

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-114

IN THE MATTER OF
CAROLYN E. ARCH
AN ATTORNEY AT LAW

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

Decided: July 22, 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 to the formal ethics complaint.

The complaint alleged that respondent lacked diligence in her handling of a real estate matter, lied to the OAE during its investigation of the grievance and negligently misappropriated trust funds.

Respondent was admitted to the New Jersey bar in 1965. On July 9, 1991, she received a private reprimand for gross neglect, lack of diligence, failure to communicate with the client and failure to withdraw from the representation when requested to do so by the

client. On July 24, 2002, she received an admonition for failure to communicate with the client in a workers' compensation matter, in violation of RPC 1.4(a) and RPC 1.4(b). In the Matter of Carolyn E. Arch, Docket No. DRB 02-188. On July 29, 2002, she received an admonition for lack of diligence and failure to communicate with the client in a divorce action. In the Matter of Carolyn E. Arch, Docket No. DRB 01-322.

* * *

On January 10, 2003, the OAE sent a copy of the complaint to respondent's last known office address listed in the New Jersey Lawyers' Diary and Manual, 744 Broad Street, Suite 525, Newark, New Jersey 07012, by certified and regular mail. The certified mail receipt was returned signed by respondent on January 10, 2003. The regular mail was not returned.

On February 28, 2003, the OAE sent a second letter to the above address, by certified and regular mail, advising respondent that, if she did not file an answer to the complaint within five days, the record would be certified directly to us for the imposition of discipline. Respondent signed the certified mail receipt. The regular mail was not returned.

By letter dated March 10, 2003, respondent requested that the time to file an answer be extended to March 17, 2003. Although the OAE granted her the extension, she did not file an answer.

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On May 5, 2003, after the matter had been certified to us as a default, respondent filed

a motion to vacate the default. On May 8, 2003, the OAE filed an objection to respondent's motion and urged us to deny it.

In order to have a default vacated, a respondent must offer a reasonable explanation for his or her failure to answer the ethics complaint and assert a meritorious defense to the ethics charges. As to her failure to answer the ethics complaint, respondent claimed that she missed the first deadline because she had entered the wrong date in her electronic calendar. This was the same reason given to the OAE when she requested an extension to March 17, 2003. As to the new deadline, respondent contended that she had "lost track of time" while trying to locate documents to exonerate her conduct.

With regard to the meritorious defense requirement, respondent's motion was vague. She claimed that she is "now in a position to corroborate and document [her] defenses to the charges in the complaint." She did not specify any newly found evidence that would excuse her conduct.

Our review of the motion persuaded us that respondent did not overcome the two hurdles to vacating a default. First, she did not present any valid reason for her failure to answer the ethics complaint. She was given ample additional time to file her answer, but failed to do so because she allegedly "lost track of time." Moreover, although respondent attempted to advance meritorious defenses to some of the allegations in the complaint, that defense required her to locate missing documents, which she did not. In any event, her failure to overcome the first hurdle alone requires us to deny the motion. Indeed, the OAE was

generous with respondent, to the extent that it gave her additional time along the way, including extra time to answer the complaint. Respondent, however, did not avail herself of that opportunity.

* * *

The complaint alleged violations of RPC 1.3 (lack of diligence), RPC 1.15(a) (negligent misappropriation of trust funds), RPC 1.15(b) (failure to promptly deliver funds to a person entitled to receive them), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations) and RPC 8.4(c) (conduct involving misrepresentation).

On or about April 22, 1998, respondent represented Cynthia Smith in the purchase of a house. Over the following month, respondent made a series of disbursements from the proceeds of sale, but failed to remit \$1,090 to NIA Lawyers Title Agency (“NIA”), representing the cost of Smith’s title policy.

Beginning in July 1998, NIA made repeated requests to collect its premium for the title policy.

On August 12, 1998, respondent sent NIA a copy of a trust account check for \$1,090, dated May 20, 1998 and made payable to NIA. Respondent claimed that she had sent NIA the check on or about May 20, 1998. She did not enclose a copy of the reverse side of the check, which would have shown whether or not the check had been negotiated. Respondent also sent NIA a copy of her May 20, 1998 “Closing Report,” showing the alleged transmittal of the check to NIA.

Thereafter, NIA periodically contacted respondent about payment. On or about July 12, 2000, more than two years after the closing, NIA sent respondent an undated letter stating, in part, as follows:

On May 20, 1998, you issued Attorney Trust Account check no. 2528 in the sum of \$1,090, payable to NIA/Lawyers Title Agency, LLC, in payment of the invoice in connection with the captioned matter. To date, we have no record of having received nor negotiated this check. Would you kindly reissue this check so that we may issue your policies and close our file in connection with this matter.

Respondent did not reply to NIA or reissue the check.

On August 15, 2000, NIA sent respondent a copy of its July 12, 2000 letter, with a note stating, "May [we] please have a response to this so that we may close this file." Again, respondent did not reply to NIA's letter. On July 2, 2001, three years after the closing, NIA again wrote to respondent, as follows:

We have written several times requesting that you reissue your Attorney Trust Account Check No. 2528, dated May 20, 1998. We have no record of having received or negotiated this check. If this check has been negotiated, kindly send us a copy of the cancelled check. If this check has not been negotiated, please reissue it so that we may issue the owner's policy and close our file.

Once again, respondent ignored NIA's request for information about the check.

On September 7, 2001, NIA advised respondent that it intended to file an ethics grievance against her.

During the OAE investigation that followed, respondent stated that she was unable to produce her original file because it had been destroyed in a flood. She also stated that, in

November 2000, her landlord had inadvertently disposed of boxes containing her financial records. Therefore, she claimed, she could not produce the trust account records. She did not submit proof of the flooding incident or the accidental disposal of her records. In addition, as late as October 2002, respondent had failed to reconstruct her attorney trust account records for the relevant period.

