SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-257
District Docket No. XIV-2002-0440E

IN THE MATTER OF :

STANLEY J. HAUSMAN :

AN ATTORNEY AT LAW :

Decision

Argued: January 15, 2009

Decided: March 4, 2009

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Respondent failed to appear, despite proper service.

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

This matter came before us on a recommendation for disbarment filed by Special Master Herbert S. Friend, J.S.C. (Ret). The complaint charged respondent with violating 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, 81 N.J. 479 (1979) (knowing misappropriation of client funds).

Respondent was admitted to the New Jersey bar in 1970. In 1999, he was temporarily suspended after pleading guilty to four counts of a federal information charging him with structuring transactions to evade federal financial institution reporting requirements, in violation of 31 U.S.C.A. 5322(b) and 5324(a)(3). In re Hausman, 157 N.J. 158 (1999). In 2003, he was suspended for five years, by way of motion for final discipline, based on the above criminal conduct. In re Hausman, 177 N.J. 602 (2003). The suspension was imposed retroactively to February 10, 1999, the date of respondent's temporary suspension. Ibid.

This matter has a lengthy procedural history. On November 2, 2006, the Office of Attorney Ethics ("OAE") objected to respondent's answer to the formal ethics complaint as not fully responsive. The OAE contended that the answer contained general denials, contrary to the requirements of In re Gavel, 22 N.J. 248 (1956). On November 30, 2006, respondent denied that his answer was improper. On May 23, 2007, the special master ordered respondent to file an amended answer by June 5, 2007. On June 11, 2007, the OAE moved for sanctions for respondent's failure to comply with the special master's order. The special master addressed this motion at a pre-hearing conference and at the ethics hearing.

During an August 1, 2007 pre-hearing conference conducted by telephone, the special master ordered the OAE to provide discovery to respondent by September 4, 2007 and ordered respondent to file an amended answer by September 18, 2007. The OAE provided discovery to respondent on August 31 and September 4, 2007. Respondent did not file an amended answer.

On September 24, 2007, the OAE filed a motion with the special master for an order suppressing respondent's answer, barring respondent's defenses at the ethics hearing, precluding respondent from offering evidence at the hearing, and directing that the hearing be limited to admission of evidence by the OAE, while preserving respondent's right to cross-examination. As seen below, the special master ruled on this motion at the ethics hearing.

At that hearing, respondent claimed that he had not filed an amended answer because the special master had not confirmed, in writing, the oral rulings made during the August 1, 2007 telephonic pre-hearing conference. Respondent also complained that (1) he had not received "fair and equal justice," citing the case of a Superior Court judge who was allegedly guilty of conduct similar to his own, but was not disciplined; (2) he had not been treated fairly by the federal court; (3) the OAE had not complied with the special master's ruling for providing discovery, asserting that the due date was the end of August, not September 4, 2007, and that, in any event, although someone in his household signed for the documents, he did not learn that they had been delivered until several days later; (4) he could not review the voluminous discovery items in time to file his answer by the September 18, 2007 deadline; (5) he was still waiting for the special master's letter memorializing the rulings of the pre-hearing conference; and (6) the 2003 five-year suspension that the Court had imposed on him based on his criminal conduct was "grossly inappropriate."

Moreover, respondent asserted: "I will no longer participate and be a member, in terms of anything related to the bar of the State of New Jersey, and as a result of that, they can go ahead with whatever they damn well please, I'm not going to fight them . . . ." Although the special master cautioned respondent that he would be making findings of fact with or without respondent's presence, respondent chose not to participate at the ethics hearing and left the hearing room before the presenter began his case-in-chief.

The presenter, in turn, asserted that he had provided discovery timely, in accordance with the special master's ruling issued during the pre-hearing conference. The presenter pointed out that, after receiving the discovery, respondent had not asked the special master for an extension of time to file his answer.

As to the presenter's motion, the special master determined that respondent had admitted certain parts of the ethics complaint, and that, therefore, his proofs at the hearing would be limited. The special master denied the motion to suppress respondent's answer. Because respondent did not participate in the hearing, the special master was not required to issue rulings on respondent's proofs.

