

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-262

IN THE MATTER OF
STEVEN F. MILLER
AN ATTORNEY AT LAW

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

Decided: November 25, 2003

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 in this matter directly to us for the imposition of discipline, following respondent’s failure to file an answer.

Respondent was admitted to the New Jersey bar in 1983. He received a private reprimand in 1991 for lack of diligence, failure to communicate with a client, and failure to reply to reasonable requests for information from a disciplinary authority. In the Matter of Steven F. Miller, Docket No. DRB 91-07 (February 4, 1991). Respondent was

temporarily suspended for contempt of court for failure to turnover partnership records of his law firm to a court appointed accountant. In re Miller, 127 N.J. 496 (1992). The Court continued the suspension by order dated June 12, 1992. In re Miller, 128 N.J. 53 (1992). In 1994, respondent was suspended for a three-month period for misconduct in three matters which included gross neglect, failure to communicate with a client and to provide necessary information, failure to return client property when requested, failure to cooperate with ethics authorities, and conduct involving misrepresentations. In re Miller, 93 N.J. 165 (1994). To date he has not been reinstated.

On April 17, 2003, the OAE sent a copy of the complaint to respondent by regular and certified mail, return, receipt, requested, to 115 Short Hills Road, #633, West Orange, New Jersey. The returned receipt card indicated delivery on May 6, 2003. The signature of the recipient was that of respondent. Respondent did not file an answer. On June 2, 2003, the OAE sent respondent a second letter notifying him that if he did not file an answer within five days, the matter would be certified to the Board as a default. The returned receipt card indicated delivery on June 5, 2003. The signature of the recipient appears to be that of respondent. Respondent did not file an answer.

The three-count complaint charged respondent with violations of RPC 8.4(a) (knowingly assisting or inducing another to violate the Rules of Professional Conduct), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 1.15(a) and (b) (failure to safeguard funds - knowing misappropriation of funds and failure to promptly deliver to a client or third person funds to which the client or third person is entitled to receive), In re Wilson, 81 N.J. 451(1979), and In re Hollendonner,

102 N.J. 21 (1985) (count one); R.1:20-20(b)(15) contempt of Court for failing to comply with Guideline 23 or R.1:20-20 (count two); R.1:21-8 [redesignated as R.1:20-20(a)] (prohibited association with a disciplined attorney) and R.1-20-20(b)(2) (prohibition against suspended attorney occupying or sharing office space where an attorney practices law) (count three).

According to the complaint, Todd A. Pennington filed a grievance with the District VIII Ethics Committee alleging that Nicholas Mundy, Esq., as escrow agent for Edison Power Technologies Inc. (Edison), failed to honor a stock sale and repurchase agreement. Similar grievances were filed by Johan Fokkema and Albert Miller. Mundy's attorney filed a reply on his behalf. Respondent was named in the reply. As a result, respondent submitted a reply to the attorney's letter. During the investigation relating to Mundy, the OAE learned that respondent was also involved with the stock sale and repurchase agreement and, therefore, commenced an investigation into respondent's conduct.

In 1994, Mundy formed the entity Blackstone Financial Resources Inc. (Blackstone). Mundy brought respondent into the business. At that time respondent had already been suspended. Mundy was the president and respondent the registered agent of Blackstone. The business address for Blackstone was 501 Main Street, P.O. Box 375, Metuchen, New Jersey, Mundy's law office.

Respondent's role with Blackstone was to develop business for the company by obtaining commercial loans for clients. He was to be paid for successfully structuring deals. Respondent used Mundy's office to transact business for Blackstone.

George Richard Malgran, Jr., Esq. (Malgran) was a shareholder and president of a company trading as Edison Power Technologies Inc. (Edison). Nicholas Anderson (Anderson) was the president and a major stockholder of a company trading as Power Efficiency Corporation (PREF). PREF manufactured an energy saving motor control for elevators, which was being marketed to Otis Elevator and other companies. Edison was PREF's representative.

In 1998, Malgran and Anderson determined to merge their two companies. After Malgran borrowed \$20,000 from Mundy to complete the buyout of some of his partners in Edison, he had a controlling interest in the company. Malgran introduced Anderson to Mundy. Together, they sought Mundy's assistance in securing capital, including expansion capital for their new venture, PREF/Edison.

