

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-118

IN THE MATTER OF :
: AUGUSTINE U. UZODIKE :
: AN ATTORNEY AT LAW :
:

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

Decided: November 2, 1998

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

Pursuant to R. 1:20-4(f)(1), the Office of Attorney Ethics ("OAE") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. Respondent was served with two separate complaints. Service of the first complaint was made by regular and certified mail to respondent's last known address. Although the record is unclear as to the return of the regular mail, the certified mail receipt (green card) was returned indicating delivery on January 13, 1998. Service of the second complaint was also made by regular and certified mail. Again, while the record is not clear as to the return of the regular mail, the certified

mail receipt was returned indicating delivery on February 11, 1998. Respondent did not file an answer to either complaint.

On March 11, 1998 the OAE certified the record to the Board and mailed a copy of the certification to respondent. On March 19, 1998 respondent requested an additional thirty days to file an answer, which the OAE denied by letter dated March 25, 1998. Subsequently, respondent contacted the OAE to inquire about the process for making a motion to vacate the default. The OAE directed respondent to contact the Board directly. The record is silent as to whether respondent followed this advice.

On May 20, 1998 the Board forwarded notice of this default to respondent at his address in East Orange, New Jersey. Neither the regular mail nor the certified mail receipt has been returned. Respondent did not contact the Board. Additionally, notice of the Board hearing was published in both New Jersey Lawyer and the New Jersey Law Journal on June 1, 1998.

Respondent was admitted to the New Jersey bar in 1990. At the relevant times he maintained an office in East Orange, New Jersey. He has no prior ethics history.

The first complaint (District Docket No. XIV-97-042E) charged respondent with violations of RPC 1.15(a) (safekeeping property), R. 1:21-6(a) (negligent misappropriation), RPC 1.1(b) (pattern of neglect) (count one); and RPC 1.15(d) and R. 1:21-6(a) (recordkeeping deficiencies) (count two).

The second complaint (District Docket No. XIV-97-205E) charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) (count one); RPC 1.1(a), RPC 1.3 (count two); RPC 1.1(a), RPC 1.3, RPC 1.4 (failure to communicate) (count three); and RPC 8.1(a) (giving false material information to disciplinary authorities) (count four).

District Docket No. XIV-97-042E (The Real Estate Closings and Recordkeeping Violations)

In March 1996, Thomas Wester, Esquire, a member of the District VB Ethics Committee, notified the OAE that, in multiple real estate transactions, respondent allegedly failed to remit mortgage payoffs in a timely manner. Wester claimed that he could not investigate the matter himself because of a conflict of interest. Thus, the OAE conducted the investigation.

Between October 1995 and January 1996 the OAE found that, in two transactions, respondent had failed to remit mortgage pay-offs in a timely manner. The delay resulted in extra interest charges in both transactions. Additionally, the OAE found that respondent failed to obtain sufficient closing funds from his clients in three other real estate transactions. In all five transactions, respondent made overdisbursements, thereby creating negative balances of \$18,333.81 in his trust account. Although respondent initially had approximately \$25,000 of his own personal funds in his trust account before the five transactions, only \$15,436.72 of his funds remained to offset the \$18,333.81. It appears that respondent had

already used the remainder of his personal funds himself. As a result, respondent negligently invaded other clients' funds by \$2,897.09 .

The complaint also charged respondent with the following recordkeeping deficiencies: (1) failure to maintain a trust receipts book; (2) failure to maintain a trust disbursements book; (3) failure to retain bank statements, canceled checks and deposit checks; (4) failure to keep a running balance in the trust account checkbook; (5) failure to maintain client ledger sheets; and (6) failure to prepare required reconciliations. During the investigation respondent stated that he was just "too busy" to maintain client ledgers and receipts and disbursements journals.

District Docket No. XIV-97-205E (The Elonge Matter)

The complaint alleged that Ann Elonge retained respondent to represent her in the purchase of property from Arthur and Lavinia Yarborough in May 1994. The Yarboroughs' pre-existing mortgage in the amount of \$7,927.27 had been paid off as of the date of the closing. However, a discharge of the mortgage had not been recorded. When respondent obtained the title insurance commitment, which required that this mortgage be satisfied from the closing proceeds, the Yarboroughs' attorney supplied respondent with a discharge of lis pendens to file in advance of the closing in order to give Elonge clear title. Respondent never filed the discharge of lis pendens.

Unaware that she did not have clear title, Elonge again retained respondent in November 1995, when she resold the same property to Tracey and Jill Bowens. The property was still encumbered by the Yarboroughs' mortgage, as it had not yet been canceled of record. The Bowens' title insurance commitment required that the Yarboroughs' mortgage be satisfied at the time of closing. Monique Griffith, the Bowens' attorney, sent a copy of the title binder to respondent, who promised to deliver a discharge at the closing. Respondent never delivered the discharge.

At this closing, Elonge took back an interest-free second mortgage of \$9,200 from Tracey and Jill Bowens. Respondent failed, however, to record the mortgage. Then, because respondent had not filed the discharge of the mortgage, the Bowenses refused to make payments to Elonge. In January 1996 respondent told Elonge that he would pay her the amount due from the second mortgage if he could not discharge the Yarboroughs' mortgage. He subsequently gave Elonge \$600 between April and May 1996.

