

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-027  
District Docket No. XIV-05-352E

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IN THE MATTER OF  
AVERY C. PILGRIM  
AN ATTORNEY AT LAW

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

Decided: May 16, 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). The complaint charged respondent with knowing  
misappropriation of escrow funds in a real estate matter, as  
well as general recordkeeping violations. We recommend that  
respondent be disbarred.

Respondent was admitted to the Massachusetts bar in 1982 and to the New Jersey bar in 1985. At the relevant times, he maintained an office for the practice of law in East Orange.

Presently, respondent is administratively suspended from the practice of law in Massachusetts. He has no disciplinary record in New Jersey. On March 20, 2006, he was temporarily suspended in New Jersey. In the Matter of Avery C. Pilgrim, 186 N.J. 260 (2006). Also, on multiple occasions, respondent was placed on the Supreme Court's list of ineligible attorneys for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. He was ineligible to practice from September 24, 2001 to October 16, 2001; September 30, 2002 to December 9, 2002; September 15, 2003 to October 15, 2003; and September 27, 2004 to July 7, 2005.

Service of process was proper. On November 17, 2006, the OAE sent a copy of the complaint to five different addresses that it had obtained from various sources. All five complaints were sent to respondent via regular and certified mail, return receipt requested.

The first attempted service was to respondent's last known office address, listed in the New Jersey Lawyers Diary and Manual as 63 Washington Street, East Orange, New Jersey 07017.

The letter sent via certified mail was returned with the notation "Not Deliverable as addressed. Unable to Forward."

The letter sent via regular mail was returned with the notation "Return to Sender Moved No Forwarding Address."

The second attempted service was to respondent's office address, listed in the Attorney Registration System as 50 Union Avenue, Suite 403, Irvington, New Jersey 07111. The letter sent via certified mail was returned with the notation "Refused. Return to Sender." The letter sent via regular mail was returned with the notation "Return to Sender."

The third attempted service was to respondent's home address, listed in the Attorney Registration System as 52H Village Green Apartments, Budd Lake, New Jersey 07828. Both letters were returned with the notation "Return to Sender. Not deliverable as addressed, unable to forward."

The fourth and fifth attempted services were to separate addresses provided to the OAE by respondent's attorney, Robert E. Margulies: 815 Lyons Avenue, Irvington, New Jersey 07111, and Post Office Box 222, Glen Ridge, New Jersey 07028. The letters sent via certified mail were returned with the notation "Return to sender. Unclaimed." The letters sent via regular mail were not returned. Respondent did not file an answer.

Accordingly, the OAE served him with the complaint via publication of a notice in the December 25, 2006 editions of the Star-Ledger and the New Jersey Lawyer. As of January 16, 2007, respondent still had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

The first count of the complaint alleged that, on September 15, 2003, Dorothy C. McFarlane filed a grievance, claiming that respondent had represented her in the sale of real estate. McFarlane also claimed that, as part of the representation, respondent had failed to timely pay off her home equity loan and return an escrow.

The closing took place on July 2, 2003. According to the HUD statement, the buyer paid a \$10,000 deposit with two checks: one for \$1000 and the other for \$9000. Respondent's trust account records did not reflect the \$10,000 deposit.

According to respondent's bank records, the buyer's \$9000 deposit check was negotiated on May 30, 2003, in the following manner: \$7000 was deposited into the account of respondent's wife, Carella; \$1850 was deposited into respondent's business account; and respondent took the remaining \$150 in cash.

When questioned by the OAE, respondent stated that he "might have cashed the check" and "used the money to do certain things." When pressed for details, respondent replied that he "messed around with drugs," specifically mentioning "cocaine, pot, crack and stuff like that."

Respondent also stated that, although he intended only to borrow the money, he never (1) discussed borrowing the money with McFarlane, (2) informed McFarlane that he was using the money, or (3) obtained McFarlane's authorization to use the money. In addition, respondent did not ask the buyer if he could use the deposit funds.

Based on these allegations, the first count of the complaint charged respondent with knowing misappropriation of client funds and failure to safeguard funds, violations of RPC 1.15(a) (failure to safeguard funds), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and the principles set forth in In re Wilson, 81 N.J. 451, 455 n.1, 461 (1979) (misappropriation of client funds), and In re Hollendonner, 102 N.J. 21, 26-27 (1985) (misappropriation of escrow funds).

The second count of the complaint charged respondent with recordkeeping violations (RPC 1.15(d)), uncovered during an OAE

audit. At the audit, respondent informed the OAE that he did not (1) maintain a receipts and disbursements journal, (2) have client ledger sheets, or (3) reconcile his attorney trust account on a monthly basis, all of which constituted a violation of R. 1:21-6(c), (d), and (h).

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 allegations of the first count of the complaint establish that respondent knowingly misappropriated escrow funds, a violation of the Hollendonner rule, RPC 1.15(a) (failure to safeguard funds), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The buyer of McFarlane's real estate gave respondent a \$9000 check, representing partial payment of the deposit. The check should have been deposited in respondent's attorney trust account, where it should have remained until the closing. Instead, without the permission of either the buyer or the seller, respondent placed \$7000 into his wife's account, \$1850 into his business account, and took the remaining \$150 in cash.

The allegations of the second count of the complaint establish that respondent committed recordkeeping violations when, contrary to the provisions of R. 1:21-6(c), (d), and (h), he failed to (1) maintain a receipts and disbursements journal, (2) have client ledger sheets, and (3) reconcile his attorney trust account on a monthly basis.

Respondent must be disbarred for knowingly misappropriating escrow funds, as established by the allegations in the first count of the complaint. In re Hollendonner, supra, 102 N.J. at 26-27; In re Wilson, supra, 81 N.J. at 455 n.1, 461. Accordingly, we need not consider what would be the appropriate discipline for the balance of respondent's infractions.

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  
William J. O'Shaughnessy,  
Chair

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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Avery C. Pilgrim  
Docket No. DRB 07-027

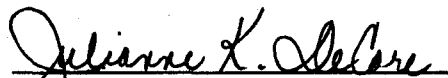
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Decided: May 16, 2007

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:	9					

  
Julianne K. DeCore  
Chief Counsel