SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-074
District Docket No. XIV-02-008E

IN THE MATTER OF	:
	:
DEMETRIOS KATSIOS	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 21, 2005

Decided: July 21, 2005

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Ralph E. Faasse appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by special master Steven L. Menaker, arising from respondent's unauthorized release of escrow funds and misrepresentations to the Office of Attorney Ethics ("OAE"). The first count of the complaint charged respondent with having violated RPC 1.15 (failure to safeguard funds) and RPC 8.4(c) (conduct involving dishonesty, fraud deceit or

misrepresentation). Count two charged respondent with having violated RPC 8.1(a) (false statement to disciplinary authorities), RPC 8.4(b) (criminal act that reflects adversely on his honesty, trustworthiness or fitness as an attorney), and RPC 8.4(c).

Respondent was admitted to the practice of law in New Jersey in 1994. He has no history of discipline.

In 2001, respondent represented 686 Bergen Avenue, Inc., a corporation owned by his uncle, Thomas Pappas, and his cousin, Steven Pappas, in the sale of a retail liquor store. The buyer, Khai Pham, was represented by Gerald D. Miller.

In March 2001, Miller sent the buyer's deposit of $22,000 to respondent. Miller's cover letter to respondent stated, "Enclosed please find our trust check in the amount of $22,000.00. Please deposit same to your trust account." An earlier letter from Miller to respondent also indicated that the $22,000 was to be deposited in respondent's trust account. Respondent understood that Miller's intention was that the deposit money be placed in his trust account until the transaction was completed.

Respondent deposited the funds in his trust account. Approximately one month later, respondent, under pressure from his cousin, Steven Pappas, issued a check for $22,000 to 131-133

Ocean Avenue Properties, Inc., a company owned by Steven Pappas and a third party. The check bore the notation "Loan to Corp" on the memo line. Respondent testified that he knew, when he wrote the $22,000 check, that it was improper to do so.

The seller's liquor license lapsed, and the sale to Khai Pham fell through. Miller then made several requests for respondent's return of the deposit.[1] When his requests went unanswered, Miller contacted the OAE. That office, in turn, requested an explanation from respondent. After his receipt of the OAE's letter of inquiry, respondent obtained the funds from Steven Pappas, and on January 3, 2002, returned the deposit to Miller.

During the OAE investigation, respondent submitted altered bank statements and false reconciliations to that office. Respondent testified that he panicked when he was contacted by the OAE. He explained that, as a result, he scanned his bank statements onto his computer and edited them to create altered statements, and also created false reconciliations to make it appear that the $22,000 had remained in his trust account until January 3, 2002.

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[1] Respondent testified that he was out of his office for approximately two weeks in December 2002, which coincided with the time Miller made his requests for the funds. He claimed, thus, that he was unaware of Miller's communications to him until December 31, 2002.

During a demand audit conducted in March 2002, respondent did not report to the OAE that he had submitted false and altered documents. Respondent testified below that he "assumed they knew at that point." At a subsequent meeting with the OAE in October 2002, however, respondent admitted that he did not hold the deposit in his trust account and gave a truthful account of his transgressions.

The special master determined that respondent was guilty of the unauthorized release of escrow funds, in violation of RPC 1.15(a) and RPC 8.4(c). The special master also found respondent guilty of presenting to the OAE altered bank statements and false reconciliations, failing to advise that office of his actions, committing the criminal act of tampering with records, in violation of N.J.S.A. 2C:21-4(a),[2] and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, all in violation of RPC 8.1(a), RPC 8.4(b), and RPC 8.4(c).

The special master noted, in aggravation, respondent's continuing course of dishonesty and misrepresentation and his lack of candor to disciplinary authorities. In mitigation, the

[2] N.J.S.A. 2C:21-4(a) states ". . . a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing."

special master considered respondent's eventual cooperation with disciplinary authorities, his admission of wrongdoing, his contrition and remorse, his good reputation and character, his lack of prior discipline, his lack of personal gain from the misconduct, and the absence of loss to any client. The special master went on to state that

> [t]he quantitative superiority of the mitigating circumstances is overshadowed by the fact that Respondent's misconduct arose directly from the practice of law and by the recognition that Respondent's reaction to the inquiry from the OAE — cover-up and deception — reflect[s] adversely on his honesty and trustworthiness. As a result, substantial discipline is required to protect the public and preserve public confidence in the bar.
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> [SMR10.][3]

The special master recommended the imposition of a one-year suspension.

Upon a de novo review of the record, we are satisfied that the conclusion of the special master that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

When the buyer's deposit was placed in respondent's hands, he became the agent for both the buyer and the seller and was obligated to hold the funds until the transaction was

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[3] SMR refers to the special master's report, dated February 18, 2005.

consummated. He knew, at the time he released the funds to the seller, that he did not have the buyer's authorization to do so. The consent of both parties to the escrow agreement was required before he was permitted to release the funds. In re Frost, 171 N.J. 308, 324 (2002). Respondent's unauthorized release of the funds violated his ethics obligations to the parties.

