

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-223

IN THE MATTER OF

AUGUSTINE U. UZODIKE

AN ATTORNEY AT LAW

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

Decided: October 9, 2001

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

Pursuant to R.1:20-4(f), the Office of Attorney Ethics (“OAE”) certified the record directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

This matter had previously been before us as a default in February 2001. At that time, we granted respondent’s motion to vacate the default and remanded the matter to the OAE. Thereafter, the OAE filed an amended complaint. On March 22, 2001, the OAE mailed a copy of the amended complaint by regular and certified mail to respondent’s last known home address. The regular mail was not returned. The certified mail was returned marked “unclaimed” and showed a forwarding address for respondent. On April 30, 2001, the OAE

mailed a copy of the amended complaint by regular and certified mail to the forwarding address shown on the certified mail. The regular mail to the new address was not returned. The certified mail was returned marked “unclaimed.”¹

On August 20, 2001, we notified respondent, by regular and certified mail, as well as by publication, that the matter had been certified to us as a default and that a motion to vacate the default had to be filed no later than September 4, 2001. The regular mail was not returned. The certified mail was returned marked “unclaimed.”

Respondent did not file an answer to the complaint or a motion to vacate the default.

* * *

Respondent was admitted to the New Jersey bar in 1990. At the relevant times, he maintained an office in East Orange, New Jersey.

In July 1999, in another default matter, respondent was suspended for six months for violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.15(a) (failure to safekeep property), RPC 1.15(d) and R. 1:21-6(a) (recordkeeping deficiencies) and RPC 8.1(a) (giving false material information to disciplinary authorities). In re Uzodike, 159 N.J. 510

¹ According to a June 5, 2001 letter from the OAE to respondent, respondent contacted the OAE on that date and requested additional time to answer the complaint. Respondent was advised that the matter had already been certified to us as a default and that he had to seek relief from us. The letter also confirmed that the address to which the OAE sent the complaint on April 30, 2001, as well as a letter brief and enclosures on May 30, 2001, was respondent’s home address.

(1999).

In September 2000, respondent was suspended for three months for violations of RPC 1.1(a), RPC 1.1(b), RPC 1.4(a), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). In re Uzodike, 165 N.J. 478 (2000). He has not been reinstated.

* * *

The formal ethics complaint alleged violations of RPC 1.15(a) (knowing misappropriation of trust funds), RPC 1.15(d) (recordkeeping violations), RPC 8.1(b) (failure to cooperate) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

This matter arose out of two trust overdraft notices from First Union National Bank (“First Union”), dated March 5 and 17, 1998. The bank notified the OAE that respondent’s trust account was overdrawn in the amounts of \$15,570.29 and \$20,805.62, respectively.

Count One – Knowing Misappropriation of Client Trust Funds

The complaint stated that, in January 1998, Maxforesight Gbanite, a friend of respondent, introduced him to Donald Walker and an individual named Garcia. Walker acted as “intermediary for Garcia’s brother, who needed legal representation for a criminal matter.” Respondent agreed to represent Garcia’s brother and to provide other unspecified

legal services for Gbanite. Walker was “to provide the retainers for these matters.”

On January 21, 1998, Walker accompanied respondent to First Union, where respondent deposited in his trust account twenty-one Fleet Bank money orders, totaling \$52,200.² According to the complaint, the \$52,200 represented respondent’s retainers for his representation of Garcia’s brother and Gbanite.

While respondent and Walker were at First Union, respondent cashed a \$20,000 counter check drawn against his trust account and gave the cash to Walker, purportedly for bail for Garcia’s brother. Two days later, on January 23, 1998, respondent issued four trust account checks against the Walker/Gbanite/Garcia funds, totaling \$32,480. Two of the checks, totaling \$16,000, were made payable to respondent.

The complaint stated that, on January 27, 1998, respondent was advised by his bank that the money orders had been dishonored. Between January 27 and 29, 1998, the bank debited respondent’s trust account by \$52,200.

According to the complaint, respondent’s issuance of the \$20,000 counter check and the four additional checks totaling \$32,480 created a shortage of \$52,480 in respondent’s trust account. At the time, respondent had \$10,868.07 “to his credit” in the account; therefore, the complaint charged, “the net shortage created by respondent was \$41,611.93.”

The complaint further charged that

² The complaint stated that \$52,500 was deposited. However, three of the money orders that were credited as \$2,500 were actually for \$2,400. The bank adjusted the amount.

respondent was made aware of the problem in his trust account as described above in a timely way by his bank; however, after the bank made respondent aware of the shortage in his attorney trust account, respondent did nothing to correct the shortage; instead, he continued to draw additional checks on that account for various matters, and, in so doing, increased the shortage in the account by continually invading the trust funds of one client to pay another.

