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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-182  
District Docket Nos. XIV-05-221E  
and XIV-04-564E

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IN THE MATTER OF :  
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RICHARD R. THOMAS, II :  
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 :  
AN ATTORNEY AT LAW :  
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\_\_\_\_\_ :

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

Decided: October 19, 2006

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 for his knowing  
misappropriation of client funds.

The five-count complaint charged respondent with violating RPC  
1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(a)  
(failure to keep a client reasonably informed about the status of a  
matter or to promptly comply with a client's reasonable requests  
for information); RPC 1.5(b) (failure to communicate the basis or

rate of the fee in writing); RPC 1.7(a) (conflict of interest - representing a client when the representation adversely affects another client); RPC 1.8(a) (conflict of interest - prohibited business transaction with a client); RPC 1.15(a) (knowing misappropriation of client funds); RPC 1.15(b) (failure to promptly deliver funds to the client); RPC 8.1(b) (failure to cooperate with disciplinary authorities); RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1996. At the relevant time, he maintained a law office in New Brunswick, New Jersey. Because of respondent's prior suspensions, he does not currently maintain a law office.

In 2001, respondent received an admonition for misconduct in two matters, including failure to inform his clients that he was no longer acting as their attorney and failure to protect their interests upon termination of the representation. In the Matter of Richard R. Thomas, II, DRB 01-083 (June 29, 2001).

Effective October 29, 2004, respondent was suspended for one year for improprieties in a real estate transaction. In re Thomas, 181 N.J. 327 (2004). Respondent was involved in an unusual

residential real estate transaction, in which the buyer contributed virtually no funds toward the purchase, the seller received no consideration for the sale of her house, and a "mortgage broker/realtor," and possibly respondent, received all of the sales proceeds. Respondent was found guilty of gross neglect, lack of diligence, failure to communicate with a client, failure to provide a client with a written retainer agreement, conflict of interest, failure to promptly deliver funds to the client or third person, recordkeeping violations, false statement of material fact or law to a third person, false statements of material fact in connection with a disciplinary matter, criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, and conduct involving dishonesty, fraud, deceit or misrepresentation. The Court ordered that respondent not be reinstated until all pending ethics matters against him are resolved.

In 2005, respondent was suspended for three years for his involvement in a similar, unconventional real estate transaction in which, again, the buyer contributed virtually no funds toward the purchase of the property and the seller got none of the sale proceeds, which were received by the mortgage broker/realtor and possibly respondent. The Court found respondent guilty of gross neglect, lack of diligence, failure to communicate with a client,

failure to safeguard property, failure to make prompt disposition of funds, failure to comply with the recordkeeping rules, violation of or attempt to violate the Rules of Professional Conduct, commission of a criminal act, and conduct involving dishonesty, fraud, deceit or misrepresentation. In re Thomas, 183 N.J. 230 (2005).

We recently determined to suspend respondent for an additional one-year period for accepting a fee in a consumer credit card matter and then failing to provide any services to the client. Respondent was found guilty of gross neglect, lack of diligence, pattern of neglect, failure to provide his client with a writing setting forth the basis or rate of his fee, failure to communicate with the client, and failure to cooperate with disciplinary authorities. In the Matter of Richard R. Thomas, II, DRB 06-081 (July 25, 2006). That matter is pending with the Court.

Service of process was proper. On May 11, 2006, the OAE sent a copy of the complaint, via regular and certified mail, to respondent's last known office address, 46 Bayard Street, P.O. Box 606, New Brunswick, 08903, and to his home address, 91 Claremont Road, Franklin Park, New Jersey 08823. The certified mailings sent to the New Brunswick and Franklin Park addresses were both returned to the OAE on June 5, 2006, marked unclaimed. The regular mail was not returned. Respondent did not file an answer to the complaint.

On June 6, 2006, the OAE sent a second letter to the above addresses, by regular mail. The letter notified respondent that, if he did not file an answer within five days, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b) (failure to comply with a lawful demand for information from a disciplinary authority).

The regular mail was not returned. As of the date of the certification of the record, respondent had not filed an answer.

**Count One – The Jenkins Divorce Matter**

On April 13, 2001, Donna Kidd Jenkins retained respondent to represent her in a divorce matter. Although respondent had not regularly represented Jenkins, he did not provide her with a written fee agreement or otherwise communicate the basis or rate of the fee to her. By three separate checks, dated April 13, May 21, and November 9, 2001, Jenkins paid respondent a \$5,500 fee for her divorce.

