SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-367
District Docket No. XIV-2004-0059E

IN THE MATTER OF	:
GARY R. THOMPSON	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 18, 2010

Decided: April 13, 2010

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Respondent's counsel waived appearance for oral argument.

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

This matter was before us on a recommendation for disbarment filed by Special Master Cynthia M. Craig. Count one of the complaint charged respondent with violating RPC 1.2(a) (failure to abide by a client's decision whether to accept a settlement offer), RPC 1.15(a) (knowing misappropriation of

client funds), RPC 1.15(c) (failure to safeguard client funds), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and the principles of In re Wilson, 81 N.J. 451 (1979). Count two charged violations of RPC 1.15(a), RPC 8.4(c), and Wilson. The charges arose from respondent's handling of two personal injury matters. We recommend that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1982. In 1990, he was privately reprimanded for improperly calculating contingent fees due to his firm in personal injury cases. Specifically, in at least thirty-one matters, between 1987 and 1989, respondent overcharged his clients by computing his contingent fee on the gross recovery, rather than on the after-cost net recovery. In the Matter of Gary R. Thompson, DRB 90-295 (November 26, 1990).

The facts that gave rise to this matter are as follows:

Respondent was associated with the law firm of Dunne & Thompson from 1985 until the end of January 2004. The firm was a professional corporation, with the stock entirely held by Frederick Dunne. Respondent received a draw of $600 per week, a weekly expense check of $250, one-third of the fee for work he

brought into the firm, and occasional bonuses at Dunne's discretion.[1]

According to respondent, Dunne was "the rainmaker," handling matrimonial and real estate matters. Respondent handled all of the firm's personal injury litigation, as well as most court appearances for the firm.

Respondent was not authorized to endorse checks made payable to Dunne & Thompson. Rather, a stamp was used for trust account deposits. According to Dunne, respondent was not authorized to deposit money anywhere, except the Dunne & Thompson business and trust accounts.

Respondent testified that, during the time he was associated with Dunne's firm, he maintained his own personal "book of business." Dunne was not entitled to any portion of the legal fees from his book of business. Rather, respondent kept those funds, which were deposited in his business or trust

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[1] In 2003, Dunne increased to fifty percent respondent's share of the fee on work he brought into the firm.

accounts.[2] Expenses in respondent's cases were paid from his accounts.

Dunne had no knowledge of respondent's separate business account. According to Dunne's agreement with respondent, respondent would not have represented clients outside of Dunne & Thompson.

In January 2004, Dunne learned that respondent was settling Dunne & Thompson cases and having the one-third fee paid directly to himself. Dunne learned about respondent's fee arrangement after respondent dictated to a secretary a release in a matter involving client DeSouza. The secretary asked Dunne to review it. The document, which referenced a $33,000 settlement, indicated that the $11,000 fee was going to respondent, rather than to Dunne & Thompson. Dunne left the release on respondent's desk on a Friday afternoon, with a note asking "what's going on?" When Dunne returned to the office on Monday, "every single trace of [respondent] was gone." Dunne testified that "a myriad" of files were missing from the office.

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[2] Respondent testified that he had a trust account. The OAE investigator found no record that respondent maintained a trust account.

Respondent had a different explanation for the circumstances surrounding his departure. He testified that he had become "fed up" with covering court appearances for Dunne, who no longer wanted to go to court. Therefore, he left, taking his clients' files with him. On cross-examination, respondent admitted that his conversation with Dunne about the DeSouza matter might have been a factor in the break-up of the firm.

The Jackiewicz Matter (Count One)

Chester Jackiewicz was a long-term friend, client, and business partner of Dunne. Jackiewicz's appearance before the special master was compelled by court order. He commented that he wanted "no part of putting a person into jail that has a family, especially a person that has a handicapped child." Jackiewicz was unable to testify about any issues that might have harmed respondent, claiming that his memory was faulty. He was able to testify, however, about the essential facts that gave rise to the allegations against respondent.

