

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-087

IN THE MATTER OF :
ALFRED J. VILLORESI :
AN ATTORNEY AT LAW :

Decision

Argued: April 15, 1999

Decided: November 17, 1999

Richard J. Englehardt appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice of the hearing.

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

This matter was before us on a motion for final discipline filed by the Office of Attorney Ethics (“OAE”), based upon respondent’s June 18, 1997 criminal conviction of one count of second degree misapplication of entrusted property, in violation of *N.J.S.A. 2C:21-15* and two counts of second degree theft by failure to make required disposition of property received, in violation of *N.J.S.A. 2C:20-9*.

Respondent was admitted to the New Jersey bar in 1963. Although he has no prior disciplinary history, respondent was temporarily suspended by the Court on May 23, 1995 based on the OAE's motion following respondent's failure to cooperate with the ethics authorities. That suspension remains in effect.

According to the brief filed by the state in respondent's appeal of his criminal conviction, from the 1960's through the 1980's, respondent maintained a successful law practice. He invested in real estate, amassing property valued in excess of ten million dollars. During the mid-1990's, respondent's real estate holdings fell to thirty to fifty percent of their former value. Respondent's home was sold in a mortgage foreclosure proceeding. His law practice dwindled. As a result, in two matters, *Hayes* and *Pistilli*, respondent used client trust funds for his own purposes.

The Hayes Matter

In 1994, Carl Hayes retained respondent to represent him on the sale of a mortgage held by the estate of Hayes's mother. On March 4, 1995, respondent deposited into his attorney-trust account \$200,000 representing the mortgage proceeds. Within two weeks, respondent had depleted the entire sum by issuing checks to, among others, himself, a client, a creditor and his own daughter. He also sent \$20,588 to Hayes. After trying without success to reach respondent, Hayes traveled from Florida to New Jersey to recover the mortgage proceeds. On March 23, 1995, respondent met with Hayes and apologized for taking his

money. Respondent explained that he used Hayes's funds to pay creditors who would have killed him if he had not paid his debts. He promised to repay Hayes with interest. From March through September 1995, respondent paid Hayes a total of 206,788.50 (\$200,000 plus interest of \$6,788.50) using various funds, including third-party checks, cash and a check drawn on respondent's daughter's bank account.

Although at the trial, respondent contended that Hayes had lent him the \$200,000, Hayes denied making the loan. Moreover, shortly after the mortgage sale, Hayes contacted the attorney for the buyer of the mortgage to discover the reason for the delay in his receipt of the proceeds. If Hayes had agreed to the loan, he would not have made such inquiries.

The Pistilli Matter

Over a number of years, respondent performed legal services for Albert and Josephine Pistilli, a married couple with three adult children. Respondent developed a close friendship with the Pistilli family. After consulting respondent about estate-planning matters, the Pistillis agreed that, in order to minimize estate-tax liability, respondent would establish a trust fund with the Pistilli children as beneficiaries. From November 12, 1993 through June 22, 1994, the Pistillis gave respondent a total of \$563,642.66 from their savings for the trust fund. Respondent deposited the funds in two business accounts and his attorney trust account. On November 22, 1993, ten days after respondent first received funds from the Pistillis, respondent began spending those monies. He wrote numerous checks to himself and to his

creditors to pay expenses such as utilities and credit cards. Respondent also distributed some of the funds to the Pistilli children as gifts from their parents.

In order to mislead the Pistillis into believing that he had properly invested the trust fund monies, respondent gave them a stock certificate ostensibly issued to Albert Pistilli representing 27,000 shares of Montana Precision Mining Co. ("MPM") stock. The stock certificate had been issued to another individual and had been altered to appear that it had been issued to Albert Pistilli. When the Pistillis began raising questions about the trust fund investments, respondent tried to persuade them to accept land in the Poconos or MPM stock in lieu of the money they had given him. The Pistillis refused. As it turned out, respondent did not own the Poconos property individually, but jointly with his brother and daughter. When the Pistillis' daughter, Elizabeth, suggested that respondent sell the MPM stock and pay the proceeds to her parents, respondent did not offer a satisfactory response.

At the criminal trial, respondent denied that he stole the Pistillis' money, claiming that they gave him the funds to buy MPM stock at a future date. He further contended that he did not buy the stock immediately because he had persuaded Mrs. Pistilli to wait until the price decreased so that he could buy more shares. Mr. Pistilli denied respondent's version of the events, insisting that they had given respondent money to establish a trust fund for his children. In turn, respondent asserted that only Mrs. Pistilli, who had passed away before the trial, had understood the terms of the agreement.

On June 18, 1997, respondent was convicted of all three charged counts. On August 15, 1997, after merging count one into count two, the judge sentenced respondent to two concurrent five-year custodial terms, plus restitution of \$439,642.66 to the Pistillis and various fines.

The OAE urged the Board to recommend respondent's disbarment.

* * *

Following a review of the full record, we determined to grant the OAE's motion for final discipline.

The existence of a criminal conviction is conclusive evidence of respondent's guilt. *R. 1:20-13(c)(1); In re Gipson*, 103 *N.J.* 75, 77 (1986). Respondent's second degree conviction for misapplication of entrusted property and theft by failing to make required disposition of property received constituted a violation of *RPC 8.4(b)* (commission of a criminal act that reflects adversely on his honesty, trustworthiness or fitness as a lawyer) and of *RPC 8.4(c)* (conduct involving dishonesty, fraud, deceit or misrepresentation). Only the quantum of discipline to be imposed remains at issue. *R. 1:20-13(c)(2); In re Lunetta*, 118 *N.J.* 443, 445 (1989).

Respondent knowingly misappropriated client funds in both the *Hayes* and *Pistilli* matters. In *Hayes*, respondent retained the \$200,000 proceeds from the sale of his client's


mortgage. Instead of distributing those funds to his client, or at the very least, maintaining them intact in his client's behalf, respondent depleted the entire amount in two weeks, disbursing most of the funds for his own purposes. In *Pistilli*, respondent received \$563,642.66 from his clients with which to establish a trust fund for their children. Although respondent was duty-bound to invest and maintain those monies to benefit the Pistilli family, he used those funds for his own benefit, including paying his own debts.

Respondent's knowing misappropriation of client funds mandates his disbarment. *In re Wilson*, 81 N.J. 451 (1979). No amount of mitigation will be sufficient to excuse misappropriation that was knowing and volitional. *In re Noonan*, 102 N.J. 157 (1986). It is enough that respondent used his clients' money without their consent, knowing that he had no authority to do so. *In re Wilson, supra*, 81 N.J. 451 (1979); *In re Noonan, supra*, 102 N.J. 157 (1986).

We unanimously recommend respondent's disbarment. One member did not participate.

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

Dated: 11/17/99

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Alfred J. Villoresi
Docket No. DRB 99-087

Argued: April 15, 1999
Decided: November 17, 1999
Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling	x						
Cole	x						
Boylan							x
Brody	x						
Lolla	x						
Maudsley	x						
Peterson	x						
Schwartz	x						
Thompson*	On temporary leave of absence						
Total:	7						1

Robyn M Hill 12/2/99
 Robyn M. Hill
 Chief Counsel