The charges in this matter are related to the conduct for which respondent received a five-year suspension, as mentioned in the ethics history above. In that case, respondent made four loans to a client, QEM Enterprises, Inc. ("QEM"), who later repaid him in cash. In the Matter of Stanley J. Hausman, DRB 02-363 (May 2, 2003) (slip op. at 3 to 7). Respondent deposited the cash in his trust account in amounts less than $10,000 to evade the mandatory reporting requirements to the Internal Revenue Service.[1] Ibid. On July 10, 2000, at the sentencing proceeding in federal court, respondent represented that the moneys that he lent to QEM were not client funds. The complaint in the matter now before us alleges that, contrary to this representation to the federal court, respondent had lent to QEM other clients' funds, and thus, was guilty of knowing misappropriation.

On October 4, 2002, OAE investigator Glen Nicholas Hall conducted a demand audit of respondent's books and records. At that audit, respondent denied that client funds were affected by the four loans to QEM, claiming that his law firm, Hausman and Sunberg ("the law firm"), had received fees earned in two personal injury cases, the Charles Daniels and Edward Wozniak matters, and had retained those legal fees in the trust account. According to respondent, the amount of those legal fees exceeded the amount of the QEM loans.

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[1] 31 U.S.C. §5313(a) requires the reporting to the Internal Revenue Service of cash transactions in which the amount is $10,000 or more. 31 U.S.C. §5324(a)(3) prohibits the structuring of transactions to evade the reporting requirements.

Hall, however, determined that, when respondent made two of the QEM loans, he invaded other clients' funds. In addition, Hall concluded that respondent had made a fifth loan, which had not been the subject of his guilty plea, that had also invaded other clients' funds. Specifically, respondent made the following loans to QEM that the OAE alleged constituted knowing misappropriation of client funds:

Date	**Amount**
November 25, 1994	$40,000
January 25, 1995	30,000
March 10, 1995	22,230

The law firm maintained two attorney trust accounts: one at First Fidelity Bank (identified in the record as trust account number one) and the second at Broad National Bank (trust account number two). On April 2 and May 17, 1993, respondent made two deposits, totaling one million dollars, to trust account number one, in connection with the Charles Daniels matter. In addition, on January 27 and February 28, 1994, respondent made two deposits, totaling $450,000, to trust account number one, in connection with the Edward Wozniak matter. Hall's review of the receipts journal for trust account number two indicated that respondent had not deposited any of the Daniels or Wozniak funds in that account.

According to Hall's analysis, by September 1994, the law firm's legal fees from the Daniels and Wozniak matters had been depleted. Hall's reconstruction of the firm's checkbook register for trust account number one showed that the account was overdrawn by $4,661.72 as of September 13, 1994. The trust account number one bank statement of September 30, 1994 confirmed this overdraft. According to that bank statement, as of September 14, 1994, the trust account number one was overdrawn by $1,079.78.[2]

Part of the Daniels and Wozniak legal fees had been disbursed on June 14, 1993, when respondent issued a $70,000 check to satisfy an obligation that the principal of QEM owed to the New Jersey Department of Labor for unemployment and disability taxes. QEM had no funds on deposit in the trust account to cover the $70,000 check. The legal fees were further depleted on March 30, 1994, when respondent disbursed $60,000 to another client, Samuel Cohn, in an unrelated matter. At the time

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[2] The reconstruction of the account shows a larger overdraft due to outstanding checks that had been written, but not yet presented for payment, when the bank statement was issued.

of this disbursement, Cohn had no funds on deposit in the law firm's trust account.

By September 30, 1994, the trust account number one balance was $7,244.05. Thus, when respondent extended the aforementioned $40,000 loan to QEM on November 25, 1994, the $7,244.05 balance in trust account number one was insufficient to cover the $40,000 QEM loan, even if the entire balance constituted legal fees. Moreover, according to respondent's client ledger, QEM had no funds on deposit in the trust account.

