

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-227
District Docket Nos. XIV-08-560E,
XIV-08-609E, and XIV-09-074E

IN THE MATTER OF
MARK E. GOLD
AN ATTORNEY AT LAW

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Decision

Decided: December 11, 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 violating RPC 1.15(a) (failure to safeguard funds), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and the principles of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of trust funds), and In re Hollendonner, 102 N.J. 21 (knowing misappropriation of escrow funds).

For the reasons expressed below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1972. At the relevant time, he maintained a law office in Tenafly, New Jersey.

In 1997, respondent was suspended for six months for conflict of interest, prohibited business transaction with a client, and failure to safeguard funds. In re Gold, 149 N.J. 23 (1997). Respondent was reinstated in 1998. In re Gold, 154 N.J. 10 (1998). He was temporarily suspended in 2009 for failure to cooperate with the OAE's investigation of this matter. In re Gold, 198 N.J. 405 (2009).

Service of process was proper. On June 5, 2009, the OAE mailed a copy of the ethics complaint by regular and certified mail to respondent's last known office address, 19 Phelps Avenue, Tenafly, NJ, 07670. The certified mail was returned with an unsigned receipt. The regular mail was also returned.

In connection with the OAE's motion for respondent's temporary suspension, the OAE had attempted to serve him with a copy of the motion at his home address, on file with the New Jersey Lawyers' Fund for Client Protection, 50 Northrop Lane, Tenafly, New Jersey 07670. The certified mail was returned to the OAE marked "UNCLAIMED." The regular mail was returned marked

"NOT DELIVERABLE AS ADDRESSED UNABLE TO FORWARD." The OAE, therefore, did not forward the ethics complaint in this matter to respondent's last known home address.

Based on information that respondent had abandoned his law office in June 2009, the OAE served him by publication in The Record and the New Jersey Law Journal. Respondent failed to file an answer to the complaint.

According to the complaint, in February 2009, Donald B. Fraser, Jr., an attorney, filed a grievance with the OAE, alleging that respondent had knowingly misappropriated approximately \$290,000 that belonged to Fraser's client, Montaser Hanno, and then had knowingly misappropriated approximately \$300,000 that belonged to Thomas J. Roman's client, Fahim Mojawalla, to repay Hanno.

In his grievance, Fraser explained that Hanno and Ibrahim Fayed had been partners in developing an apartment building in Jersey City. After the building was sold, in August 2005, they became involved in litigation over the division of the sale proceeds (the net proceeds amounted to \$390,571.58). In the ensuing litigation, respondent represented Fayed. Fraser represented Hanno.

After the court ordered some distributions to the parties, the remaining \$290,571.58 was deposited into Fraser's non-

interest bearing trust account. The parties believed, however, that the litigation would not be resolved quickly, resulting in the loss of a substantial amount of interest. They, therefore, agreed to transfer the monies to respondent's interest-bearing trust account, thereby replacing Fraser with respondent as the escrow agent.

On March 9, 2006, respondent deposited Fraser's attorney trust account check for \$290,571.58 into his PNC Bank attorney trust account. Respondent was required to hold the amount in his attorney trust account until the Fayed v. Hanno litigation was resolved.

The Fayed v. Hanno matter went to trial in 2008. On December 1, 2008, the court issued an order and judgment, providing that Fraser's client, Hanno, was entitled to \$277,089.74 plus accrued interest of \$24,237.57, for a total distribution of \$301,327.31.

Between December 1, 2008 and January 26, 2009, Fraser tried to obtain the distribution from respondent. On January 26, 2009, Fraser and respondent agreed that respondent would give Fraser \$315,993.83, the entire amount originally deposited into respondent's trust account on March 9, 2006, together with the interest that had accrued thereon. On that date, respondent issued from his Unity Bank escrow account check no. 993 for

\$315,993.83, payable to Fraser's law firm. The funds, however, belonged to client Mojawalla because the funds that respondent was to have held in escrow for the Fayed v. Hanno litigation were no longer available.

The OAE's review of respondent's PNC Bank trust account for the period from January 1, 2006 to February 28, 2009 revealed the following. On March 9, 2006, after respondent's \$290,571.58 deposit of the Fayed v. Hanno escrow, he had a \$352,285.16 balance in his trust account. On March 27, 2006, fewer than three weeks after that deposit, the balance in the trust account had fallen to \$99,945.16, or \$190,626.42 short of the amount that respondent should have been holding for the Fayed v. Hanno litigation.

According to the complaint, respondent used funds from the Fayed v. Hanno escrow without anyone's knowledge, authority or consent. Specifically, respondent made the following disbursements from his trust account, between March 9, 2006 and March 27, 2006: (1) \$206,275 to MDS Management Systems; (2) \$25,000 to an illegible payee; (3) \$2,350 to Azzolina, Feury & Raimondi; and (4) \$14,190 to another illegible payee. Fraser stated that respondent had no authority to disburse any of the Fayed v. Hanno funds until after the case concluded and that

none of the above disbursements were related to the Fayed v. Hanno litigation.