In 1997, Jackiewicz was involved in an automobile accident. He hired Dunne to represent him. Respondent was handling accident cases for the firm. Similarly, Dunne testified that he spoke to Jackiewicz, agreed to take on the case, and advised

Jackiewicz that he would assign respondent to handle it. Dunne denied that respondent was entitled to any portion of the fee.

Respondent agreed that Jackiewicz had been a client of Dunne, but claimed that, eventually, Jackiewicz, as well as other Dunne clients, had become part of his "book of business," that is, became his own client, not Dunne's. According to respondent, nothing was said or put in writing about this shift, but it was understood.

Respondent handled Jackiewicz's case, which settled in 2001. In 2004, Dunne spoke to defense counsel in Jackiewicz's case at a social function and learned that the case had been settled. At the ethics hearing, Jackiewicz was shown a release bearing his signature, dated September 19, 2001, and witnessed by respondent, which concluded his case for $7,200. Jackiewicz testified that he had not agreed to settle his case and that he had not signed the release.

Defense counsel forwarded a check in the amount of $7,200 payable to "Chester Jackiewicz and Dunne & Thompson, P.C." Jackiewicz denied having signed the check. He received no money from the settlement.

Respondent testified that Jackiewicz had orally authorized him to settle his case. He stated that he signed Jackiewicz's

name to the release with his permission and admitted that he had signed the notary's portion, stating that Jackiewicz had appeared before him.[3] According to respondent, Jackiewicz did not come to his office to sign the release personally because he "was disgusted with the case" and "busy on other things." Respondent understood that the release would be forwarded to the insurance company, which would rely on the document.

In September 2001, respondent received the settlement check, which was made payable to "Chester Jackiewicz and Dunne & Thompson, P.C." Respondent signed Jackiewicz's name and his own and deposited the money in his personal attorney business account, rather than his trust account. Respondent advanced a belief that he did not have to deposit the check in his trust account because he did not have to make disbursements from it.

By November 2001, the balance in the account had dipped below $7,200. By December 2001, the balance in the account had fallen to $826.83. Respondent admitted that none of the disbursements between the day of the deposit and December 2001 related to the Jackiewicz settlement.

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[3] There are no allegations in either matter arising from respondent's taking a false jurat.

Respondent asserted that roughly $3,000 remained of the settlement, after the deduction of litigation expenses and his fee. He claimed that Jackiewicz had orally authorized him to apply any remaining balance to work that he had performed for Jackiewicz in the past.

The record contains no evidence of bills incurred for the Jackiewicz matter or respondent's payment of any bills. Neither does the record contain a closing statement for the settlement or documentation of prior work that respondent had done for Jackiewicz, for which he was owed fees.

The Gumier Matter (Count Two)

Herminia Gumier, whom respondent described as "a good family friend," was involved in an automobile accident in July 2000. She retained respondent to represent her in a personal injury matter because he was married to a friend of hers. Gumier recalled signing a retainer agreement with respondent. The agreement was not produced at the hearing.

Respondent testified that Gumier's injuries from the accident could not meet the verbal threshold and that he had settled her case for $2,500, in September or October 2001.

Respondent asserted that he had discussed the settlement with Gumier and that he had her oral authorization to sign her name to the release and the check. Respondent claimed that, because Gumier was a good friend, he did not think that he needed a writing to that effect. When asked why he had not asked Gumier to come into his office to sign the release herself, respondent stated, "I guess our schedules were different, it was faster to do it this way."

Respondent admitted that he signed Gumier's name on the release and on the settlement check. The check was made payable to "Herminia Gumier, A Single Individual & Dunne & Thompson, P.C.," in the amount of $2,500. Respondent also admitted signing the attestation portion of the release, where he certified that Gumier had appeared before him and executed the document. Respondent forwarded the release to the insurance company, knowing that the insurance company would rely on it.