As of November 30, 1994, five days after the $40,000 loan to QEM, trust account number one was short by $42,891.40. Although the trust account should have had $121,058.30 for all clients, the balance in that account was only $78,166.90. Hall prepared a reconciliation of the law firm's trust account as of November 30, 1994, which listed the names of thirty-five clients who had funds on deposit in the trust account. Thereafter, on December 12, 1994, respondent replaced the $40,000 in his trust account.

As previously mentioned, on January 25, 1995, respondent lent $30,000 to QEM. According to the OAE's reconciliation of the law firm's trust account number two, as of that date, the $30,000 loan created a shortage of $29,964.11. The client trust account ledger indicated that QEM had no funds on deposit in the trust account on January 25, 1995.

In addition, respondent made a loan of $22,230 to QEM, on March 10, 1995, from trust account number two. This loan caused a $28,222.66 shortage in that trust account. At that time, QEM had a negative balance of $22,000, which increased to $44,230 as a result of the loan. On January 31, 1995, trust account number two had a shortage of $13,964.11.

At the October 4, 2002 demand audit, when Hall questioned respondent about these negative balances, respondent replied that, because he had received a $60,000 loan from a client named LaDue, there was no shortage. The law firm's trust account number two receipts journal showed the receipt of $60,000 from LaDue on January 30, 1995. The entry in the journal did not indicate that the receipt of those funds represented a loan.

The LaDue client ledger revealed that, on March 28, 1995, respondent disbursed $60,000 to Pine Brook Building Supply Employee Pension Plan ("Pine Brook"). In December 2004, during the ethics investigation, LaDue told Hall that, although he had lent money to respondent on other occasions, the $60,000 was not a loan. LaDue indicated to Hall that the funds were rolled over into a pension plan. In contrast, respondent told Hall that Pine

Brook held one of the mortgages on the law firm's office building and that Ladue had lent this money to him, presumably to pay the mortgage.

During a later conversation with Hall, however, LaDue said that he was not interested in testifying at the ethics hearing, asserting that he had lent $60,000 to respondent, contrary to his earlier statement. Although respondent produced documents supporting a $30,000 loan from LaDue on September 20, 1995, he had no papers documenting the alleged $60,000 loan.

Hall pointed out, nevertheless, that, even if LaDue had lent the $60,000 to respondent, when respondent issued the March 28, 1995 check to Pine Brook, the shortage was again created. In other words, if the "loan" from LaDue had cured the shortage, respondent's repayment of the "loan" had revived it.

When Hall asked respondent why he needed to borrow money from LaDue, when he believed that he had a "cushion" of legal fees from the Charles Daniels and Edward Wozniak matters, respondent did not answer.

Respondent's former secretary, Karin Colla, also testified at the ethics hearing. She began working for respondent during the 1980s, when he had a solo practice. She was responsible for keeping respondent's books, reconciling his bank statements, maintaining his client ledgers, and reporting to him monthly about his records. Colla did not have signatory authority over any of respondent's accounts.

About two or three years after the formation of the law firm, Colla was promoted to office manager, continuing her bookkeeping duties. Although respondent was Colla's direct supervisor and the managing partner, she also provided respondent's partner, Sunberg, with a copy of the monthly trust account reconciliations.

According to Colla, respondent maintained total control over the law firm's books and records, and became angry when Sunberg raised any questions about them. Colla asserted that she frequently brought to respondent's attention the existence of negative client balances in the trust account. As an example of such an occurrence, Colla identified a letter dated December 29, 1993 to a client, Deborah Burke Ortiz, from respondent. In that letter, respondent requested the return of $54 that had been disbursed to Ortiz in error, thus creating a negative balance. The client ledger confirmed this overdisbursement.

By way of further example, the presenter introduced into evidence the law firm's trust account reconciliation from May 31, 1994, which Colla had prepared. The reconciliation revealed twelve negative client balances. When Colla brought these shortages to respondent's attention, he told her not to worry about them. According to Colla, thus, respondent was aware of the shortages. Colla did not recall respondent ever assuring her that, because he retained legal fees from the Daniels matter in the trust account, the negative client balances were covered.

After Colla brought to respondent's attention the shortages in trust account number two, respondent directed Colla to cease reconciling that account. Respondent told Colla that he did not want his partner to see all of the negative client balances in the trust account. Despite respondent's direction, Colla prepared the reconciliations at home.