By letter dated April 26, 2001, respondent informed Jenkins that he had completed the initial draft of her divorce complaint, would be finalizing it that afternoon, and would be

meeting with her to have her sign it. Thereafter, he would file the complaint and have it served on her husband.

On May 2, 2001, Jenkins signed the verification to the divorce complaint. On May 21, 2001, respondent sent the divorce complaint to the Essex County court for filing. The complaint, which was deficient, was not filed but, instead, returned to respondent marked "received." Thereafter, respondent "did not take reasonably prompt and diligent steps to correct the deficiencies" in the complaint and to re-file it. Eventually, he corrected the deficiencies and filed it on November 26, 2001. Afterwards, respondent did not take any action in the matter.

On January 28, 2003, fourteen months after respondent filed the complaint, Jenkins wrote to him, inquiring whether he had begun the process for her divorce, and noting that she had requested a complete copy of her file on several occasions, to no avail. By letter dated February 1, 2003, Jenkins again wrote to respondent, detailing her numerous unsuccessful attempts to contact him and her requests for her complete file, complaining that he was unable to finalize her divorce in two years, and requesting the return of all of the money from her account, as well as the identification of all transactions made from her account.

On February 27, 2003, the matrimonial court forwarded to respondent a notice to dismiss Jenkins' complaint for lack of

prosecution. On April 2, 2003, the complaint was dismissed without prejudice. Respondent took no action to vacate the order of dismissal and restore the complaint.

In addition, respondent never notified Jenkins when he initially filed the complaint, that the complaint was deficient, that he had to re-file it, that he had received a notice to dismiss it, and that it had been dismissed. Similarly, respondent did not reply to Jenkins' letters and did not comply with her requests for a copy of her file.

On July 16, 2003, Jenkins filed her divorce complaint pro se. On February 19, 2004, Jenkins obtained a final judgment of divorce.

#### **Count Two - Knowing Misappropriation**

On April 13, 2001, Jenkins retained respondent to represent her in the refinancing of a mortgage on her real property, located at 154 Park Street, East Orange, New Jersey, and in the purchase of property located at 334 Springdale Avenue, East Orange, New Jersey. As noted above, respondent had not regularly represented Jenkins. He did not provide her with a written fee agreement for these transactions.

The contract for the sale of the Springdale Avenue property listed Jenkins' son, Jesse Jenkins IV, as the buyer, Allens Lane Corp. as the seller, a purchase price of \$100,000, and a down

payment of \$5,000. According to the formal ethics complaint, Jenkins had informed respondent that she needed to refinance the mortgage on the Park Street property for \$100,000, in order to obtain sufficient funds to complete the purchase of the Springdale Avenue property.

Respondent instructed Jenkins to sign a blank mortgage application. Thereafter, unbeknownst to Jenkins, respondent's "associate," Charles Shelton, completed Jenkins' mortgage application, in the amount of \$121,800. It was Jenkins' understanding that the amount listed on her mortgage application was \$100,000.

In November 2001, prior to the closing and without informing Jenkins, respondent negotiated with Allens Lane, the seller, to reduce the purchase price of the property from \$100,000 to \$99,000.

On November 12, 2001, the day of the closing, the seller agreed to an additional last-minute reduction of the purchase price to \$94,000. Prior to the closing, respondent had already prepared the HUD-1 settlement statement showing the additional \$5,000 reduction. Respondent did not inform Jenkins of his further negotiations with the seller.



For seven months, from April through November 2001, Jenkins "continuously" called respondent, leaving him numerous messages requesting information about her matter, to no avail.