The complaint did not detail either the “various matters” against which respondent continued to draw trust account checks or which clients’ funds were invaded. However, the investigative report explained one of the matters – the Egbutu closing – in detail. The report also explained how respondent’s failure to replace the \$52,200 invaded the trust funds that respondent should have been holding for other clients. The investigative report was not incorporated into the complaint. However, the OAE’s certification of the record to us incorporated the investigative report, with exhibits, and stated that the report “sets forth the detailed evidence against respondent and the basis for the amended complaint.”³

According to the investigative report, respondent provided the OAE with only one document dealing with the Walker/Gbanite/Garcia matter – a sheet of paper, titled “Donald Walker, Pest X, Inc., P.O. Box 989, Orange, N.J. 07051.” The paper listed the following disbursements, which totaled \$52,480: Donald Walker, \$20,000; respondent, \$8,000;

³ Instead of the usual cover letter, the OAE transmitted the certified record to us by letter-brief, in which the OAE argued that respondent should be disbarred for knowing misappropriation of trust funds. The May 30, 2001 letter-brief showed that the OAE sent a copy of the brief and the enclosures (the OAE’s certification, amended complaint and investigative report) to respondent, via regular and certified mail.

Donald Walker, \$8,000;⁴ G.E.Capital Mortgage \$8,935.08 and Theresa Gbanite, \$7,544.92.

The paper also indicated deposits of “\$52,500.00 on 1/21/98 into trust account” and “\$7,020.00 on 1/21/98 into business account.”⁵

According to the investigative report, the following information was obtained from respondent at the September 9, 1998 demand audit:

- Respondent could not recall Garcia’s first name.
- Respondent never met his client, Garcia’s brother, who was in custody on federal drug charges. Walker acted as the intermediary between Garcia’s brother and respondent.
- Respondent and Walker agreed on a \$25,000 retainer for respondent’s representation of Garcia’s brother.
- The money orders were supplied by Walker. (However, respondent signed the money orders as both the drawer and the payee.)
- When Walker attempted to cash \$20,000 worth of money orders for bail money for Garcia’s brother, Cherie Taylor, assistant manager for First Union, refused to do so. Taylor told respondent to deposit the money orders in his trust account and wait for them to clear before writing checks.
- When Walker insisted that he needed \$20,000 in cash for Garcia’s brother’s bail, Taylor advised respondent that he had sufficient funds in his trust account to cover a \$20,000 withdrawal.
- Respondent issued a counter check to himself, cashed it and gave the cash to Walker.

⁴ According to the investigative report, that \$8,000 check was made payable to respondent, not Walker.

⁵ The record did not show whether the \$7,020 was actually deposited in respondent’s business account.

- Respondent became suspicious of Walker several weeks later because Walker failed to contact him about the Garcia case and he was unable to contact Walker.

The investigator's examination of respondent's trust account records for January 20, 1998, the day prior to his deposit of the money orders, showed that he should have been holding \$26,472.53 on behalf of fifteen clients. At that time, there was \$37,340.60 in the account. The investigator was unable to attribute the \$10,868.07 difference to any client. Therefore, the investigator deemed the funds to belong to respondent.

The investigative report stated that, as of February 5, 1998, after First Union debited respondent's trust account for the amount of the money orders, respondent should have been holding \$52,828.76 in client funds in his trust account, exclusive of the Walker/Gbanite/Garcia funds. However, respondent's trust account bank statement showed a balance of only \$11,187.83 in the account on February 5, 1998.

The investigator discussed one client transaction - the Egbutu matter - in detail.⁶ On February 13, 1998, respondent represented Emmanuel and Rose Egbutu in their purchase of real property. Respondent received sufficient funds at the closing to pay all of the closing expenses, including the seller's existing mortgage. As the settlement agent, respondent issued a \$150,874.40 trust account check to pay off that mortgage. It was that \$150,874.40 trust account check to the mortgage company, which was presented and returned twice, that

⁶ The investigative report also discussed another matter in which respondent may have misappropriated client funds. However, that matter was not included in this complaint.

caused the March 5 and 17, 1998 overdraft notices mentioned above.

By letter dated March 19, 1998, the seller's attorney notified respondent that his trust account check to the mortgage company had been returned for insufficient funds and demanded that respondent satisfy the outstanding mortgage amount plus penalties imposed by the mortgage company. When respondent did not reply to the attorney's March 19, 1998 letter or to his telephone messages, the attorney again wrote to respondent on March 24, 1998.

On March 26, 1998, respondent remitted a \$127,299.48 trust account check to the mortgage company. He promised to wire the \$25,000 balance on "either Friday or Monday." By letter dated March 27, 1998, respondent forwarded a \$25,000 bank check to the mortgage company. Respondent told the investigator that he had borrowed the \$25,000 from a friend and that, on March 30, 1998, he had wired an additional \$500 to the mortgage company to complete the mortgage pay-off.