Mundy informed Anderson that he had a substantial amount of money coming in from the United States government, which he would use as capital for the PREF/Edison project. When Mundy became incapable of personally funding the project, he and Malgran introduced Anderson to respondent. They decided that respondent would be responsible for obtaining capital/long term financing for PREF/Edison, through Blackstone.

Respondent's attempt to obtain financing through Meridian Investments was unsuccessful. Mundy, Anderson, Malgran, and respondent, therefore, agreed to go forward with a stock sale and repurchase agreement for PREF stock to raise the needed funds for current expenses and fees to obtain a letter of credit. The agreement provided that individual investors would purchase PREF stock for \$6.00 a share from Edison.

During a 120-day period from the effective date of the agreement, Edison had the right to repurchase the stock at \$9.00 a share. The investors had the right to sell the stock back to Edison at \$9.00 a share on the 120th day from the effective date of the agreement. If neither party exercised their option, the investors would receive their shares in PREF. The Stock Sale and Repurchase Agreement was signed by Malgran on Edison's behalf, and by Mundy as the escrow agent. During the course of the OAE investigation, Mundy acknowledged that he was to be the escrow agent for the funds on behalf of PREF/Edison. The investors' funds were deposited into Mundy's attorney trust account. Under the agreement 1,646,500 shares, including 33,600 shares, which were "free, clear, unencumbered and free trading" were to be held in escrow by Mundy.

On June 24, 1999, Anderson delivered the PREF stock certificate to Mundy. Mundy signed a document that acknowledged the receipt of the certificate and indicated that he was to hold the shares in escrow. On the same date, Anderson sent a letter to Continental Stock Transfer & Trust Company (Continental) authorizing the break up of the PREF stock certificate into two certificates, one for 33,600 of free trading shares and a certificate for the balance, both to be issued in Anderson's name. Continental was instructed to send the certificate to Mundy.

According to the complaint "Mundy stated that the certificate was lost, though it was in respondent's possession." The stock certificate was never sent to Continental and the free trading shares that were to be held by Mundy in escrow were never obtained. Under cover letter dated August 29, 2000, respondent returned the stock certificate to Mundy.

Respondent retained Global Diversified, run by David Friedman, to solicit investors in the stock sale and repurchase plan. Friedman was to be paid a commission on the amounts he brought in.

In early July 1999, Mundy began to receive funds from investors. He deposited the funds into his trust account. Sixteen investors invested a total of \$226,800 in PREF. Mundy's files revealed, however, that the deposits in his trust account relating to the PREF project totaled \$256,800.

None of the investors in the PREF project, including grievants Todd Pennington, Johan Fokkema, and Albert Miller, were ever advised that the funds raised through the stock sale and repurchase agreement would be used for the benefit of any other entities other than PREF/Edison. They were told that the funds would be used for short term funding as well as for obtaining long term financing for expansion for PREF/Edison. Anderson and Malgran both acknowledged that PREF was to be the primary beneficiary of the funds raised.

Respondent, together with Robert Staub, an insurance broker, attempted to secure a \$12.5 million line of credit through Emerald Pure Trust, located in Longwood, Florida. The line of credit was for the benefit of PREF as well as financing for several other Blackstone projects. In addition to seeking financing for PREF, respondent and some others, attempted to secure financing for other entities including: Quality Restaurant Associates (QRA), Electric Power Co., Red Rock Casino, Trebors, also known as J/R's, the Place for Ribs, Santa Clara Casino, and Sun Packing. Mundy, thus, wired a total of

\$153,750.12 from his attorney trust account to Emerald Pure Trust on behalf of PREF, as well as for other unrelated projects.

<u>PROJECT NAME</u>	<u>DATE</u>	<u>AMOUNT</u>
PREF	07/09/99	\$10,000.00
Electric Co.	07/12/99	\$10,000.00
Sun Packing	07/14/99	\$10,000.00
Trebor's (JR's)	07/14/99	\$10,000.00
QRA	07/16/99	\$10,000.00
Red Rock Casino	07/16/99	\$10,000.00
Royal Palm Casino	07/21/99	\$10,000.00
PREF	08/10/99	\$50,000.00
Trebor's (JR's)	08/14/99	<u>\$33,750.12</u>
	Total	<u>\$153,750.12</u>

Of the total listed above, only \$60,000 was wired to Emerald Pure Trust on behalf of the PREF/Edison project.