> [A]n early release of escrow funds to a party to the escrow agreement does not invariably result in disbarment when the attorney has reasonable grounds to believe that the purposes of the escrow have been completed and the circumstances do not otherwise demonstrate that the attorney has 'made a knowing misappropriation' of the funds within the meaning of In re Wilson, 81 N.J. 451, 409 A.2d 1153 (1979) and In re Hollendonner, [102 N.J. 21 (1985)].
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> [In re Susser, 152 N.J. 37, 38 (1997).]

Here, respondent knew the transaction had not been completed, but must have believed that it would shortly be.

Improper distribution of escrow funds, without more, has generally resulted in discipline ranging from an admonition to a reprimand. In In the Matter of Joel Albert, Docket No. DRB 97-092 (February 23, 1998), an admonition was imposed for the release of a portion of escrow funds to pay college tuition costs of a daughter of a party to the escrow agreement, without first obtaining the consent of the other party. The attorney had a reasonable belief that consent had been given. In In re

Spizz, 140 N.J. 38 (1995) the attorney was admonished for releasing to the client escrow for a former attorney's fees, against a court order, and misrepresenting to the court and the former attorney that the funds remained in escrow.

More serious discipline was appropriate in In re Milstead, 162 N.J. 96 (1999), where an attorney was reprimanded for disbursing escrow funds to his client, in violation of a consent order. A reprimand was also imposed in In re Margolis, 161 N.J. 139 (1999), where the attorney breached an escrow agreement requiring the attorney to hold settlement funds in escrow until the completion of the settlement documents. The attorney used part of the funds for his fees with his client's consent. In In re Flayer, 130 N.J. 21 (1992), a reprimand was appropriate where the attorney made unauthorized disbursements against escrow funds. In that case, the attorney represented himself in the purchase of real estate. Because certain repairs needed to be made to the property, the attorney and the builder agreed that the attorney would escrow funds to cover those repairs. When the repairs were not completed after a substantial time had elapsed, the attorney became extremely frustrated. He, therefore, wrote to the builder and its counsel on several occasions, demanding that the repairs be completed within a particular time frame and warning that, if they were not so

made, he would himself arrange to have them undertaken at the builder's expense. When the attorney received no response to his letters and the repairs remained uncompleted, he used the escrow funds to make some repairs himself and to hire workers to make others. Acknowledging the clear impropriety of the attorney's conduct, the Court nevertheless recognized his frustration in dealing with an unresponsive builder and counsel. A reprimand was also imposed in In re Power, 91 N.J. 408 (1982), where the attorney improperly disbursed escrow funds to a third party, in satisfaction of that party's bill. But see In re Valore, 169 N.J. 225 (2001) (six-month suspension for failure to hold in escrow settlement funds belonging to third parties; with his clients' consent, the attorney invested the funds in other clients' complex litigation cases); In re Feranda, 154 N.J. 2 (1998) (six-month suspension where the attorney prematurely released his client's (the buyer) funds to the seller, causing his client to lose his life savings, and engaged in a conflict of interest by representing the buyer and seller in a real estate matter); and In re Moore, 175 N.J. 100 (2003) (one-year suspension where the attorney improperly released escrow funds to his client, a party to the escrow agreement, who then used the funds to pay the attorney's fee; in addition, the attorney misrepresented the status of the escrow to the other party, to

that party's counsel and to the OAE, failed to cooperate with the OAE's investigation, failed to comply with a Court order, and practiced law while ineligible).

Had respondent's misconduct been limited to the early release of the escrow funds, it is likely that a reprimand would have been sufficient discipline. Respondent, however, compounded his misconduct by fabricating evidence that he submitted to the OAE to cover up his misdeeds. Presenting false evidence to disciplinary authorities or to a court has resulted in discipline ranging from an admonition to a lengthy suspension. See In re Lewis, 138 N.J. 33 (1994) (admonition for attempting to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment of which the attorney was the owner/landlord had been corrected prior to the issuance of a summons); In re Sunberg, 156 N.J. 396 (1998) (reprimand where attorney created a phony arbitration award to mislead his partner, and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension where attorney submitted two fictitious letters to the district ethics committee in an

attempt to justify his failure to file a divorce complaint on behalf of a client; he also filed a motion on behalf of another client after his representation had ended, and failed to communicate with both clients); In re Paul, 167 N.J. 6 (2001) (three-month suspension for attorney who made oral misrepresentations to his adversary, and written misrepresentations in, among other things, a deposition and several certifications to a court); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension where the attorney did not diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three fictitious letters to the ethics committee in an attempt to show that he had worked on the matter); In re Poreda, 139 N.J. 435 (1995) (three-month suspension for an attorney who presented a forged insurance identification card to a police officer and also to a court); In re Telson, 138 N.J. 47 (1994) (six-month suspension where attorney altered a court document by whiting out a section to conceal the fact that his client's divorce complaint had been dismissed; thereafter, he submitted the uncontested case to another judge, who granted the divorce; several weeks later, the attorney denied to a third judge that he had altered the document); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed for an attorney who, in a

real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties); In re Penn, 172 N.J. 38 (2002) (three-year suspension imposed on an attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

Although respondent testified that he panicked when contacted by the OAE, his cover-up of his actions required a great deal of thought, planning, and time. Surely, his initial feeling of panic, had it been the only motivation for his actions, would have passed before the completion of the scheme. If respondent's misconduct had been limited to the early release of the escrow funds, a reprimand would suffice. As noted by the

special master, however, this was truly an instance where the cover-up was worse than the crime. We conclude that respondent's calculated plan of repeated misrepresentations to the OAE warrants a period of suspension.