On March 3, 1998, respondent's trust account balance was \$135,304.11. As of that date, according to the investigator, respondent should have been holding \$177,980.54 on behalf of twenty-seven clients. The investigator stated that, although respondent used \$25,500 of his own funds to pay off the Egbutu mortgage, "respondent did not take any further action to bring his trust account into balance."

The investigator also interviewed Cherie Taylor, assistant manager for First Union, who stated that she had advised respondent that he would have to deposit the money orders

into his trust account and allow them to clear the account before he could write checks against them. According to Taylor, respondent seemed upset and told her he needed \$20,000 for bail for a client. Taylor said that she then reviewed respondent's trust account balance and told him that he had sufficient funds in the account to cover a \$20,000 check. Taylor also told the investigator that she received notice from First Union's security department on either the last week in January or the first week in February 1998 that a restriction had been placed on respondent's trust account because of the money orders, that she telephoned respondent to advise him of the restrictions and that respondent stated to her that he had discovered that the money orders had been stolen or forged.

George Buglar, Fleet Bank's district security chief, told the investigator that the money orders deposited by respondent were counterfeit.

Laura Sisto, a senior investigator with First Union, told the investigator that she called respondent shortly after the first-charge back, on January 27, 1998, to determine from whom he had received the money orders. However, Sisto's investigative notes did not reflect that conversation. Her notes did indicate a February 20, 1998 conversation with respondent, at which time he told Sisto that he had received the money orders from a client but had not provided her with the name of the client.

The complaint charged that respondent misappropriated client trust funds in three ways, thereby violating RPC 1.15(a) and RPC 8.4(c). First, according to the complaint, respondent "invaded the funds of other clients he had on deposit in his trust account" when

he obtained \$20,000 cash for Walker by issuing a counter check against his trust account before the money orders were credited to the account. The complaint also charged that respondent “again invaded client trust funds” on January 23, 1998, when he issued the four additional trust account checks (totaling \$32,480) against the money orders. Finally, the complaint charged that respondent misappropriated client trust funds when he failed to correct the shortage in his trust account after First Union notified him that the money orders had been dishonored. In fact, according to the complaint, respondent never made up the shortage.

Count Two – Failure to Cooperate with the OAE’s Investigation

The complaint charged that respondent failed to cooperate with the OAE’s investigation of the March 5 and 17, 1998 trust overdraft notices. As set forth above, the overdrafts were caused by respondent’s check to the mortgage company for the Egbutu closing, after First Union dishonored the \$52,200 money orders and debited respondent’s trust account in that amount. Because respondent failed to reply to the OAE’s two requests for an explanation of the overdrafts, the OAE filed a motion for his temporary suspension. In his certification in opposition to the OAE’s motion, respondent stated that he had not replied to the OAE’s requests because he was out of the country. The Court gave respondent additional time to reply and to submit the requested documents. Respondent submitted a “confusing” reply and some, but not all, of the requested documents. When

respondent failed to appear for a demand audit, the Court temporarily suspended him on August 18, 1998. Respondent was reinstated on September 18, 1998, after he appeared for the audit.

In January 2000, the OAE requested that respondent appear on February 16, 2000 for a continuation of the audit. Respondent replied that he would not appear because he needed more time. The audit was rescheduled for February 29, 2000. Respondent again notified the OAE that he would not appear because he could not locate certain files. According to the complaint, the “investigation was concluded without respondent’s further cooperation.”

The complaint charged that respondent’s continuing refusal to cooperate with the OAE’s investigation violated RPC 8.1(b).

Count Three – Recordkeeping Violations

Finally, the complaint stated that the OAE’s audit of respondent’s attorney books and records revealed the following deficiencies:

- a. respondent did not maintain a trust receipts book, a trust disbursements book or client ledger sheets;
- b. respondent did not retain bank statements, canceled check and deposit tickets;
- c. respondent did not keep a running cash balance in the trust account checkbook;
- d. respondent did not prepare a schedule of clients’ ledger accounts and did not reconcile it to the trust account bank statements; and

e. respondent commingled personal and trust funds.

Respondent's failure to comply with recordkeeping requirements was exacerbated by the fact that, on four prior occasions, March 7, 1995, May 16, 1996, February 25, 1997 and July 10, 1997, he was placed on notice that his records were not in compliance with the rules.

The complaint charged that respondent's failure to comply with the recordkeeping requirements of R.1:21-6 violated RPC 1.15(d).