Respondent testified that he had performed legal work for Gumier on prior matters, for which he had never charged her a fee. The record contains no retainer agreements or bills for those earlier matters. According to respondent, he then discussed with Gumier the costs and his fee in the personal injury case and explained to her that, after his fees for the

earlier work were deducted from the settlement, approximately $300 remained. According to respondent, Gumier wanted him to keep the $300 as a gift for his recently born children. Respondent testified that he did not receive Gumier's written authorization to keep the balance of the settlement proceeds.

Gumier was specifically questioned about fees in two of the several matters that respondent had handled for her. She did not recall if she had paid him. She testified, however, that, at the time that she retained respondent for the personal injury matter, she did not owe him any money for any other representations.

In October 2001, respondent deposited the settlement check in his business account, as part of a deposit of $2,825. There is no evidence of any payments made by respondent for costs or medical bills in Gumier's case.

By December 2001, the funds in the account had dropped below the amount that respondent should have been holding for Gumier. Respondent admitted that none of the disbursements from the account, between October and December 2001, were related to Gumier's case. Respondent continued to see Gumier after the settlement and maintained that she did not inquire about it.

Gumier testified that she did not know that her case had been settled, had not signed the release, had not endorsed the settlement check, and had never received any funds. She explained that, on one occasion, she called respondent's wife to find out if her case "was over."[4] When no one returned her call, she assumed that no money had been awarded in the case. Gumier discovered that her case had been settled, when she spoke with Hudson County detectives.

In 2003, Gumier became dissatisfied with respondent, after he charged what she felt was an excessive fee in a real estate closing. Following the closing, Gumier went to Brazil for over a year. Respondent testified that he never heard from Gumier after the 2003 closing.

The Hudson County Prosecutor's Office conducted an investigation into respondent's actions, which led to his indictment for theft by deception, theft by failure to make required disposition of property received, and forgery, based on the Gumier and Jackiewicz matters. Respondent was admitted into the pre-trial intervention program ("PTI"). As a condition of

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[4] Gumier and respondent's wife both spoke Portuguese. Respondent would communicate with Gumier through his wife.

PTI, respondent had to pay restitution to both clients. Respondent paid the required amount.

The special master determined that respondent violated RPC 1.15, RPC 8.4(c), and the principles of In re Wilson, supra, 81 N.J. 451. The special master did not address the charged violation of RPC 1.2.

The special master found that the OAE had proved by clear and convincing evidence that respondent had knowingly misappropriated the funds issued to Gumier and Dunne & Thompson, in settlement of Gumier's claim. The evidence proved that respondent had forged Gumier's name on the release and taken a false jurat. He had deposited the check into his "individual business account," rather than into the firm's trust account. The special master noted that, although respondent claimed that he had made disbursements in the case, he had issued no checks for those alleged costs. The special master did not find respondent's testimony credible.

Moreover, the special master remarked, respondent contended that he maintained a trust account for his "book of business," but never produced evidence of it. The OAE never uncovered evidence of such an account. Respondent was given an opportunity, even after the hearing date, to produce any of the

books and records required for attorney accounts, but failed to do so.

In the special master's view,

> [a]s an experienced personal injury attorney, [respondent] knew that personal injury settlement checks made payable to client and attorney jointly must be deposited into attorney trust accounts, and all disbursements including attorneys' fees be made from that account, with appropriate documentation and accounting to the client. In the Herminia Gumier matter, [respondent] forged the client's name on the release and settlement check, deposited the check into his own account and spent all the money. This was not sloppy bookkeeping; this was not a business dispute between law partners: this was stealing.
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> [SMR10.][5]

The special master reached the same conclusion in the Jackiewicz matter. Although Jackiewicz claimed no recollection of some aspects of his case, his testimony was clear that he had not signed the release, had not signed the settlement check, and had not received any money out of the settlement. Rather, respondent had stolen and spent the settlement funds. The special master found respondent's explanation for his entitlement to the entire settlement "incredible and without

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[5] "SMR" denotes the special master's report.

support in fact or logic," including respondent's assertion that Jackiewicz, Dunne's long-term friend and client, had somehow become respondent's client, "via an undocumented and admittedly unspoken understanding."