Respondent's trust account receipts and disbursements in connection with Jenkins' refinancing and purchase showed the following:

FUNDS RECEIVED

04/27/01	Deposit from Donna Jenkins	\$ 5,000.00
06/18/01	Wire Deposit	\$118,852.12
01/14/02	Sherman Silverstein law firm	<u>\$ 23,730.36</u>
	<b>TOTAL</b>	<b>\$147,582.48</b>

FUNDS DISBURSED

04/27/01	1604 Sherman, Silverstein, et al	5,000.00
06/18/01	1619 Allied Mortgage	5,634.00
06/18/01	1620 Essex County Clerk	69.00
06/18/01	1621 William Held Associates	[425.00]
09/01/01	1663 Richard R. Thomas	2,000.00
09/26/01	1687 Richard R. Thomas	2,000.00
11/10/01	1694 Richard R. Thomas	1,000.00
11/13/01	Wire Sherman, Silverstein et al	89,000.00
11/26/01	1710 Richard R. Thomas	1,200.00
01/10/02	1715 Richard R. Thomas	2,000.00
05/02/02	1726 Richard R. Thomas	1,000.00
06/07/02	1728 Essex County Clerk	329.00
06/07/02	1729 Gina DeFazio	250.00
06/21/02	1730 East Orange Tax Collector	26,230.85
06/21/02	1731 Coastal Title	520.00
06/26/02	1732 Essex County Clerk	45.00
06/26/02	1733 East Orange Tax Collector	861.96
06/26/02	1734 Richard R. Thomas	900.00
07/11/02	1753 East Orange Tax Collector	2,456.93
07/12/02	1754 Donna Jenkins	4,500.00
11/05/04	1810 Donna Jenkins	<u>255.54</u>
	<b>TOTAL</b>	<b>\$145,677.28</b>

[C5 III-17; Ex. 16; Ex. 17; Ex. 18.]<sup>1</sup>

<sup>1</sup> C refers to the formal ethics complaint, dated May 10, 2006.

As shown above, respondent disbursed \$10,100 to himself, even though, according to the complaint, he was entitled only to a \$1,900 fee for the refinancing and the purchase. Jenkins neither authorized nor was aware that respondent had taken an additional \$8,200 for himself. Furthermore, as the above summary shows, after the closing, respondent kept \$1,905.20 of Jenkins' funds in his trust account. Despite Jenkins' repeated requests for her money, respondent failed to return the \$1,905.20 balance to her. According to the complaint, respondent's unauthorized disbursements to himself constituted a theft (more properly, a knowing misappropriation) of Jenkins' funds.

After the closing, respondent did not provide Jenkins or her son with copies of the closing documents and did not act promptly or diligently to record the deed, pay the taxes, or complete the transaction. After the closing, respondent ignored Jenkins' numerous telephone messages and letters.

**Count Three - The Allens Lane Corp. Matter/Conflict of Interest/Knowing Misappropriation**

In August or September 2001, while respondent was representing Jenkins in her refinancing and purchase, respondent acted as counsel for Allens Lane Corp., the plaintiff in a tenancy/eviction action captioned Allens Lane Corp. v. Jessie Jenkins, Donna Jenkins, and the Law Offices of Jenkins & Scoon. Exhibit 19 to the

complaint is a substitution of attorney form stating that Eric S. Goldstein, Esq. had consented to the substitution of respondent as the attorney for Allens Lane in the above matter. According to the formal ethics complaint, Allens Lane "did not retain respondent to represent its interests in that litigation and did not authorize respondent to act in its behalf." The complaint also alleged that, although respondent had not regularly represented Allens Lane, he had not provided the corporation with a writing setting forth the basis or rate of his fee.

Respondent did not communicate with Allens Lane about the representation and did not inform Jenkins that he was representing Allens Lane in the litigation against her. Respondent's representation of Allens Lane was directly adverse to Jenkins' interests. Exhibit 20 to the complaint is a writ of possession, whereby Allens Lane recovered possession of the Springdale Avenue property.

The complaint charged that, although respondent engaged in a dual representation, he "did not reasonably believe that the representation of Allens Lane would not adversely affect the relationship with . . . Donna Jenkins." The complaint further charged that, during the course of the simultaneous representation of Allens Lane and Jenkins, respondent "did not make full

disclosure to each client and obtain the consent of each client to the dual representation."

While "ostensibly" representing Allens Lane in the above mentioned litigation, respondent paid himself \$6,000 in legal fees for acting as Allens Lane's counsel. Respondent improperly removed the \$6,000 from trust funds that he was holding for Jenkins, the defendant in the litigation.<sup>2</sup> Respondent did not inform Jenkins that he was using her funds to pay for his representation of Allens Lane.

The complaint charged respondent with knowing misappropriation of Jenkins' funds.