* * *

Service of process was properly made in this matter. Therefore, the matter may proceed as a default. Following a de novo review of the record, we find sufficient evidence of unethical conduct. Because of respondent's failure to timely file an answer to the ethics complaint, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

The record established that, although the bank credited respondent's trust account with the \$52,200 on January 21, 1998, an assistant bank manager told respondent that he would have to wait for the money orders to clear before he could issue checks against the funds. Therefore, respondent was on notice that he could not draw against the \$52,200 until the money orders cleared his trust account. Despite that notice, respondent immediately withdrew \$20,000 from his trust account, when he had, at most, \$10,868.07 of his own funds in the account. Thus, respondent's withdrawal of the \$20,000 necessarily invaded

clients' trust funds. The complaint charged that respondent again invaded clients' trust funds when, two days later, on January 23, 1998, he issued four checks, totaling \$32,480, against the money orders. Two of the checks, totaling \$16,000, were made payable to respondent. Finally, after respondent was told by the bank that the money orders had been dishonored, he failed to replace the funds and "continued to draw additional checks on that account for various matters, and in so doing, increased the shortage in the account by continually invading the trust funds of one client to pay another." In fact, the complaint charged that respondent "never made up the shortage."

Although the complaint did not specify which clients' funds were invaded, the investigative report and exhibits gave more details about the misappropriations, the clients for whom respondent should have been holding funds and the shortages in respondent's trust account. It also discussed, in detail, the impact of the misappropriations on Egbutu's funds.

Furthermore, the investigative report and exhibits established that, as of February 5, 1998, respondent should have been holding \$52,828.76 in client funds in his trust account. However, on that date, respondent's trust account bank statement showed a balance of only \$11,187.83. Also, according to the report and exhibits, on March 3, 1998, respondent's trust account balance was \$135,304.11, when he should have been holding \$177,980.54 on behalf of twenty-seven clients. Finally, although respondent used \$25,500 of his own funds to pay off the Egbutu mortgage, he never replaced the remaining \$26,980 (\$52,480 in cash and checks taken against the Walker/Gbanite/Garcia funds less the \$25,500 replaced by

respondent).

In In re Brown, 102 N.J. 512 (1986), the attorney, in March 1978, deposited a client's \$20,000 check and drew against the deposit without waiting for the check to clear. After the check was dishonored, the client filed for bankruptcy and never made good on the check. Brown did not make up the deficiency in his trust account. In 1980, two years after the initial \$20,000 deficiency, the IRS seized an \$8,098 escrow account that Brown had opened on behalf of a client. Thereafter, Brown's trust account was short more than \$28,000. Brown attempted to make up the shortage by leaving earned legal fees in his trust account. However, those fees "did not come near returning the account to an in-trust condition." Id. at 515. Brown also paid his secretary's salary and his office rent from the trust account. It was not until 1982, after an ethics complaint had been filed, that Brown restored the missing funds to his trust account by refinancing the mortgage on his house and recouping \$15,000 from the bankrupt client. For four years, between 1978 and 1982, Brown continually invaded the trust funds of one client to pay another, a process known as "lapping." The Court rejected Brown's arguments that he was simply trying to correct a situation that had been caused by his bankrupt client, never used his clients' funds as his own and never took funds from his trust account for his personal use. The Court stated that Brown could not "avoid the impact of *Wilson* by relying on his having been victimized by a client who gave him a bad check and by demonstrating the heroic nature of his efforts to recover from that calamitous set-back. For more than four years thereafter he misused trust monies –

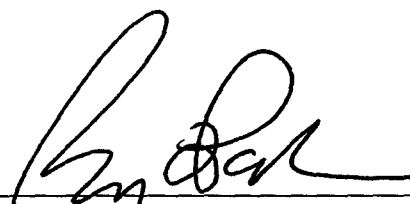
knowingly so.” Id. at 516.

We find that, under In re Brown, respondent is guilty of knowing misappropriation of trust funds. In addition, we find that respondent’s course of conduct with respect to his trust account amounted to “willful blindness” that client trust funds were being invaded. Such “willful blindness” satisfies the knowledge requirement for knowing misappropriation. In re Skevin, 104 N.J. 476, 486 (1986), cert. denied 481 U.S. 1028 (1987).

For respondent’s knowing misappropriation of trust funds, we unanimously determined to recommend that he be disbarred. In re Wilson, 81 N.J. 451 (1979). Two members did not participate.

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

Dated: Oct 9 2001

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Augustine U. Uzodike
Docket No. DRB 01-223**

Decided: October 9, 2001

Disposition: Disbar

Members	Disbar	Three-month suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
Peterson	X						
Maudsley	X						
Boylan	X						
Brody	X						
Lolla	X						
O'Shaughnessy							X
Pashman	X						
Schwartz							X
Wissinger	X						
Total:	7						2

Robyn M. Hill 10/29/01
Robyn M. Hill
Chief Counsel