

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-144  
District Docket No. XIV-01-455E

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IN THE MATTER OF :  
 :  
PHILIP F. MURPHY :  
 :  
AN ATTORNEY AT LAW :

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Decision

Argued: June 17, 2004

Decided: July 22, 2004

Brian D. Gillett appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE").

Respondent was admitted to the New Jersey bar in 1986. He has no history of discipline. From September 20, 1999 through August 12, 2003, however, he was ineligible to practice law for

failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

On November 14, 2001, Fred Boniakowski filed a grievance against respondent, alleging that he had failed to turn over \$7,500 that he was holding in escrow since 1993, and had failed to reply to Boniakowski's letters and telephone messages. Boniakowski's grievance stemmed from respondent's conduct in a real estate transaction that took place in 1993.

In July 1993, Boniakowski, his wife, and his brother retained respondent to represent them in the sale of property located in Dunellen, New Jersey. The buyer, Marlene Vogel, later known as Marlene Warren, was represented by Daniel Soriano. At the August 23, 1993 closing, the parties agreed that respondent would hold \$7,500 in escrow, pending receipt of a satisfactory inspection by the New Jersey Department of Community Affairs "with respect to the registration as a multiple family dwelling."

Attached to the Title Closing Statement was a handwritten "Supplement to Title Closing Statement," dated August 23, 1993, which stated:

Any mandated remediation and repairs shall be accomplished and paid for by the Sellers. To secure the Sellers [sic] obligation, their attorney, Philip F. Murphy, is holding the sum of \$7,500.00 in escrow in his attorney trust account. The cost of remediation and repairs may

be paid from this escrow. Surplus funds shall be paid by the sellers. The Sellers shall remain liable for any escrow deficiencies.

[S13;Ex.4.]<sup>1</sup>

By letter dated August 29, 1995, respondent reminded Soriano that he was still holding the \$7,500 and stated that he would release the funds to Boniakowski if he did not hear from Soriano before August 31, 1995. On August 31, 1995, Soriano informed respondent that the buyer had recently received an inspection report requiring several repairs. On September 5, 1995, Soriano sent the report to respondent.

By letter of January 1997, respondent asked Soriano to advise him of "what you require of Mr. Boniakowski so that the matter can be finally resolved and the funds which I am holding can be turned over to Mr. Boniakowski."

On February 5, 1997, Soriano advised respondent that the property would be reinspected on February 11, 1997. Soriano instructed respondent to maintain the funds in escrow until the buyer received a reinspection report.

On March 18, 1997, Soriano sent a copy of the reinspection report to respondent. Soriano's letter stated, "As you can see, there are 13 open violations which must be addressed by the Boniakowskis. I suggest that Mr. Boniakowski contact Marlene

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<sup>1</sup> S refers to the Disciplinary Stipulation of Facts.

Warren to arrange for the abatement of these open violations." On the next day, respondent advised Boniakowski to contact the buyer to "arrange for the abatement of these violations so that I can return this money to you without further delay."

Starting in 1997, Boniakowski and his brother left telephone messages for and send correspondence to respondent, inquiring about the escrow. Respondent did not reply to their inquiries.

On November 14, 2001, Boniakowski filed a grievance against respondent. Three days later, respondent gave Boniakowski's nephew a check for \$7,500. The accompanying letter stated:

These funds have been in my IOLTA escrow account since the sale of the business/property . . . .

The attorney for the purchaser had steadfastly refused to permit the release of the funds unless certain conditions were completed. [Boniakowski] was kept informed of these affairs but no one communicated to me that the repairs were completed. To this day I have received no such word.

But we both agree that too much time has passed for this money to not be in [Boniakowski's] possession and I am sending it to [Boniakowski] through you.

[S115;Ex.18B.]

The OAE does not dispute that respondent maintained the escrow funds untouched since 1993. According to a June 24, 2002

letter from Soriano to the OAE, all the house violations were satisfactorily corrected in 1997.

As noted earlier, respondent was ineligible to practice law from September 20, 1999 through August 12, 2003. During a demand audit of respondent's attorney records, respondent told the OAE that he had closed his practice in February 1998. Nevertheless, the OAE's review of respondent's trust account records showed that respondent continued to practice law during at least twenty-four of the forty-seven months that he was ineligible. Respondent's trust account deposits and withdrawals during that period totaled \$870,000 and \$909,000, respectively.<sup>2</sup>

Early in January 2002, the OAE auditor called respondent's home and talked to him and his wife to confirm the address and to indicate that the OAE would be sending him a copy of the grievance, to which a reply was expected. On January 11, 2002, OAE Chief of Investigations Gerald Smith forwarded a copy of the grievance to respondent and requested a reply before January 28, 2002. Respondent did not comply with that request. A telephone message from the OAE auditor, on April 8, 2002, did not spur respondent into action.

