

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-131
District Docket No. XIV-2012-0501E

IN THE MATTER OF
YOUNG MIN KIM
AN ATTORNEY AT LAW

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Decision

Decided: August 26, 2014

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

This matter was before us on a certification of default, filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f). The complaint charged respondent with having violated RPC 8.1(b) and R. 1:20-3(g)(3) and (4) (failure to cooperate with disciplinary authorities). For the reasons expressed below, we determine that a censure is warranted.

Respondent was admitted to the New Jersey bar in 2006 and the New York bar in 2001. He has no history of discipline.

Service of process was proper in this matter. On February 27, 2014, the OAE sent a copy of the complaint, by certified mail, to respondent's attorney, Marc D. Garfinkle, who had represented that

he was authorized to accept service. The signature on the certified mail receipt is not entirely legible. By letter dated March 4, 2014, Garfinkle noted that he had not yet been retained in the matter, but confirmed that he had accepted service on respondent's behalf. However, no answer was filed.

On March 24, 2014, the OAE sent a letter to Garfinkle, by regular and certified mail. The letter notified Garfinkle that, if respondent did not file an answer to the ethics complaint within five days of the date of the letter (five-day letter), the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail receipt was signed by "C. O'Rourke" on March 27, 2014. The regular mail was not returned. Again, no answer was filed.¹

On April 4, 2014, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's New Jersey office address, 1627 Parker Avenue, 2nd Floor, Fort Lee, New Jersey 07024. An unsigned certified mail receipt was returned, indicating delivery on April 7, 2014. The USPS tracking information sheet

¹ By letter dated July 2, 2014, Garfinkle withdrew from the case as respondent's counsel. Subsequently, on August 18, 2014, he advised the Office of Board Counsel that he currently represents respondent.

confirmed that delivery was made on that date. The regular mail was not returned.

On April 28, 2014, the OAE sent a five-day letter to respondent, by regular and certified mail, at the same address. The certified mail receipt was returned indicating delivery on May 1, 2014. The signature of the recipient is illegible. The regular mail was not returned.

As of the date of the certification of the record, May 7, 2014, respondent had not filed an answer.

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

On September 5, 2012, the Wilshire State Bank notified the OAE about a \$23,220.37 overdraft in respondent's trust account. The overdraft resulted from a check payable to Jobeco Realty, Inc., for \$290,303.55, which was presented for payment on August 9, 2012.

On October 23, 2012, the OAE conducted a demand audit of respondent's books and records, for which respondent did not produce trust account three-way reconciliations for July, August and September 2012, with corresponding ledger cards.

Between October 2012 and May 29, 2013, the OAE made numerous requests for respondent's three-way reconciliations of his trust account. The OAE granted him "several" extensions, but he failed to provide the requested records. On May 29, 2013, respondent faxed "purported" July, August, and September 2012 three-way trust account reconciliations to the OAE. The OAE's review of the

reconciliations disclosed a "recurring deposit in transit entry of \$57,968.21 labeled 'Unknown'". During a June 19, 2013 conference call among the OAE, respondent, and his accountant, the accountant confirmed that the \$57,968.21 deposit in transit entry was a number inserted into the reconciliation to cover the unexplained \$57,968.21 shortage.

On June 20, 2013, the OAE requested respondent to provide, by July 31, 2013, three-way trust account reconciliations for June 30, 2010 through June 30, 2012. Rather than provide the records, from August to November 2013, respondent requested and received numerous additional extensions to produce them. On November 15, 2013, at the continuation of the OAE demand audit, respondent provided his bank reconciliations from September 2007 through October 2008, but not the specifically requested reconciliations for June 30, 2010 through June 30, 2012. At that demand audit, the OAE informed respondent that the shortage in his trust account totaled approximately \$219,000. Respondent then requested an additional two weeks to provide the trust account reconciliations.

On December 9, 2013, respondent informed the OAE that he expected to produce all of the requested documents by December 17, 2013. As of the date of the complaint, February 28, 2014, respondent had not done so.

The complaint charged that the "apparent" trust account shortage of at least \$57,968.21, followed by respondent's long

delay in providing the requested information, was intended to frustrate the OAE's investigation of respondent's misappropriation of trust funds.²

The complaint alleges sufficient facts to support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). For more than one year, despite receiving numerous extensions, respondent failed to provide the OAE with the information necessary to explain his trust account shortage.

Failure to cooperate with an ethics investigation generally results in an admonition. See, e.g., In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011); and In the Matter of James M. Dougherty, DRB 11-029 (April 29, 2011). But see, In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE; the attorney ignored six letters and numerous phone calls from the OAE requesting a certified explanation on how he had corrected thirteen recordkeeping deficiencies noted during a random

² The complaint asked that, in addition to imposing discipline, we temporarily suspend respondent from the practice of law until he provides the requested documentation and otherwise cooperates with the OAE's investigation.

audit; the attorney also failed to file an answer to the complaint). In the Matter of Gregory P. Arnotrading, DRB 07-240 (December 5, 2007) (slip op. at 19).

In this case, it is our view that respondent's failure to meet the numerous deadlines that the OAE granted him at his repeated requests unmistakably reveals an attitude of indifference -- defiance even -- toward disciplinary authorities. Our conviction that this is so is further reinforced by respondent's failure to file an answer to the formal ethics complaint, thereby causing this matter to proceed on a default basis. In re Kivler, 193 N.J. 332, 342 (2008) ("[A] respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.") We, therefore, find that discipline greater than an admonition, the discipline typically imposed on attorneys who do not cooperate with the ethics authorities, is warranted in this case. We determine that respondent should be censured.

As to the OAE's request that we temporarily suspend respondent, we decline to do so. R. 1:20-15(i) allows us, in some situations, and on our own motion, to recommend to the Court that an attorney be temporarily suspended:


On receipt of evidence demonstrating that an attorney subject to the disciplinary jurisdiction of this state has committed a

violation of the Rules of Professional Conduct . . . and poses a substantial threat of serious harm to the public or, where necessary to protect the interests of . . . the public . . . the Board may . . . on its own motion, recommend to the Supreme Court that an attorney be suspended temporarily from practice upon such terms and conditions as it deems appropriate.

We are aware that respondent seems unwilling to cooperate with the OAE's investigation of his trust account activities. On this record alone, however, there is no showing that respondent poses a "substantial threat of serious harm to the public." In addition, we have no formal motion before us. Accordingly, we decline to recommend, on this record alone, that respondent be temporarily suspended. This is not to say that respondent does not pose a substantial threat of serious harm to the public. Our decision to deny the complaint's request is simply based on this record's absence of the evidence required by R. 1:20-15(i).

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 C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel


RECORD SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING

In the Matter of Young Min Kim
Docket No. DRB 14-131

Decided: August 26, 2014

Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			9			


Ellen A. Brodsky
Chief Counsel