SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-100
District Docket No. XIV-08-268E

IN THE MATTER OF

PIETER J. DE JONG

AN ATTORNEY AT LAW

Corrected Decision

Decided: July 14, 2009

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

This matter came 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 knowing misappropriation of escrow funds, in violation of RPC 1.15(a), In re Wilson, 81 N.J. 451, 455 n.1, 461 (1979), In re Hollendonner, 102 N.J. 21, 26-27 (1985), and RPC 8.4(c); failure to comply with recordkeeping requirements, in violation of RPC 1.15(d); and failure to cooperate with disciplinary

authorities, in violation of RPC 8.1(b). For the reasons expressed below, we recommend that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1972, the Florida bar in 1976, and the New York bar in 1981. At the relevant times, he maintained an office for the practice of law in Long Valley. On March 10, 2009, respondent was temporarily suspended in this State pursuant to R. 1:20-3(g)(4) and R. 1:20-11. In re De Jong, 198 N.J. 477 (2009).

In 1985, respondent received a private reprimand for gross neglect and lack of diligence. In the Matter of Pieter J. De Jong, DRB 84-348 (August 21, 1985).

Respondent was on the Supreme Court's list of ineligible attorneys due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection during the following periods: July 20 to August 20, 1992; September 25 to November 8, 1995; September 15, 1997 to May 1, 1998; September 20 to 27, 1999; and September 29 to October 15, 2008.

Service of process was proper. On January 30, 2009, the OAE sent a copy of the formal ethics complaint to respondent's last known office and home address, 3 Beechnut Drive, Long Valley, New Jersey 07853, via regular and certified mail, return

receipt requested. The certified letter was unclaimed. The letter sent via regular mail was not returned.

On March 2, 2009, the OAE sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. On March 4, 2009, "B. DeJong" signed for the certified letter. The letter sent by regular mail was not returned.

As of March 23, 2009, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

Between January 2005 and June 2008, respondent maintained an attorney trust account and business account at Peapack-Gladstone Bank in Gladstone. On January 26, 2005, respondent acted as the settlement agent and attorney for the buyer of a residence owned by seller Jane Davis. According to the HUD-1, Davis was to receive $264,551.57 cash at the settlement.

With respect to the transaction, on January 26, 2005, Long Beach Mortgage wired $260,509.20 to respondent's trust account.

Two days later, $4,126.20 was deposited into the trust account for the transaction.

At the January 26, 2005 closing, respondent issued two trust account checks payable to Davis: one for $264,551.57 and the other for $1000. Davis died the next month, without having endorsed either check.

In August 2007, attorney Todd Mizeski was appointed administrator of Davis's estate. In his capacity as administrator, Mizeski learned that the two checks issued to Davis at the real estate closing had never been negotiated.

Mizeski demanded that respondent turn over the proceeds by March 25, 2008. Respondent did not comply with the demand. According to the trust account statement, the account balance on March 25, 2008 was $10,942.31. Mizeski filed a grievance against respondent.

On September 15, 2008, respondent appeared at the OAE for a demand audit and interview. He informed the OAE that his law practice was limited to real estate closings. He admitted that he did not perform monthly reconciliations of his trust account, maintain client ledgers, receipts and disbursement journals, or keep a running balance in his checkbook.

By letter dated September 16, 2008, the OAE required respondent to produce (no later than November 14, 2008) the business and trust account records that he was obligated to maintain by R. 1:21-6, as well as three-way reconciliations of his trust account, for the period encompassing January 1 through August 31, 2008. Respondent did not comply. He was then given a deadline of January 5, 2009 to comply with the September 16, 2008 letter and to produce client ledger sheets for the same period. Again, he did not comply.

OAE disciplinary auditor Steven Harasym analyzed respondent's trust and business account bank statements from February 2005 through June 2008 and determined that, after the deposit of the Davis escrow funds, respondent had conducted 157 real estate closings during that period. Based on the assumption that respondent charged a $1200 fee per closing (which he had done in the Davis transaction), the OAE concluded that respondent should have disbursed to himself a total of $188,400 in legal fees for the 157 closings. Instead, between February 2005 and June 2008, respondent disbursed to himself the sum of $678,120.63, or $489,720.63 more than he should have received, based on the OAE's assumption of $1200 per closing.

The OAE compiled a chart showing the number of closings per month and the total amount disbursed to respondent from the trust account. In February 2005, respondent conducted eight closings but disbursed no money to himself. In April 2005, he conducted five closings and took $8000. The following month, he conducted the same number of closings but took $34,165.63.

In June 2007, respondent conducted four closings and took $42,000. The following month, he disbursed nothing to himself, even though he had conducted two closings. In January 2008, he conducted two closings and removed $21,500 from the trust account. The following month, he took $7700, even though he conducted three closings.

The complaint alleges that the disbursements to respondent were in round dollar amounts and did not reference any client matters. (The record does not include copies of the checks.) The disbursements were made in the form of (1) $166,500 in wire transfers from the trust account to respondent's checking account that he shared with his wife, (2) $335,665.63 in telephone transfers to an "undisclosed account," and (3) $128,755 in checks payable to respondent.

Moreover, between February 2005 and June 2008, the balance in respondent's trust account fell below the amount he should

have been holding in escrow for Davis ($264,551.57) on 458 occasions. Thus, the complaint alleged, respondent knowingly and intentionally misappropriated the funds that he should have been safeguarding for Davis and her estate.

In addition, respondent was charged with having failed to cooperate with disciplinary authorities by virtue of his non-compliance with the OAE's requests for records.

In the second count of the complaint, respondent was charged with having violated RPC 1.15(d), as a result of his failure to maintain client ledger cards, a receipts and disbursements journal, and a running balance in his checkbook, and his failure to perform monthly three-way reconciliations of his trust account, in violation of R. 1:21-6.

The facts recited in complaint 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).

Despite the OAE's assumption that respondent charged $1200 per closing,[1] which cannot be verified, it is clear that Davis's $264,551.57 is long gone, as respondent's trust account dipped below this amount on August 4, 2005. Respondent has offered no explanation for this and other discrepancies, despite several opportunities to do so.

Given the deficit in respondent's trust account, the multiple withdrawals in even amounts over the years, the transfers to an unidentified account, respondent's silence, and the admitted allegations of the complaint, we find that he knowingly misappropriated $264,551.57 of the escrow funds that he was obligated to hold for the benefit of Davis. Thus, we recommend respondent's disbarment under In re Hollendonner, 102 N.J. 21, 26-27 (1985) (disbarment mandated when attorney misappropriates escrowed funds).

Respondent also failed to cooperate with disciplinary authorities, when he refused to reply to the OAE's requests for

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[1] If the total money taken from the trust account ($678,120.63) is divided by the number of closings (157), respondent's attorney fee would amount to approximately $4319 per closing.

documentation and failed to answer the complaint. Finally, he committed several recordkeeping violations by failing to comply with the court rules. In light of our recommendation that respondent be disbarred for knowing misappropriation of escrowed funds, however, we need not consider what would be the appropriate measure of discipline for these additional violations.

Member Stanton recused himself.

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
Louis Pashman, Chair

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