

B

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 99-273

IN THE MATTER OF :
:
DANNY M. VNENCHAK :
:
AN ATTORNEY AT LAW :
:

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

Decided: February 22, 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 the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On May 26, 1999, a copy of the complaint was sent to respondent's last known address by regular and certified mail. The certified mail receipt was returned signed by respondent. The regular mail was not returned.

Upon respondent's failure to file an answer to the formal ethics complaint within the specified period, the OAE sent respondent a second letter by regular and certified mail, dated July 9, 1999, notifying him that failure to file an answer within five days would

constitute an admission of all the charges and could result in his immediate temporary suspension. The certified mail receipt was returned, indicating delivery on July 31, 1999. The signature is illegible. The regular mail was not returned. Respondent did not file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1985. He previously maintained a law office in Morristown, New Jersey.

On September 4, 1997, he was temporarily suspended pending the final disposition of all ethics proceedings pending against him. In re Vnenchak, 151 N.J. 115 (1997).

Also, on January 19, 1999, respondent was suspended for three months for pattern of neglect, gross neglect, lack of diligence, failure to keep his client reasonably informed, failure to expedite litigation, failure to cooperate with disciplinary authorities, conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice. In re Vnenchak, 156 N.J. 547 (1999). Respondent remains suspended to date.

According to the general allegations of the four-count complaint, respondent was the subject of a select audit of his attorney records because of a trust account overdraft reported by his bank in November 1996. When respondent failed to cooperate with the OAE investigation, he was temporarily suspended, as noted above.

The audit investigation continued despite respondent's lack of cooperation and, based on information obtained from the bank where respondent maintained his attorney trust and

business accounts, the OAE auditor concluded that respondent knowingly misappropriated the funds of two clients between December 1996 and March 1997.

The Bucceri Matter

According to the first count of the complaint, respondent represented Michael and Gillian Bucceri in their November 1996 purchase of a house. The Real Estate Settlement Procedures Act ("RESPA") statement for the transaction showed that respondent was due a total of \$566 in fees and costs. He subsequently disbursed to himself from the closing funds two checks totaling that amount.

Thereafter, in January 1997, respondent issued to himself three additional trust checks totaling \$1,650. The checks were drawn against \$1,875 held in escrow for payment of the Bucceris' real estate taxes for the first quarter of 1997. Respondent deposited the Bucceris' funds to his attorney business account and used the funds for his own personal expenses, which included child support payments, office expenses and pocket money.

After the Bucceris complained, respondent reimbursed the funds to them in March 1997. However, in order to reimburse the Bucceris, respondent misappropriated the trust funds of other clients, as set forth below.

The first count of the complaint charged that respondent knowingly misappropriated the Bucceris' funds, in violation of RPC 1.15 and RPC 8.4(c)

The Angles Matter

The second count of the complaint alleges that respondent represented Timothy and Melissa Angle in their purchase of a house in February 1997. Respondent indicated on the RESPA statement for this transaction that certain fees owed to Sovereign bank, the mortgagee, had been paid out of the closing. Sovereign Bank, however, advised the OAE that the fees were never paid.

According to the complaint, respondent misappropriated the Angles' funds in March 1997 in order to reimburse the Bucceris' funds. The auditor's reconciliations of respondent's trust account showed that there were no other funds available in the trust account at the time respondent misappropriated the Bucceri and Angle trust monies.

The second count charged that respondent knowingly misappropriated the Angles' funds, in violation of RPC 1.15 and RPC 8.4(c).

The third count of the complaint charged that, during the OAE's investigation, respondent failed to reply to the OAE's numerous attempts to communicate with him by telephone, "fax" and letter. Respondent failed to provide the OAE with complete trust and business account statements, canceled checks and client files, despite repeated requests for those documents. Finally, respondent refused to assist the OAE auditor in identifying which clients' funds should have been in his trust account in December 1996 and January 1997.

The third count of the complaint charged that respondent's failure to reply to the OAE's demands for information constituted a failure to cooperate, in violation of RPC 8.1(b).

Finally, the fourth count of the complaint alleged that respondent failed to maintain financial books and records required by R. 1:21-6, in violation of RPC 1.15(d) .

* * *

Service of process was properly made in this matter. Following a review of the complaint, we found that the facts recited therein support a finding 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).


The complaint provides sufficient facts to support a finding of knowing misappropriation of client funds, in violation of RPC 1.15 and RPC 8.4. After withdrawing his fee in the Bucceri matter, respondent issued to himself three additional checks, totaling \$1,650, from funds held in escrow for his clients. He then utilized the funds for personal expenses. When the Bucceris complained, he reimbursed them by using funds held in trust for the Angles. Reconciliations of respondent's trust account during the relevant time period established that no other funds were available at the time respondent misappropriated the funds.

In addition, respondent's failure to maintain financial books and records and his failure to cooperate with the OAE constituted violations of RPC 1.15(d) and RPC 8.1(b), respectively.

Respondent knowingly misappropriated client funds in two matters. Under In re Wilson, 81 N.J. 457 (1979), respondent must be disbarred. Accordingly, we unanimously recommend respondent's disbarment. One member did not participate.

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

Dated: 2/22/00

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Danny M. Vnenchak
Docket No. DRB 99-273**

Decided: February 22, 2000

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling	x						
Cole	x						
Brody	x						
Boylan	x						
Lolla	x						
Maudsley	x						
Peterson							x
Schwartz	x						
Wissinger	x						
Total:	8						1

Robyn M. Hill 3/27/00
Robyn M. Hill
Chief Counsel