Colla explained that respondent had opened the second trust account because the first one contained too many negative client balances. When respondent closed trust account number one and opened trust account number two, he did not transfer any legal fees to the new account. The December 31, 1994 reconciliation for trust account number two does not reflect either client funds or legal fees for the Daniels or Wozniak client matters.

As an example of the negative client balances, Colla referred to the $70,000 check that respondent had issued to the New Jersey Department of Labor on QEM's behalf, on June 13,

1993. That check represented a loan to QEM, which was not repaid for two years. At the time that respondent issued the check, there were no funds to QEM's credit in respondent's trust account. In 1995, although respondent instructed Colla to enter a $70,000 deposit on the client ledger, this entry was simply a "paper transaction," because the account balance was only $7,000 at that time. According to Colla, it was not unusual for respondent to lend funds from the trust account to his friends, leading to negative client balances.

Respondent maintained a ledger sheet for his personal deposits and disbursements. As of November 16, 1995, the ledger sheet showed a negative balance of $75,650.25. The shortage was created by checks that respondent issued to his stockbrokers. According to Colla, respondent issued checks to his friends, although he had not performed any legal services for them and although he had not deposited in his trust account any funds on their behalf. The checks were issued against both respondent's legal fees and other monies in the trust account. Colla remarked that, although respondent issued numerous checks to QEM he never received money from QEM. Respondent used either legal fees or other clients' funds to cover these disbursements. As of

September 20, 1996, respondent's personal ledger sheet contained a negative balance of $143,074.20.

Respondent did not keep a ledger of client fees retained in the trust account. Thus, to determine the amount of fees in the trust account at any given time, respondent would be required to review every client ledger to ascertain whether his fee had been removed from the trust account.

At respondent's sentencing proceeding in connection with the 2003 matter, he claimed that he had been unaware that QEM had engaged in criminal activity. He denied having had any intention of assisting them in that regard. Although he denied benefitting from the loans, he conceded that he anticipated that, by lending funds to QEM, which was in financial difficulty, the client would stay afloat and be in a position to pay him outstanding legal fees: "I was hopeful that by getting [QEM] through this crisis, there would be funds to pay for the legal work that had been done. That never even happened."

Although respondent did not remain at the ethics hearing, before he departed, he alluded to a potential defense to the knowing misappropriation charge. He asserted that, during the ethics investigation, he had told the OAE that there had been sufficient legal fees from the Daniels matter in the trust account to cover the loans to QEM. According to respondent, his partner handled the Daniels matter. Respondent seemed to imply that an error on the client ledger had led him to believe that there was an additional $100,000 in legal fees in the trust account:

> The sheet which indicated everything and anything, in terms of that particular thing had erroneously apparently not taken into account for something like more than $100,000, and I fully believed, and rightfully so, as far as I was concerned, one, it was our money; two, we could do with that money, since it was belonging to the firm, and didn't belong to any client, that's what I am suggesting is what took place.
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> [1T30-14 to 1T30-22].[3]

Because respondent did not participate at the ethics hearing, he did not introduce evidence in support of any defenses that he may have had.

The special master found that respondent knowingly misappropriated client funds. The special master determined that, on November 25, 1994, January 25, 1995, and March 10,

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[3] 1T refers to the transcript of the November 8, 2007 ethics hearing.

1995, respondent lent $40,000, $30,000, and $22,230, respectively, to QEM, resulting in shortages in his trust account. The special master observed that there was no indication that respondent had the authority to use clients' funds, when he issued the checks to QEM.

The special master recommended respondent's disbarment, finding that discipline mandated by Wilson.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

On November 25, 1994, respondent lent $40,000 to a client, QEM. At the OAE audit, respondent claimed that he had not invaded other clients' funds because he had retained in his trust account legal fees from the Charles Daniels and Edward Wozniak matters. These fees had been deposited in April and May 1993, and January and February 1994, respectively. However, all of those fees had been disbursed by September 13, 1994, more than two months before respondent made the November 25, 1994 loan. On September 13, 1994, the trust account was overdrawn by $1,079.78. Obviously, respondent could not have retained any of those fees in November 1994 if he had depleted them by September 1994.