Mundy made all of the above disbursements from the investors' funds to Emerald Pure Trust at respondent's request. Neither Anderson nor Malgran approved the use of the investors' funds for non-PREF/Edison related purposes, and Mundy failed to follow up with them or respondent about the use of PREF funds for projects not related to the PREF/Edison project. Respondent's failure to obtain Anderson's and Malgran's permission to use the funds for anything other than PREF related expenditures and his failure to discuss it with them were set forth in Mundy's August 23 and 25, 1999 letters to respondent. By letters dated September 23 and December 17, 1999, Mundy demanded that respondent return the monies he advanced to Emerald Pure Trust.

Although respondent knew that under the stock sale and repurchase agreement investors' funds could only be used for PREF/Edison funds he, nevertheless, directed Mundy to make distributions of PREF/Edison funds in violation of the agreement.

Respondent helped prepare many of the documents needed for the wire transfer of funds to Emerald Pure Trust. He also caused Mundy to wire approximately \$93,000 to Emerald Pure Trust for projects unrelated to PREF.

Count two of the complaint charged that following his temporary suspension, respondent failed to comply with the Court's order directing him to comply with OAE's Guideline 23, now R.1:20-20, dealing with suspended attorneys. His failure to comply constitutes contempt of court, pursuant to R.1:20-20 (b)(15).

Finally, count-three charged that while respondent was suspended from the practice of law, he operated Blackstone from Mundy's law office in violation of R.1-21-8 [now R.1:20-20(a)] and R.1:20-20(b)(2). R.1:20-20(a), among other things, prohibits an attorney from employing or otherwise allowing a suspended attorney to share or use his/her office space. R.1:20-20(b)(2), however, prohibits a suspended attorney from occupying, sharing or using office space in which an attorney practices law.

Service of process was properly made in this matter. Following a review of the record, we determined that the facts recited in the complaint support a finding of unethical conduct. Because of respondent's failure to answer the complaint, the allegations are deemed admitted. R1:20-4(f).

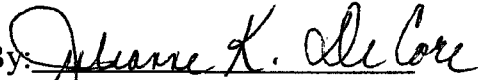
Respondent's actions caused the release of approximately \$93,000 of investors' funds, being held in escrow for the PREF/Edison venture, for purposes unrelated to that venture. Respondent had the funds released without first obtaining authorization from the investors or from Anderson and Malgram. Respondent, therefore, induced Mundy to violate the Rules of Professional Conduct, a violation of RPC 8.4(a). He also engaged in

conduct involving dishonest, fraud, deceit or misrepresentation, a violation of RPC 8.4(c), failed to safeguard escrow funds, and knowingly misappropriated funds in violation of RPC 1.15(a) and (b). In addition, respondent failed to comply with the OAE's Guideline 23, now R.1:20-20, which constitutes contempt of court, pursuant to R.1:20-20(b)(15). Finally, as a suspended attorney conducting business where another attorney practices law, respondent violated R.1:20-20(b). R.1:20-20(a), formerly R.1:21-8 more properly relates to Mundy's conduct in allowing respondent, a suspended attorney, to conduct business from his law office. That charge is, therefore, dismissed.

We unanimously determined that under the principles of In re Hollendonner, 102 N.J. 21 (1985) (knowing misappropriation of escrow funds), respondent's breach of the stock sale and repurchase agreement, by using the investors' funds for other than their intended purpose, requires his disbarment.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Acting Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Steven F. Miller
Docket No. DRB 03-262

Decided: November 25, 2003

Disposition: Disbar

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>	X						
<i>O'Shaughnessy</i>	X						
<i>Boylan</i>	X						
<i>Holmes</i>	X						
<i>Lolla</i>	X						
<i>Pashman</i>	X						
<i>Schwartz</i>	X						
<i>Stanton</i>	X						
<i>Wissinger</i>	X						
Total:	9						

for Ellen A. Brodsky
Julianne K. DeCore
Chief Counsel