North Bergen, New Jersey 07047. The certified mail was returned stamped "unclaimed." The complaint sent by regular mail was not returned. On December 17, 1999 the OAE sent a second letter to respondent by regular and certified mail, advising her that the failure to file an answer would constitute an admission of the allegations contained in the complaint and could result in her temporary suspension. Once again, the letter sent by certified mail was returned stamped "unclaimed;" the copy sent by regular mail was not returned.

Respondent did not file an answer to the complaint. On January 21, 2000 the record was certified directly to us for the imposition of discipline, pursuant to R. 1:20-4(f)(1).

Respondent was admitted to the New Jersey bar in 1988. In 1993 she received a private reprimand for failure to communicate with a client. *In the Matter of Susan Dinicola-Tapia*, Docket No. DRB 93-325 (October 1, 1993). In 1998 an agreement in lieu of discipline was implemented in two matters. In one of the matters, respondent admitted violating *RPC 1.3* (lack of diligence) and *RPC 1.4* (failure to communicate with a client). In the second matter, she admitted violating *RPC 1.3* (lack of diligence) and *RPC 1.15* (failure to safekeep property). As it turned out, the

second matter was the subject of a later audit and is now before us as this default. In 1999 respondent was reprimanded for gross neglect, lack of diligence and failure to communicate with a client. *In re Dinicola-Tapia*, 151 N.J. 181 (1999).

The complaint charged that, after a September 16, 1993 automobile accident, Mohamed Yonis and his daughter, Samera Yonis, retained respondent to represent them in a personal injury action. In June 1997 Samera filed a grievance against respondent, alleging that respondent had failed to keep her advised of the status of the case, had canceled scheduled appointments and had failed to communicate with her. In addition, Samera complained that the case had settled for only \$10,000, which she had not received.

After the grievance was filed, respondent apparently misled the OAE investigator, in part by fabricating a file, causing the investigator to conclude that only minor misconduct had occurred. As a result, the OAE approved the agreement in lieu of discipline mentioned above.

As a condition of the reprimand imposed on respondent in 1999, we required an OAE audit of respondent's books and records. That audit revealed that respondent knowingly misappropriated client trust funds. Specifically, on May 25, 1995 Mohamed's case settled for \$20,500 and Samera's for \$5,500. On May 30, 1995 respondent deposited both settlement checks, totaling \$26,000, in her trust account.

She did not inform her clients about the settlement. Instead, she converted the funds to her own use. Almost two years later, respondent lied to Mohamed that his case had settled for \$7,500, instead of \$20,500, and issued him a \$5,000 trust check on February 20, 1997, with the notation "final settlement D/A 9/16/93." Similarly, respondent informed Samera that her case had settled for \$10,000, instead of \$5,500, and issued her a \$6,667 trust check on July 28, 1997, containing the notation "Full & Final Settlement Re D/A 09/16/93."

The complaint charged that respondent misappropriated client trust funds, in violation of *RPC* 1.15(a), and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation, in violation of *RPC* 8.4(c).

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Service of process was properly made in this matter. Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. *R.* 1:20-4(f)(1).

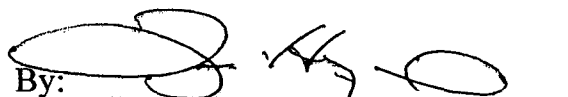
Respondent received settlement proceeds of \$26,000 for Mohamed and Samera Yonis. After depositing that sum in her trust account on May 30, 1995, respondent did

not inform her clients of the settlement and, instead of disbursing the proceeds to them, misappropriated them for her own use. In fact, respondent did not disburse Mohamed's settlement funds until February 20, 1997, almost two years after she deposited them in her trust account. She also misrepresented to Mohamed that his case had settled for \$7,500, instead of \$20,500. Similarly, respondent did not disburse Samera's settlement funds until July 28, 1997, more than two years after their deposit and about six weeks after the grievance was filed.

For respondent's knowing misappropriation of client funds she must be disbarred. *In re Wilson*, 81 N.J. 457 (1979). We unanimously so recommend. One member did not participate.

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

Dated: 9/18/00

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

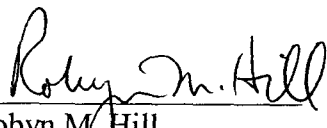
**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Susan Dinicola-Tapia
Docket No. DRB 00-029**

Decided: September 18, 2000

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling	X						
Peterson	X						
Boylan							X
Brody	X						
Lolla	X						
Maudsley	X						
O'Shaughnessy	X						
Schwartz	X						
Wissinger	X						
Total:	8						1


Robyn M. Hill 10/11/00
Chief Counsel