The OAE's review of respondent's PNC Bank trust account for the period from March 9, 2006 to January 26, 2009, when he was to have been holding the money in escrow, revealed that the balance in his trust account was significantly less, on many occasions, than the \$290,571.58 that he was obligated to hold in escrow. For example, (1) from September 20, 2007 to October 21, 2007, the attorney trust account balance fell to \$99.73, or \$290,471.85 short of the amount that respondent should have been holding for Fayed v. Hanno; (2) from December 1, 2008 to January 26, 2009, the trust account balance ranged from being overdrawn by \$4,590.88, on December 1, 2008, to \$75,409.12, on December 5, 2008; and (3) on January 16, 2009, the trust account balance was \$6,409.12, or \$309,584.71 short of the amount that respondent was required to remit to Fraser.

Respondent used money from another client to make up the difference. On January 22, 2009, he deposited \$400,000 into his Unity Bank escrow account. That amount represented payment from client Namik K. Ialchandani to Thomas Roman's client Mojawalla for stock in a business called United Med Scan. United Med Scan had no relationship to the Fayed v. Hanno litigation. Respondent knowingly misappropriated \$315,993.83 from the Mojawalla funds

to issue Unity Bank check no. 993 to Fraser to comply with the court's order in the Fayed v. Hanno matter. Mojawalla did not authorize respondent to use his funds for the Fayed v. Hanno litigation.

As to the charge of failure to cooperate with disciplinary authorities, on November 10, 2008, prior to Fraser's filing of the grievance, on February 5, 2009, the PNC Bank notified the OAE about a \$64,590.88 overdraft in respondent's trust account. On November 20, 2008, the OAE wrote to respondent, requesting an explanation for the overdraft. Respondent replied on December 2, 2008, but did not supply any supporting documentation.

Thereafter, the OAE sent letters to respondent on December 9 and December 31, 2008, requesting documentation to support respondent's explanation for the overdraft.

On January 5, 2009, respondent told the OAE that "I will send the reconciliation to you on Wednesday [January 7, 2009]. I am waiting for the December [2008] bank statement which I still have not received." He failed to provide the promised documents, however.

By letter dated January 20, 2009, the OAE reminded respondent that he was to supply the supporting documentation for his explanation to the overdraft. On January 29, 2009, respondent's paralegal, Ross Gold, notified the OAE that

respondent was attending a funeral in California and that the requested information would be forwarded on February 2, 2009. As of the date of the complaint, June 4, 2009, respondent had not provided documentation to the OAE to support his explanation for the \$64,590.88 overdraft.

On December 3, 2008, again, prior to Fraser's grievance, the OAE received notification from the PNC Bank of a second \$4,590.88 overdraft in respondent's trust account. By letter dated December 15, 2008, the OAE requested an explanation for this second overdraft. Respondent failed to reply to that letter and to the OAE's January 20, 2009 letter, relating to its previous request for supporting documentation. As of the date of the complaint, respondent had not provided the OAE with an explanation for the second overdraft.

On March 13, 2009, the OAE sent respondent letters, via certified and regular mail, to 19 Phelps Avenue, Tenafly, New Jersey, demanding that he appear on April 7, 2009, at the OAE's offices, to produce various documents and to discuss his handling of the funds in the Fayed v. Hanno litigation and the Mojawalla to Ialchandani stock transfer.

On March 19, 2009, the OAE received the certified mail receipt signed, illegibly, by someone other than respondent. The

United States Postal Service's tracking system indicated delivery on March 16, 2009.

On April 6, 2009, an OAE investigator left a voicemail message on respondent's answering machine, attempting to verify that respondent would appear at the OAE offices the following day and requesting that respondent call the OAE to confirm his attendance. Respondent did not reply to that message.

On the morning of April 7, 2009, the OAE investigator left another message, on respondent's voicemail, to verify respondent's attendance at the OAE offices that day, at 10:00 a.m. The investigator requested that respondent call to confirm his attendance. Respondent neither called nor appeared. The OAE then filed a motion for his temporary suspension, which was granted.

The facts recited in the 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).

Clearly, respondent failed to cooperate with the OAE's investigation. After his initial reply to the grievance, he failed to supply documentation that the OAE had requested, failed to reply to the OAE's numerous requests for information

about two overdrafts in his trust account, and failed to appear at the OAE's offices, as directed, thereby violating RPC 8.1(b).


More significantly, respondent knowingly misappropriated client and escrow funds. Instead of holding the Fayed v. Hanno funds inviolate, he depleted them by making four unauthorized disbursements, all unrelated to the litigation. Thereafter, he used other client's funds (Mojawalla's) to make a court-ordered payment to Hanno. Respondent's unauthorized disbursements created two overdrafts in his PNC Bank attorney trust account.

In all, respondent's conduct violated RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 1.15(a) (failure to safeguard funds), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and the principles of In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21. Under Wilson and Hollendonner, respondent must be disbarred. We so recommend to the Court.

Member Clark did not participate.

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
Chief Counsel

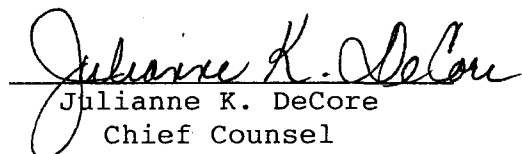
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Mark E. Gold
Docket No. DRB 09-227

Decided: December 11, 2009

Disposition: Disbar

Members	Disbar	Suspension	Admonition	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Clark						X
Doremus	X					
Stanton	X					
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	8					1


Julianne K. DeCore
Chief Counsel