On a number of occasions from June 1996 through December 1996 Elonge contacted respondent's office about the status of the discharge. Initially, respondent told Elonge that he was attempting to resolve the matter. Eventually, respondent refused to accept Elonge's telephone calls. He finally instructed his secretary to tell Elonge to hire another attorney. Elonge retained another attorney, who resolved the outstanding lien in early 1997.

During an OAE demand audit in July 1997, respondent stated that he had not been aware of the Yarborough mortgage until Griffith had told him about it, after the Bowens'

closing. However, the record shows that, before the sale from the Yarboroughs to Elonge, respondent received a title insurance report, which documented the lien. In addition, respondent had received title work from Griffith before the Bowens' closing, which also reflected the lien. Moreover, respondent told Griffith before the closing that he would discharge the lien, thereby demonstrating his awareness of the problem.

* * *

Following a de novo review of the record, the Board deemed the allegations of the complaint admitted, pursuant to R.1:20-4(f)(1).

Respondent's conduct in District Docket No. XIV-97-042E supports the conclusion that he violated RPC 1.15(a) by commingling trust and personal funds when he kept more than \$25,000 of his own funds in his trust account. The facts alleged also support a finding that respondent negligently misappropriated \$2,897.09 by invading the trust funds of other clients, in violation of RPC 1.15(a) and R.1:21-6(a). Also, respondent's failure to maintain adequate records was a violation of RPC 1.15(d) and R.1:21-6(a). Additionally, respondent's failure to timely remit the mortgage pay-offs in two matters constituted violations of RPC 1.1(a) (gross neglect). Although the complaint did not specifically cite a violation of that RPC, the factual allegations support a finding in this regard.

In the Elonge matter, the allegations support a finding that, by failing to file a discharge in two separate transactions and to record Elonge's mortgage to the Bowens, respondent's conduct violated RPC 1.1(a) and RPC 1.3. In addition, respondent's failure to communicate with Elonge violated RPC 1.4(a). Moreover, respondent's false statements to the OAE about his lack of knowledge of the pre-existing mortgage violated RPC 8.1(a) (false material information to a disciplinary authority).

Lastly, the facts alleged in the complaint also support the conclusion that respondent's conduct violated RPC 1.1(b) (pattern of neglect) for failing to timely remit mortgage payments in two matters (District Docket No. XIV-97-042E) and to file the discharge of lis pendens as well as record Elonge's mortgage to the Bowenses (District Docket No. XIV-97-205E).

In summary, respondent's conduct violated RPC 1.1(a) in four matters, RPC 1.1(b), RPC 1.3 in two matters, RPC 1.4(a), RPC 1.15(a) in two matters, RPC 1.15(d) and R. 1:21-6(a) in two matters.

In similar situations, either a reprimand or a three-month suspension has been imposed. See, e.g., In re Powell, 148 N.J. 393 (1997) (reprimand for failure to act diligently, failure to communicate and misrepresentations in three matters); In re Henn, 121 N.J. 517 (1990) (reprimand for failure to act with diligence, failure to communicate, recordkeeping deficiencies and misrepresentation, all in one matter); In re Mahoney, 140 N.J. 634 (1995) (three-month suspension for failure to communicate, lack of diligence, pattern of neglect and

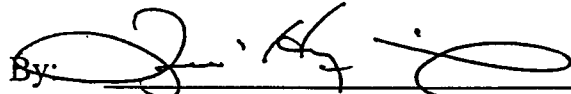
failure to maintain proper trust and business account records in four matters); In re Yetman, 132 N.J. 157 (1993) (three-month suspension for gross neglect, lack of diligence, failure to expedite litigation, failure to communicate, pattern of neglect, recordkeeping violations and misrepresentation in five matters).

Although the attorney in Powell affected multiple clients, that attorney's behavior was limited to interactions with his clients. Here, respondent went beyond harming his client and has demonstrated that he is both unwilling to comply with the Court's recordkeeping rules and unwilling to cooperate with the OAE. Like the attorneys in Mahoney and Yetman, respondent has demonstrated that he cannot meet the basic standards set forth by the Court and cannot be trusted with matters that, when not handled properly, may result in harm to his clients.

The purpose of discipline in this state is not to punish the attorney, but to protect the public against an attorney "who cannot or will not measure up to the high standard of responsibility required of every member of the profession." In re Rosenthal, 118 N.J. 454, 464 (1990) (citing In re Stout, 75 N.J. 321, 325 (1978)). The Board determined that, ordinarily, respondent's behavior would warrant a three-month suspension in order to best protect the public. However, because respondent has failed to meet his obligation to answer the complaint, causing this default, the Board determined to increase the quantum of discipline. The Board unanimously voted to impose a six-month suspension. One member did not participate.

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

Dated: 11/2/98

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

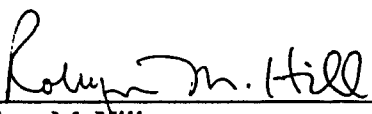
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Augustine U. Uzodike
Docket No. DRB 98-118

Decided: November 2, 1998

Disposition: Six-month Suspension

Members	Disbar	Six-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Zazzali							x
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson		x					
Total:		8					1


Robyn M. Hill
Chief Counsel