Respondent's counsel argued that a one-year suspension is too severe a penalty and took issue with two of the special master's conclusions: first, that respondent failed to report his previous submission of false documents during the OAE demand audit in March 2002, and second, that respondent's conduct amounted to a criminal violation. As to the first, that there were no questions asked of respondent and that the purpose of the meeting was to review respondent's records does not mean that he could not have used that opportunity to admit his transgressions, had he wanted to. Second, the fact that respondent was not charged with a criminal violation does not preclude our finding a violation of RPC 8.4(b), which is appropriate in this case. In re McEnroe, 172 N.J. 324 (2002) (DRB found no violation of RPC 8.4(b) because the attorney had not been charged with the commission of a criminal offense. In re McEnroe, Docket No. 01-154 (DRB January 29, 2002) (slip.op. at 14; the Court reinstated the charge of a violation of RPC 8.4(b) and found the attorney guilty of a violation of that rule).

The OAE's position is that a three-year suspension is the more appropriate measure of discipline, instead of the one-year suspension recommended by the special master. The OAE relied on In re Susser, 152 N.J. 37 (1997) in support of its position. In Susser, the attorney released escrow funds to a developer/seller of real estate, an entity in which Susser had a financial interest, without the consent of the buyer. He also misrepresented the status of the escrow funds to an attorney for the buyer. The Court suspended Susser for three years.

We find this case distinguishable from Susser, in that respondent had no financial interest in 131-133 Ocean Avenue Properties, Inc., the corporation to which he released the funds.

We also find that respondent's conduct was less serious than that displayed by the attorney in Silberberg, supra, 144 N.J. 215. There, the attorney received a two-year suspension after he went ahead with a closing knowing that the co-borrower was deceased, thereby deceiving the mortgagee, the title company, and the seller that the co-borrower was alive and had signed the documents. The attorney also allowed the buyer to sign the name of the deceased co-borrower on the RESPA statement. That alone is a serious offense (a federal crime under 18 U.S.C.A. §1001 and §1010). The attorney later admitted

that he had "given in in a weak moment." To cover up his improper actions, the attorney lied, in a letter to the DEC, that the co-borrower had attended the closing. Even more egregiously, he then lied in a seven-page sworn certification that he submitted to the DEC. At the time, the attorney was neither inexperienced nor a young practitioner. He had been practicing law for twenty-two years when he attempted to deceive ethics authorities.

Here, the underlying conduct that led to the misrepresentations -- respondent's release of the escrow funds -- was far less serious than Silberberg's underlying conduct, and caused no harm to anyone. In addition, respondent did not approach Silberberg's years of experience at the bar, was facing pressure from a close relative to release the funds, and had been facing marital difficulties. Discipline less than that imposed in Silberberg (and it follows, less than that imposed in In re Penn, supra, 172 N.J. 38) is appropriate.

In our view, this matter is most akin to that exhibited in Telson, supra, 138 N.J. 47. In Telson, the attorney altered a court document, then concealed his actions twice. When he "whited out" the court document, he acted under the pressure of the moment, aggravated by the presence of his client. Telson's lies were prompted by his inexperience in matrimonial matters,

embarrassment over the situation, and his client's extreme distress over the dismissal of the divorce complaint. Telson also admitted his actions a week after he denied his conduct to a third judge. Mitigating factors were his lack of disciplinary record, that his lies were not motivated by personal interest, and that he expressed remorse over his conduct.

Here, too, respondent acted under pressure and then foolishly tried to cover up his mistake. His initial misconduct was not motivated by self-gain but, rather, by his desire to accommodate a close family member. Taking these circumstances into account, we determine that a six-month suspension sufficiently addresses the nature of respondent's misconduct.

Members Reginald Stanton, Esq., Robert Holmes, Esq., and Lee Neuwirth would impose a one-year suspension.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Demetrios Katsios
Docket No. DRB 05-074

Argued: April 21, 2005

Decided: July 21, 2005

Disposition:

Members	Six-month Suspension	One-year Suspension	Dismiss	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy	X				
Boylan	X				
Holmes		X			
Lolla	X				
Neuwirth		X			
Pashman	X				
Stanton		X			
Wissinger	X				
Total:	6	3			

Julianne K. DeCore
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Chief Counsel