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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-342

IN THE MATTER OF
DIANE K. MURRAY,
AN ATTORNEY AT LAW

Decision

Argued: October 15, 1998

Decided: December 24, 1999

John Lynch appeared on behalf of the District VI Ethics Committee.

Jay M. Liebman appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by the District VI Ethics Committee ("DEC"). Respondent was admitted to the New Jersey bar in 1980 and maintains a law office in Jersey City, Hudson County.

On October 6, 1997, respondent received an admonition for multiple ethics infractions in a matter, in violation of RPC 1.3, RPC 1.4(a) and RPC 1.5(b).

The complaint charged violations of RPC 1.1 (gross neglect) and RPC 1.3 (lack of diligence) for respondent's alleged failure to file a deed in a real estate matter and failure to ensure that the title insurance company was promptly paid.

On July 27, 1995 respondent represented the grievant, Linda Bayus, in the purchase of a house in Bayonne. Prior to the closing, Bayus gave respondent's secretary, Kim Russell, a \$1,003 check to pay for title insurance on the property. The check was made out to Vested Title. Bayus also gave Russell a \$490 check to cover deed recordation and transfer fees. After the closing, respondent instructed Russell to forward Bayus' check to the title company, along with a letter that respondent had previously prepared for its transmittal.

That letter, dated July 28, 1995, read as follows:

. . .enclosed please find a check in the amount of \$1,003 together with original titles, seller's affidavit of title and a copy of buyer's affidavit of title in regard to the above-captioned matter.

Also find enclosed a copy of the HUD One Settlement Statement executed by the seller and buyer in the above action.

The deed and mortgage in this transaction has been forwarded to the Hudson County Register's office for recording on this date.

[Exhibit R-1]

Notwithstanding the contents of the letter, the deed to the property was not recorded until October 11, 1996, some eighteen months later. In fact, respondent's letter, Bayus' check and the other documents referenced in the letter were never sent to Vested Title.

Shortly after the closing, Russell stole Bayus' \$1,003 check, added respondent's name as co-payee and deposited it in respondent's trust account. Russell then stole four blank

trust account checks totaling \$1,493 and, using respondent's signature stamp, negotiated them at a local check-cashing service. Those checks were: number 190125 in the amount of \$500, negotiated on August 8, 1995; number 190126 in the amount of \$93, negotiated on August 14, 1995; number 190127 in the amount of \$550, negotiated on August 18, 1995; and number 190129 in the amount of \$350, negotiated on August 21, 1995.

Bayus testified that, in or about October 1995, she discovered that respondent's name had been added to the Vested Title check and deposited in respondent's trust account at The Trust Company of New Jersey ("the bank"). According to Bayus, she immediately contacted respondent. Bayus claimed that, at about this time, she found out that title to the Bayonne property was not insured. In March 1997 Bayus learned that no title policy had been issued and that respondent had not recorded the deed until October 1996. Finally, Bayus testified that, throughout the representation, from October 1995 until after the filing of her grievance in January 1997, respondent "kept her in the dark" about the case. According to Bayus, she called respondent every other week after October 1995 to find out when the deed would be recorded. Bayus recalled that respondent never gave specific answers to her inquiries.

Respondent, in turn, testified that Russell was an "overflow" secretary for a brief period in 1995, specifically assigned to handle the Bayus closing. According to respondent, she believed that Russell had forwarded all of the documents, including Bayus' check, to Vested Title, after she had instructed Russell to do so. Respondent did not dispute that it was Bayus, not she, who discovered Russell's forgery of the Vested Title check. Respondent claimed, however, that Bayus had contacted her about the Vested Title check sometime

between January and March 1996, not October 1995, as Bayus had testified. Respondent stated that Russell had no authority to make trust account deposits to her. In an attempt to explain why she had not discovered the irregularity in her trust account before Bayus' call, respondent testified that she had relocated her office and had experienced long delays in mail delivery to her new location. She also stated that, from August 1995 through March 1996, she did not receive her trust account bank statements. According to respondent, in March 1996 she contacted the bank about the statements, because "I was not getting them, this was a cause of great concern since there is an obligation to justify accounts"

Respondent alleged that, after Bayus alerted her about the Vested Title check, she searched in vain for the Bayus file. Over the ensuing months, she claimed, she found parts of that file scattered throughout other files in the office. Respondent presumed that this was an effort by Russell to "cover her tracks."

Two months later, on June 4, 1996, respondent filed a complaint against Russell with the Jersey City police department, alleging forgery and theft. She provided the police with photos of Russell cashing the checks, obtained from the check-cashing service. Respondent claimed that, from approximately June 1996 onward, she assumed that the bank and the police were handling the matter, suggesting that she had done everything possible to rectify the situation. As to the deed, respondent contended that she had located it approximately one month before filing it in October 1996. Respondent added that she did not file it immediately because she lacked the funds to do so at the time.

With respect to the two and one-half-year delay in obtaining the title policy, respondent generally blamed the bank for negotiating the forged checks. In addition to her assertion that Russell was not authorized to handle any matters related to the trust account, respondent also recalled that the four checks were “starter” checks, without respondent's name or address engraved on them. According to respondent, those checks were hidden in a “locked” drawer, which Russell was not authorized to open.

Therefore, respondent believed that it was the bank's responsibility to pay the title company. Indeed, respondent presented evidence that the bank paid Vested Title \$1,003 on January 26, 1998. According to respondent, her persistent efforts convinced the bank of its liability for the checks.

With regard to Bayus' contention that she repeatedly attempted to obtain information about the case from respondent to no avail, respondent denied any impropriety. She could not recall when the specific events in the case took place or who (she or Bayus) had initiated the contacts in the matter. Respondent produced no evidence of any communication with Bayus after the July 1995 closing.