**Count Four – Improper Business Transaction with Client**

In July 2002, respondent obtained Jenkins' permission to borrow \$4,000 to \$5,000 from her trust funds, for two or three months, at no interest. On July 12, 2002, respondent issued from his trust account a \$4,500 check payable to Jenkins. Respondent signed Jenkins' name on the check and gave it to his mother. Jenkins had not authorized respondent to sign her name on the check. Respondent did not provide Jenkins with a writing

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<sup>2</sup> This \$6,000 disbursement (\$2,000 on September 1, 2001, \$2,000 on September 26, 2001, and \$2,000 on January 10, 2002) is included in the \$8,200 sum mentioned in count two.

documenting the loan. The complaint charged that the terms of the undocumented, no-interest loan were not fair or reasonable to Jenkins, that respondent did not transmit to Jenkins the terms of the loan, in writing, in a manner that she reasonably should have understood, and that he did not advise her of the desirability of seeking independent counsel or give her a reasonable opportunity to seek the advice of independent counsel of her choice.

In November 2004, after the filing of the grievance in this matter, respondent repaid Jenkins \$3,500. The \$1,000 balance remains unpaid.

**Count Five - Failure to Comply with R. 1:20-20**

On September 28, 2004, the Court suspended respondent for one year, effective October 29, 2004. Pursuant to the Order of suspension and R. 1:20-20(b)(15), respondent was required to file with the OAE Director, within thirty days of the Order, an affidavit of compliance with R. 1:20-20. After respondent failed to timely file the affidavit, the OAE sent him letters, by regular and certified mail, to his last known home address, 91 Claremont Road, Franklin Park, New Jersey, and to his last known office address, 46 Bayard Street, P.O. Box 606, New Brunswick, New Jersey. The letters reminded respondent that he was required to file the affidavit and gave him until January 8, 2005 to do so.

The certified mail receipt for respondent's home address was returned, indicating delivery on December 24, 2002. It was signed by a Gina Thomas. The certified mail to the office address was returned unclaimed. The regular mail sent to both addresses was not returned.

On July 14, 2005, "OAE personnel" visited respondent's home and saw no indication that he was maintaining a law practice at that location. As no one was home at the time of the visit, "OAE personnel" left, at respondent's front door, copies of the order and of R. 1:20-20, as well as "the [OAE] representative's" business card. On that same day, "OAE personnel" went to respondent's last known business address and found no indication that he was conducting a law practice at that location.

On August 29, 2005, respondent was at the OAE offices for an interview on an unrelated matter. At that time, he stated that he had not opened his mail and, therefore, had not received notification of his failure to file the required affidavit. The OAE then provided him with additional copies of R. 1:20-20 and of the Order of suspension. Respondent was given an additional two weeks to file the affidavit. He failed to do so.

The complaint contains sufficient facts to support findings of unethical conduct. Because respondent failed to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

When Jenkins retained respondent for her divorce matter, he did not give her a writing setting forth the basis or rate of his fee, a violation of RPC 1.5(b).

Respondent prepared the divorce complaint, had Jenkins sign the verification, then took three weeks to file the complaint. The court returned the complaint because of deficiencies. Thereafter, it took respondent seven months to correct the deficiencies and to re-file the complaint. Respondent took no further action in the matter.

On February 27, 2003, the court sent respondent a notice to dismiss Jenkins' complaint for lack of prosecution. Respondent did not react to the notice, causing the court to dismiss Jenkins' complaint without prejudice. Eventually, Jenkins obtained a divorce pro se. Respondent's conduct in this regard constituted gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3.

During the representation, Jenkins wrote to respondent requesting information about the progress of her case. On several occasions, she requested her file. Respondent did not reply to her requests for information and did not keep her apprised of the status of her matter, a violation of RPC 1.4(a).

As to Jenkins' mortgage refinancing and purchase of the Springdale Avenue property, respondent (1) failed to provide her

with a writing setting forth the basis or rate of his fee for these transactions, a violation of RPC 1.5(b); (2) ignored Jenkins' numerous telephone messages and letters and did not provide her or her son with copies of the closing documents, a violation of RPC 1.4(a); and (3) exhibited a lack of diligence by failing to promptly record the deed, pay the taxes, and otherwise complete the transaction, a violation of RPC 1.3.

More egregiously, after respondent was retained for the mortgage refinancing and the property purchase, he embarked on a trail of deceit and deception that ended in his swindling Jenkins out of monies that were rightfully hers.