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<sup>2</sup> Although the withdrawals exceeded the deposits during that time, the trust account balance before the first deposit in the ineligibility period was \$115,000.

On May 1, 2002, OAE Deputy Ethics Counsel Brian Gillet informed respondent that the OAE would be conducting a demand audit of his attorney records on May 15, 2002. Two days before the audit, respondent requested and obtained an adjournment until June 6, 2002. On May 13, 2002, the auditor sent a confirming letter to respondent. The demand audit took place as scheduled.

On June 21, 2002, Smith wrote to respondent reminding him that he was required to send specific bank records to the OAE and outlining the recordkeeping deficiencies uncovered by the audit. Specifically, respondent did not maintain trust receipts and disbursements books, did not reconcile his trust account records, and kept inactive trust ledger balances in the trust account for an extended period. Smith's letter also cautioned respondent to rectify his ineligibility to practice law. Although the OAE reminded respondent that the deadline for the production of the bank records had expired, and although twice respondent informed the OAE that they would be mailed - - first on July 29, 2002 and then on August 7, 2002 - - it was not until August 12, 2002 that the OAE received some of the requested records.

On October 17, 2003, Gillet asked respondent to explain, in writing, the trust account activity that had occurred during the

period of his ineligibility. Despite OAE reminders, respondent did not submit an explanation until December 3, 2003. In his letter, respondent informed the OAE that he was once again an attorney in good standing and that the few matters that he had handled while ineligible related either to his mother's estate - - of which he was the executor - - or to three close family friends, his stepdaughter, and his niece. In most instances, respondent either held funds in escrow as an accommodation to friends and relatives or assisted them in purchasing their homes, at no compensation. Respondent's letter to the OAE stated that he "would like to feel free to close out dormant accounts and feel totally retired from the practice of law."

Respondent stipulated that his conduct violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with clients), RPC 1.15(b) (failure to promptly deliver to the client funds to which the client is entitled), RPC 1.15(d) (recordkeeping violations), RPC 5.5(a) (unauthorized practice of law), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The OAE recommended "discipline in the range between a reprimand and a three month suspension," citing as mitigation respondent's maintenance of the \$7,500 in trust since the

creation of the escrow agreement and his unblemished disciplinary record.

Following a de novo review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical.

Respondent stipulated that (1) his failure to ensure that the purpose of the escrow had been satisfied and to promptly disburse to his clients funds to which they were entitled violated RPC 1.1(a), RPC 1.3, and RPC 1.15(b); (2) his failure to reply to his clients' requests for information about the matter violated RPC 1.4(a);<sup>3</sup> (3) his practicing law while ineligible violated RPC 5.5(a); (4) his recordkeeping practices violated RPC 1.15(d); and (5) his failure to promptly cooperate with the OAE violated RPC 8.1(b).

Either an admonition or a reprimand is usually imposed for conduct similar to respondent's, at times even if the attorney has a disciplinary record. See In the Matter of Philip J. Moran, DRB 01-411 (February 11, 2002) (admonition for attorney who, three months after the closing, remitted payment for real estate taxes, sewer charges, and home warranty premium, and did not pay

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<sup>3</sup> The record does not reveal the precise time spanned by the clients' attempts to obtain information about the case. The stipulation merely states that, "[a]fter 1997, [the Boniakowskis] left telephone messages and sent correspondence to respondent inquiring about the escrow." The grievance was filed in 2001.



the water charges at all; also, the attorney did not reply to the clients' numerous telephone calls and failed to promptly deliver to them \$350, representing their overpayment towards the closing proceeds; in another matter, it was discovered after the closing that \$1,000 was due back to the sellers; instead of making the reimbursement, the attorney reimbursed himself for \$800 previously paid to the mortgagee and failed to refund to the sellers the \$200 balance that was not in dispute; the attorney violated RPC 1.3, RPC 1.4(a), and RPC 1.15(b)); In the Matter of Diane K. Murray, DRB 98-342 (September 26, 2000) (admonition for failure to record a deed and obtain title insurance for fifteen months and two and a half years after the closing, respectively; the attorney also failed to reply to the client's numerous requests for information about the matter and to reconcile her trust account records in a timely fashion; the attorney violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 1.15(d)); In the Matter of Laura P. Scott, DRB 96-091 (May 2, 1996) (admonition for attorney who did not remit certain fees to the title company and to the mortgage company until six months after the closing; the attorney also failed to reply to her clients' numerous requests for information on potential unpaid closing costs and to deposit \$500 in cash into either her trust account or her business account, from which the closing proceeds