The possibility that respondent had retained sufficient legal fees from other client matters to cover the loan was extinguished by the reconciliation that Hall prepared. That reconciliation revealed that, as of November 30, 1994, the balance in trust account number one was $78,166.90, when it should have been at least $121,058.30, resulting in a $42,891.40 shortage.

Respondent repeated this invasion of client funds two more times. On January 25, 1995, he lent QEM $30,000, thereby creating a $29,964.11 shortage in the trust account. On March 10, 1995, he extended a $22,230 loan to QEM, causing a $28,222.66 trust account shortage.

Although respondent maintained another trust account (trust account number two), an analysis of that account established that he had not deposited any of the Daniels or Wozniak legal fees in that account. Thus, had he been so inclined, respondent could not have established, at the ethics hearing, that he had had sufficient funds in another trust account to cover the shortages.

Respondent claimed that a $60,000 loan from another client, LaDue, had cured any trust account shortage. The record shows that, on January 30, 1995, respondent received $60,000 from

LaDue. The trust account receipts journal entry for this transaction does not indicate that LaDue lent these funds to respondent. The entry in the journal appears as an ordinary receipt of funds from a client. Respondent introduced no evidence to support the claim that LaDue had lent him $60,000. Moreover, LaDue initially told Hall that the $60,000 was not a loan.

In any event, on March 28, 1995, respondent disbursed the $60,000 to Pine Brook. Although the record contains two explanations for this disbursement — (1) LaDue claimed that the funds were issued to a pension plan and (2) respondent alleged that they were submitted as payment for a mortgage against his office building — it is clear that the $60,000 did not remain in the trust account after March 28, 1995. Thus, the $60,000 from LaDue could not have cured the shortage in the trust account. Moreover, respondent could not explain why he needed to borrow funds from LaDue, when, as he claimed, he believed that he had sufficient legal fees in his trust account.

One additional point warrants mention. During respondent's brief appearance at the ethics hearing, he implied that he may have had a good-faith, reasonable belief that there were $100,000 more in legal fees in the trust account than actually existed. Although R. 1:20-6(c)(2)(D) provides that a respondent's appearance at an ethics hearing is mandatory, respondent chose not to participate at the ethics hearing. Consequently, he failed to produce evidence to support the potential defense that he reasonably believed that the trust account contained additional legal fees that would have covered the QEM loans. We, therefore, did not consider respondent's intended defense.

Respondent's refusal to participate at the hearing is akin to an attorney's failure to file an answer to an ethics complaint, which results in a default. Here, however, instead of deeming the allegations of the complaint admitted, we find that the OAE presented clear and convincing evidence of respondent's knowing misappropriation of client funds. Accordingly, this matter contains stronger proofs than a default case would present.

Although respondent did not use the misappropriated client funds for his direct benefit, the Court makes no distinction between taking funds for oneself and for another:

> The misappropriation that will trigger automatic disbarment under *In re Wilson,* 81 *N.J.* 451 (1979), disbarment that is "almost invariable," *id.* at 453, consists simply of a lawyer taking a client's money entrusted

> to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal.
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> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

Moreover, as respondent acknowledged at the sentencing hearing, he was motivated by self-interest. He hoped that, by lending funds to QEM, the company would stay afloat and pay his outstanding legal fees. He, thus, would have derived a benefit from these QEM loans if the circumstances had developed as he had hoped.

We, thus, determine that respondent knowingly misappropriated client funds by lending them to another client, without authorization. Based on Wilson, respondent must be disbarred. We so recommend to the Court.

Members Baugh, Boylan, Clark, and Lolla 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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stanley Hausman
Docket No. DRB 08-257

Argued: January 15, 2009

Decided: March 4, 2009

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh						X
Boylan						X
Clark						X
Doremus	X					
Lolla						X
Stanton	X					
Wissinger	X					
Total:	5					4

Julianne K. DeCore

Julianne K. DeCore
Chief Counsel