

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-252
District Docket No. XIV-06-562E

IN THE MATTER OF
HEYWOOD E. BECKER
AN ATTORNEY AT LAW

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Decision
Default [R. 1:20-4(f)]

Decided: December 12, 2007

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). We recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1979. In
1998, he was reprimanded for failure to maintain a bona fide
office while practicing law in New Jersey. In re Becker, 153

N.J. 359 (1998). On December 1, 2006, he was temporarily suspended after pleading guilty in federal court to making a false oath in a bankruptcy proceeding and filing a false tax return.

Service of process was proper. On May 3, 2007, the OAE sent a two-count complaint by certified and regular mail to respondent's last known office address in Frenchtown, New Jersey, and to his home mailing address, a post office box in Carversville, Pennsylvania. The certified mail envelope sent to the office address was returned to the OAE marked "vacant." The regular mail envelope sent to the office address was returned marked "not deliverable as addressed." Although the OAE did not receive a receipt for the certified mail sent to respondent's home address, the OAE obtained shipment information from the United States Postal Service indicating delivery on May 14, 2007. The regular mail envelope sent to respondent's home address was not returned.

On May 24, 2007, the OAE sent a second letter to both addresses, by certified and regular mail, advising respondent that, unless he filed an answer, the allegations of the complaint would be deemed admitted and the record in the matter

would be certified directly to us for the imposition of discipline. The certified and regular mail envelopes for respondent's office address were returned marked "vacant, unable to forward." The certified mail return receipt for respondent's home address was signed by Karin Becker, respondent's wife, on June 8, 2007.

On June 21, 2007, the OAE sent another copy of the complaint by regular and certified mail to respondent's home address. The certified mail return receipt was signed by Stina Richtsmeier on June 25, 2007. The regular mail envelope was not returned.

Respondent did not file an answer to the complaint. The OAE then certified the record directly to us for the imposition of discipline, pursuant to R. 1:20-4(f).

Count one of the complaint alleged that, in May 2002, respondent held \$18,977.45 in his trust account on behalf of the Farber Estate, the Barnett Estate, the Della Becker Estate (the estate of respondent's late mother), the KB Trust (a property management business owned by respondent and/or his wife, and an unidentified client or clients. In August 2002, respondent deposited \$20,000 in his trust account on behalf of the

Cammarota Estate and \$739,559.40 on behalf of Coldstream Ltd., a corporate client.

Between May 28, 2002 and October 1, 2002, respondent's trust account balance contained shortages on at least thirty-four occasions, ranging from \$232.98 to \$26,853.33. These shortages were created by respondent's frequent invasion of the client funds in his trust account. He issued numerous checks payable to "cash" or for the benefit of the KB trust. The complaint contains a chart with the dates and amounts of each check, as well as the amount of the resulting shortage. According to the complaint, respondent issued 173 checks totaling \$103,811 payable to "cash," including those listed on the chart. He did not have the permission of any of his clients to use their funds held in his trust account.

The complaint alleged that respondent knowingly misappropriated funds that he should have been safeguarding for the Farber, Barnett, Della Becker, and Cammarota Estates and for Coldstream Ltd., and used those monies to pay KB Trust's expenses and to obtain cash from his trust account, in violation of RPC 1.15(a) (failure to safeguard funds), In re Wilson, 81

N.J. 451 (1979), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

On April 23, 2004, respondent was disbarred by consent in Pennsylvania, after he filed a March 24, 2004 Statement of Resignation.

Count two of the complaint alleged that, on August 23, 2005, the United States Attorney's Office filed a two-count Information in the United States District Court for the Eastern District of Pennsylvania. The Information charged respondent with making a false oath in a bankruptcy proceeding, in violation of 18 U.S.C.A. §152(2), and filing a false tax return in violation of 26 U.S.C.A. §7206. According to the Information, on October 21, 2003, respondent reported in a bankruptcy filing that his annual income was \$60,000, when he knew that he had omitted additional income of \$58,985 from his law practice and property management business. The Information further alleged that, on his 2001 income tax return, respondent reported income of \$122,872, when he knew that he had omitted additional income of \$21,427 from his law practice and property management business.

On October 26, 2005, respondent pleaded guilty to both charges. On January 13, 2006, he was sentenced to a four-month term of imprisonment, followed by a three-year term of supervised release. He was ordered to pay a fine of \$20,000 and an assessment of \$200.

The complaint alleged that respondent's criminal convictions violated RPC 8.4(b) (criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer).

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

The record demonstrates that, through a series of trust account invasions, respondent repeatedly engaged in the knowing misappropriation of client funds, including the funds of his mother's estate, for his personal and business use. His disbarment is mandated by In re Wilson, supra, 81 N.J. 451 (1979). In addition, respondent's criminal convictions are grounds for discipline. See In re Lunetta, 118 N.J. 443, 445 (1989) (a criminal conviction is conclusive evidence of an

attorney's guilt; the sole issue is the level of discipline to be imposed). Moreover, by failing to reply to the grievance or to file an answer to the formal ethics complaint, respondent violated RPC 8.1(b). Because disbarment is mandated for respondent's knowing misappropriation of client funds, we need not determine the level of discipline warranted by his criminal acts and his failure to answer the complaint.

We, thus, recommend that respondent be disbarred. Member Lolla did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
William J. O'Shaughnessy, Chair

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

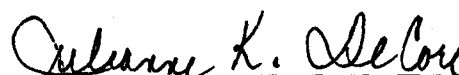
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Heywood E. Becker
Docket No. DRB 07-252

Decided: December 12, 2007

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy	X					
Pashman	X					
Baugh	X					
Boylan	X					
Frost	X					
Lolla						X
Pashman	X					
Stanton	X					
Wissinger	X					
Total:	8					1


Julianne K. DeCore
Chief Counsel