At the conclusion of the hearing, the special master wrote to respondent, reminding him to provide documentation of payments allegedly made out of his business account for medical reports and costs in the Gumier and Jackiewicz matters. Respondent provided no such documentation.

The special master concluded that "[t]here can be no argument that Mr. Thompson's misappropriation was unintentional. No rational mind could conclude that Respondent accidentally or negligently forged the clients' names and signed false jurats and deposited all the funds in his personal account. Intentional misappropriation is the only possible conclusion."

The special master noted that mandatory disbarment is compelled whether the misappropriated funds belong to a client or to a business associate. The special master concluded that she did not have to determine whether "[respondent] - as opposed to the firm of Dunne & Thompson – was entitled to any legal fee earned on the settlement of this matter in order to recognize

that respondent was not entitled to appropriate the *entire* settlement for his personal use."

The special master found clear and convincing evidence that respondent was guilty of intentional misappropriation of client funds and law firm funds, for which disbarment was required.

Following a de novo review of the record, we find that the special master's conclusion that respondent was guilty of knowing misappropriation was supported by clear and convincing evidence.

The record contains a great deal of discussion on whether Jackiewicz and Gumier were respondent's clients or clients of the firm of Dunne & Thompson. However, whether a fee in the clients' matters should have been paid to respondent or to Dunne & Thompson is irrelevant to a finding that respondent knowingly misappropriated Jackiewicz's and Gumier's funds. They received nothing from their settlements.

To justify his retaining the entire settlement for these two clients, respondent argued that he was owed fees for prior legal work performed for them. Yet, no evidence was submitted to support respondent's contention. He produced no letters, documents, or bills in connection with his alleged prior representation of these clients. He claimed that he had paid

costs on their behalf. But, again, no evidence was submitted to support respondent's assertion. Moreover, he produced no writing from these two clients in support of his contention that he was authorized to keep the entire settlement in their cases. Both clients denied even knowing that their case had been settled.

It was clear that Jackiewicz did not want to be at the ethics hearing and did not want to be the source of trouble for respondent. If, as respondent claimed, Jackiewicz had authorized him to keep the $7,200 settlement, then why did Jackiewicz not say so? The only reasonable conclusion is that respondent was not being truthful in that respect.

Parenthetically, prior to the ethics hearing, when respondent was acting pro se, he had requested handwriting exemplars from Gumier and Jackiewicz for analysis by a handwriting expert that he had retained in his defense. The special master's case management order, dated April 9, 2008, required the OAE to provide respondent with such exemplars. As indicated above, during the hearing, respondent admitted signing his clients' names. When asked why he had been looking for a handwriting expert, respondent stated:

> I couldn't remember whether I signed their names or not and talking to my counsel, Mr. Hanlon here, and going through this and him going over this to me again because I guess I got a mental block on this, because this is something I didn't want to deal with, I didn't even want to go see him yesterday. He dragged me over this again and my recollection now is that I signed those.
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> [3T128-3T129.][6]

Respondent added, "I was confused, I was in denial, depression maybe."

In conclusion, we find that the proofs clearly and convincingly establish that respondent misappropriated the entire settlement in both cases, for a total of $9,700

For this knowing misappropriation of client funds alone, respondent must be disbarred, under In re Wilson, supra, 81 N.J. 451 (1979). We need not reach the issue of whether respondent also misappropriated the firm's funds. Either way, the client should have received some portion of the settlement of their own case. They received nothing.

We find also that respondent violated RPC 1.2, given that the clients had no knowledge of the settlement of their cases. We need not, however, decide the question of the appropriate

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[6] 3T denotes the transcript of the hearing on December 18, 2008.

discipline for respondent's violation of RPC 1.2, inasmuch as disbarment is mandated for respondent's knowing misappropriation alone. We recommend that the Court order respondent's disbarment.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Gary R. Thompson
Docket No. DRB 09-367

Argued: February 18, 2010

Decided: April 13, 2010

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Clark	X					
Doremus	X					
Stanton	X					
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	9					

Julianne K. DeCore
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Chief Counsel