Respondent also told the OAE investigator that her bank could not produce copies of her trust account records because of their age. Unknown to respondent, the OAE had made a similar request of respondent's bank and had no difficulty obtaining copies of the requested documents.

Lastly, respondent also told the investigator that she reconciled her trust account every three or four months and recalled having seen the canceled check to NIA, as well as a bank statement, both of which reflected that the check to NIA had been negotiated. In fact, the records obtained from the bank indicated that the check had never been presented for payment.

The OAE reconstruction of the Smith closing, based on the bank copies of respondent's trust account records, showed that respondent received the Smith proceeds of \$161,100.63 by wire transfer to her attorney trust account on April 22, 1998. On April 25, 1998, respondent deposited into her trust account a \$10,000 Summit Bank treasurer's check, dated April 23, 1998, representing the additional funds for the Smith closing. Respondent made the following disbursements out of the closing funds:

CK. NO.	TO	FOR	AMOUNT	BALANCE
2518	Axia Fed. Sav. Bank	Payoff 1 st Mtg.	47,696.58	113,404.05
2519	Geo. & Marie Meluso	Net Proceeds	102,505.74	10,898.31
2520	Century 21 Realty	Commission	9,780.00	1,118.31 ¹
2526	Tax Collector	Property Tax	1,286.70	9,831.61
2525	Allstate Mtg. Corp.	Fees	6,736.00	3,095.61
2524	William Held Assoc.	Surveyor	375.00	2,720.61
2523	Union County Clerk	Recording Fees	225.00	2,495.61
2547	Carolyn Arch, Esq.	Attorney Fees	450.00	2,045.61

The OAE reconstruction confirmed that, over the following year, respondent expended substantially all of the \$2,045.61 that remained on account of the Smith transaction, through payments unrelated to the Smith closing. On March 3, 1999, the trust account balance for all clients had dwindled to \$711.73. By January 7, 2000, that balance was \$5.59. The OAE investigator found no evidence that respondent knowingly misappropriated the Smith funds, concluding that her invasion of client funds was the result of inattention to her recordkeeping responsibilities.

On October 12, 2002, respondent finally sent NIA a business account check for \$1,090, representing the premium for the title policy, which had never been issued in the four years after the closing.

* * *

Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges of unethical conduct. Because of

¹ This balance should reflect a \$10,000 deposit to the trust account on April 25, 1998, changing it from \$1,118.31 to \$11,118.31.

respondent's failure to file an answer, the allegations of the complaint are deemed admitted.

R.1:20-4(f).

The Smith closing took place in 1998. Over the next four years, NIA tried repeatedly to obtain its premium payment so that it could issue Smith's policy. Yet, respondent failed to attend to the matter until 2002. As a result, Smith was without title insurance for four years. Respondent's failure to address the problem for that lengthy period of time, despite her awareness that the situation needed rectification, amounted to lack of diligence, in violation of RPC 1.3.

During the OAE investigation, respondent claimed that her trust and business account records were destroyed in separate calamities, including a flood and an accidental disposal of boxes. The OAE investigator concluded that respondent had not maintained records for a significant period of time, based on respondent's failure to show that she had attempted to either obtain copies from other sources or to reconstruct her records through other means. Like the OAE, we found that respondent failed to properly maintain records of the transaction, in violation of RPC 1.15(d) and R. 1:21-6. By her negligent misappropriation of the remainder of the Smith funds, respondent also violated RPC 1.15.

In addition, respondent made several misrepresentations to the ethics investigator. First, she misrepresented that the original check to NIA had been negotiated and that she had seen the canceled check when reconciling her trust account records – records that she could not produce. She then misrepresented to the OAE that officials at her bank had refused to

copy those records for her, based on the age of the records. Respondent's conduct in this context violated RPC 8.1(a). Although the complaint did not cite this RPC, the facts recited therein gave respondent sufficient notice of a potential finding of a violation of that rule. No due process considerations, thus, preclude our finding in this regard.

It is not so clear, however, that respondent intended to mislead NIA by her failure to show the reverse side of the NIA check. This could have been an oversight on respondent's part. Without more, we found no clear and convincing evidence of a violation of RPC 8.4 (c) for that act.

Ordinarily, a reprimand is imposed for negligent misappropriation of client's funds and recordkeeping violations, see In re Blazsek, 154 N.J. 137 (1998); In re Zavodnick, 139 N.J. 607 (1995); In re Mitchell, 139 N.J. 608 (1995); In re Harrison, 139 N.J. 609 (1995); and In re Imperiale, 140 N.J. 75 (1995), although mitigating circumstances could lower the discipline to an admonition. See In the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) and In the Matter of Philip J. Matsikoudis, Docket No. DRB 00-189 (September 25, 2000). Here, respondent also lacked diligence, made misrepresentations to the OAE and has an ethics history (a private reprimand and two admonitions). Nevertheless, a five-member majority was not persuaded that a suspension is required in this matter. Accordingly, those members voted to impose a reprimand, with the requirement that respondent be supervised by a proctor for a period of one year. Four members dissented, believing that respondent's overall conduct and ethics history, coupled with the default nature

of this proceeding, warrant a three-month suspension.

We also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

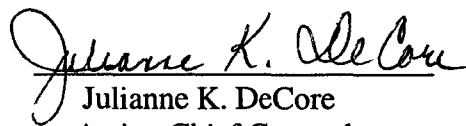
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Carolyn E. Arch
Docket No. DRB 03-114

Decided: July 22, 2003

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Three-month 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:		4	5				


Julianne K. DeCore
Acting Chief Counsel