Specifically, respondent instructed Jenkins to sign a blank mortgage application to enable his "associate" to apply for a larger mortgage loan, for which she would be responsible. Jenkins was unaware of the application for the higher sum. Furthermore, on two separate occasions, respondent convinced the seller to reduce the sale price, but did not disclose these important developments to Jenkins.

Respondent's conduct with regard to the refinancing amounted to a fraud against the lender, as well as against Jenkins, a violation of RPC 8.4(b) and RPC 8.4(c). Furthermore, his failure to turn over funds to Jenkins constituted a violation of RPC 1.15(b) and, more significantly, a knowing misappropriation of



her funds, a violation of RPC 1.15(a) and RPC 8.4(c). Altogether, respondent misappropriated at least \$10,105.20 of Jenkins' monies: \$8,200 plus the \$1,905.20 balance from the two real estate transactions.<sup>3</sup>

In addition to converting Jenkins' funds, respondent engaged in serious conflict of interest situations when he obtained a loan from Jenkins without observing the safeguards of RPC 1.8(a), and when he represented Allens Lane in a suit against Jenkins at the same time that he was acting as her attorney in the real estate transactions, a violation of RPC 1.7(a). As stated above, he then had the audacity to use Jenkins' funds to pay for Allens Lane's legal fee, without Jenkins' knowledge or consent. Here, too, respondent's conduct amounted to a knowing misappropriation of Jenkins' funds.

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<sup>3</sup> As stated above, the complaint alleges that respondent negotiated a \$6,000 reduction in the purchase price of the Springdale Avenue property, but did not disclose this reduction to Jenkins. The complaint also alleges that, unbeknownst to Jenkins, respondent inserted a \$121,800 figure on her refinance application, instead of \$100,000. The precise disposition of those excess funds, however, is not clear from the record. All the record establishes is that respondent improperly disbursed to himself \$8,200 more than the \$1,900 fee to which he was entitled, and kept a \$1,905.20 balance that should have been returned to Jenkins. Presumably, these overdisbursements, totaling \$10,105.20, were made against the \$6,000 price reduction and the \$21,800 excess loan. With the exception of the \$10,105.20 sum, however, the record does not clearly and convincingly demonstrate that respondent knowingly misappropriated other amounts.

Furthermore, respondent violated RPC 1.5(a) by failing to provide Allens Lane with a writing setting forth the basis or rate of his fee. According to the complaint, despite a substitution of attorney signed by a lawyer named Eric S. Goldsten, Allens Lane had not hired respondent as its attorney. By falsely representing to the court that he was authorized to represent Allens Lane's interests, respondent violated RPC 8.4(c), as well as RPC 8.4(d).

Finally, despite having been given ample opportunity to file an affidavit of compliance with R. 1:20-20, as previously ordered by the Court, respondent did not do so. His conduct in this context violated RPC 8.1(b) and RPC 8.4(d).

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b), RPC 1.7(a), RPC 1.8(a), RPC 1.15(a), RPC 1.15(b), RPC 8.1(b), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d).

For respondent's knowing misappropriation of client funds alone, he must be disbarred. In re Wilson, 81 N.J. 451 (1979).<sup>4</sup>

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<sup>4</sup> Although the complaint references In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation of escrow funds warrants disbarment), it is not entirely clear from the record if the source of the stolen funds was the loan refinance, which the lender entrusted to respondent for the benefit of Jenkins (escrow monies), or other monies that belonged to Jenkins (strictly client monies). Because the complaint charges only that respondent knowingly misappropriated client funds, Wilson is the applicable case in this matter.

We recommend respondent's disbarment. Even in the absence of a finding of knowing misappropriation, we would have recommended respondent's disbarment for the totality of his conduct in the matters that comprise his extensive disciplinary record.

Members Boylan, Stanton, and Wissinger 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  
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 Richard R. Thomas, II  
Docket No. DRB 06-182

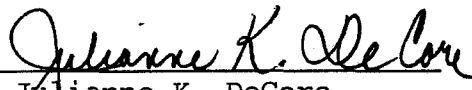
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Decided: October 19, 2006

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Disqualified	Did not participate
O' Shaughnessy	X				
Pashman	X				
Baugh	X				
Boylan					X
Frost	X				
Lolla	X				
Neuwirth	X				
Stanton					X
Wissinger					X
<b>Total:</b>	6				3

  
Julianne K. DeCore  
Chief Counsel