* * *

The DEC found a violation of RPC 1.1(a) for respondent's failure to record the deed and to ensure that title insurance was issued. The DEC also found that respondent violated the recordkeeping requirements of RPC 1.15(b) [mistakenly cited as RPC 1.1(b)] by failing to monitor her trust account between August 1995 and March 1996. The DEC recommended the imposition of a reprimand and legal education courses in the areas of real

estate and trust account management. Finally, the DEC recommended an audit of respondent's trust account. The DEC did not make any finding with regard to the alleged violation of RPC 1.3.

* * *

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

Even with Russel's theft of funds designated for the Bayus closing, it is unquestionable that respondent grossly neglected the matter. Also, she had a duty to act swiftly following her discovery of Russell's improprieties.

Respondent knew about problems in the case as early as October 1995, when Bayus allegedly alerted respondent about the Vested Title check. Even accepting respondent's vague recollection that Bayus contacted her only in January or March 1996, it is undeniable that the deed was not recorded until October 1996. Likewise, respondent should have contacted the title company about the title insurance as soon as she learned of the problems with the case. She never contacted the title company, however. In fact, respondent did not pay for the title insurance herself, but ascribed that responsibility to the bank. As a result, it was not paid until January 1998, two and one-half years after the closing. Even if respondent believed that ultimate responsibility lay with the bank — because of its payment of the check over a forged endorsement — respondent had a duty toward her client first to ensure that the policy was paid and then to attempt to recover the equivalent amount from the bank.

In essence, respondent offered no defense, other than that she was generally looking for the contents of the Bayus file for months, in hopes of straightening out the matter.

Respondent attempted to demonstrate her diligence in the representation by introducing evidence of police and bank investigations into the matter. Yet, respondent must have known that those criminal investigations would do nothing to protect her client against the danger of an unrecorded deed and lack of title insurance. Unquestionably, thus, respondent violated RPC 1.1(a) and RPC 1.3.

With regard to the alleged violations of RPC 1.15(b), it is clear that respondent did not learn of the Vested Title and forged trust account checks for months after they had been negotiated. Respondent claimed that her trust account bank statements were delayed due to an office move in August 1995. However, it took respondent seven months to contact the bank about that problem. Even without the alleged theft of trust account funds, an inordinate amount of time passed while respondent allowed the mails to "straighten themselves out." Respondent should have contacted the bank sooner. We find that respondent's failure to reconcile her trust account in a timely fashion and her failure to discover the irregularities in it from October 1995 until March 1996 violated RPC 1.15(b) and (d). Although respondent was not specifically charged with a violation of RPC 1.15, the facts in the complaint gave her sufficient notice of the alleged improper conduct and of the potential violation of that RPC. Furthermore, the record developed below contains clear and convincing evidence of a violation of RPC 1.15(d). Respondent did not object to the

admission of such evidence in the record. In light of the foregoing, we deem the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

Lastly, there is evidence in the record that respondent failed to communicate with Bayus. Indeed, Bayus claimed that she reached out to respondent constantly over the course of the representation to spur respondent into action. Bayus claimed that respondent never contacted her about the status of the case. Rather, according to both Bayus and respondent, it was Bayus who alerted respondent to the major events of the case. Incredibly, respondent argued that there was no failure to communicate with Bayus because, since Bayus discovered the forged Vested Title check, the unrecorded deed and lack of title insurance on her own, Bayus was aware of those events as they unfolded. Therefore, respondent argued, there was no need for her to communicate with Bayus. At a minimum, however, respondent had a duty to inform Bayus about the delay in recording the deed and about the steps undertaken to protect Bayus' interests. Yet, there is no evidence that respondent ever contacted Bayus after the July 1995 closing. Respondent's conduct in this regard was clearly a violation of RPC 1.4(a). Under Logan, supra, 70 N.J. 222 (1976), the complaint is deemed amended to include a charge of a violation of this RPC, thereby conforming it to the proofs.

Fortuitously, it appears that Bayus did not suffer any harm or incur any additional expenses at the hands of respondent. However, had respondent taken earlier affirmative steps to protect her client and had she communicated those efforts to Bayus, much of this case could have been avoided.

Discipline ranging from an admonition to a reprimand is generally appropriate for misconduct of this sort. See, e.g., In the Matter of Charles Deubel, III, DRB Docket No. 95-051 (1995) (where the attorney received an admonition for failure to record his clients' deed for fifteen months after their real estate closing) and In re Halpern, 117 N.J. 678 (1989) (where the attorney was publicly reprimanded for gross neglect, that he failed, for thirteen months, to remit real estate proceeds to pay off an existing mortgage and failed to maintain proper trust and business account records). In mitigation, it is clear to us that respondent was the victim of Russell's acts and that those acts set into motion Bayus' entire ordeal. Although that does not diminish the mistakes that respondent made in the case, we are persuaded that, under all of the circumstances, an admonition is sufficient discipline for respondent's misconduct. Two members would have imposed a reprimand.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 12/24/95



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

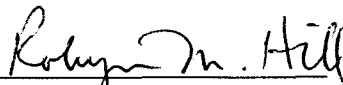
**In the Matter of Diane K. Murray
Docket No. DRB 98-342**

Argued: October 15, 1998

Decided: December 24, 1999

Disposition: Admonition

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling				X			
Zazzali				X			
Brody				X			
Cole			X				
Lolla				X			
Maudsley				X			
Peterson			X				
Schwartz				X			
Thompson				X			
Total:			2	7			


Robyn M. Hill
Chief Counsel