would then be disbursed; finally, the attorney did not submit to her clients proof of \$97 in "reimbursement for costs/fees," and did not reimburse them for that amount; the attorney violated RPC 1.3, RPC 1.4(a), RPC 1.15(b), and RPC 1.15(d)); In re Jodha, 174 N.J. 407 (2002) (reprimand for attorney who did not promptly complete post-closing procedures; the attorney did not record the deed, pay the title insurance premium, pay the real estate taxes or refund escrow funds to his client until nine to twenty months after the closing; the attorney also failed to correct accounting deficiencies noted during a 1998 random audit by the OAE); In re Gronlund, 171 N.J. 30 (2002) (reprimand for attorney who represented a client in a claim for a riparian grant from the State of New Jersey in connection with the sale of real property; at the closing, \$6,200 of the sale proceeds were placed in escrow, pending receipt of the riparian grant; the attorney failed to act diligently and to file the claim for a period of nine months; he also failed to keep his clients informed about the status of the matter; the attorney had received a prior reprimand for lack of diligence and failure to communicate with the client); In re Regojo, 170 N.J. 67 (2001) (reprimand for attorney who failed to properly maintain the required trust account records, negligently misappropriated client's trust funds, and failed to promptly pay funds from a

real estate closing to various third parties, including fees for inheritance tax liens, property taxes, realty transfer tax, and sewer, exterminator, and surveyor bills); In re Mandle, Jr., 167 N.J. 609 (2001) (reprimand for attorney who, while practicing law under the supervision of a proctor, failed to represent a client diligently by not recording a deed and mortgage for five months after the closing and not properly disbursing the closing funds, allowing them to remain stagnant in his trust account; the attorney also failed to cooperate with the investigation of the ethics matter; the attorney had received two prior reprimands for conduct that included gross neglect, pattern of neglect, lack of diligence, failure to cooperate with disciplinary authorities, and failure to communicate with a client); In re Maiorello, 140 N.J. 320 (1995) (reprimand for attorney who practiced law while ineligible, failed to maintain proper trust and business account records in nine matters, and exhibited a pattern of neglect, lack of diligence, and failure to communicate with clients in six of the matters).

The three-month suspension cases cited by the OAE, In re Sciver, 158 N.J. 4 (1999), and In re Medford, 148, N.J. 81

(1997), presented discipline-enhancing factors: a "default" in Sciver,<sup>4</sup> and a misrepresentation in Medford.

Mitigating factors are respondent's lack of disciplinary history, his lack of knowledge that the parties had reached an agreement about the repairs (although he should have made inquiries after a reasonable time had elapsed), the probability that he failed to promptly comply with the OAE's requests for information or documents because of his retirement from the practice of law, and the fact that his practicing law while ineligible was limited to the representation of friends and relatives, whom he wished to help; respondent received no compensation in most, if not all, instances. That the funds were kept inviolate in his trust account since 1993, however, should not merit any favorable consideration; it was his duty to maintain them intact. RPC 1.15(a).

In light of the foregoing, we determine that a reprimand is the appropriate quantum of discipline for respondent's ethics infractions. One member did not participate.

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<sup>4</sup> Sciver was not considered strictly on a default basis because, although the Court and we reviewed the case after the effective date of the default rule, the complaint was served on respondent before that date. For all intents and purposes, however, we deemed the case a default, since we considered respondent's failure to answer the complaint and to appear at the DEC hearing as aggravating factors.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board  
Mary J. Maudsley, Chair

By: Julianne K. DeCore  
Julianne K. DeCore  
Chief Counsel

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

In the Matter of Philip F. Murphy  
Docket No. DRB 04-144

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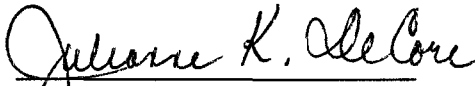
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Argued: June 17, 2004

Decided: July 22, 2004

Disposition: Reprimand

| <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                |                   |                |                     |                            |
| <b>Total:</b>        |               |                   | 8                |                   |                |                     | 1                          |

  
Julianne K. DeCore  
Chief Counsel