SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-272

IN THE MATTER OF :
:
MICHAEL L. MAGNOLA :
:
AN ATTORNEY AT LAW :

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

Decided: December 6, 2002

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

This matter was before us based on a certification of default filed by the Office of Attorney Ethics ("OAE"), pursuant to R.1:20-4.

Respondent was admitted to the New Jersey bar in 1976. During the time relevant to this proceeding, he maintained an office in Westfield, Union County. He was temporarily suspended, effective May 7, 2001, for failure to comply with a fee arbitration determination. In re Magnola, 167 N.J. 68 (2001). He remains suspended to date.

On May 2, 2002 the OAE forwarded a copy of the complaint to respondent at his last known office address listed with the New Jersey Lawyers' Fund for Client

Protection, 114 Elm Street, Westfield, New Jersey, 07091, by certified and regular mail. A copy of the complaint was also sent to respondent's residence, 2416 Allwood Road, Scotch Plains, New Jersey 07076, via certified and regular mail. A certified mail receipt was returned indicating delivery at respondent's law office on May 6, 2002. The certified mail to respondent's residence was returned as unclaimed. The regular mail was not returned.

On May 29, 2002 a second letter was sent to respondent advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of sanction. The letter was sent to the above addresses by certified and regular mail. The certified mail to both addresses was returned as unclaimed; the letter to respondent's residence was marked "Returned-MLNA (moved left no address)." The regular mail to either address was not returned.

In addition, a postal address search revealed a possible post office box number for respondent: P.O. Box 279, Westfield, New Jersey, 07091. On June 27, 2002 the five-day letter previously sent to respondent was forwarded to that address by certified and regular mail. The certified mail was returned as unclaimed on July 22, 2002, after apparently being forwarded to another Westfield post office box. The regular mail was not returned.

As of July 29, 2002 respondent had not filed an answer to the complaint.

The 2000 edition of the New Jersey Lawyers' Diary and Manual listed respondent as affiliated with the firm of McCusker, Anselmi, Rosen, Carvelli and Walsh, P.A., 127 Main Street, Chatham, New Jersey, 07928. The 2001 edition of the Lawyers' Diary

listed the same address for respondent, but no firm association or telephone number. According to the certification filed by John J. Janasie, First Assistant Ethics Counsel, OAE, the managing partner of the McCusker firm, Bruce Rosen, Esq., advised him that respondent's association with the firm lasted only from September 7 through October 16, 1999, at which time respondent was dismissed. Rosen did not know where respondent had practiced law after that time. The OAE, therefore, deemed it pointless to attempt to serve respondent at the Chatham address.

Jennie Mae Parsil ("Jennie") died intestate on August 10, 1996, survived by two brothers, who were the only heirs to her estate: Eugene C. Parsil ("Eugene"), 84 years old, and Lewis B. Parsil, Jr. ("Lewis"), 89 years old. On October 22, 1996 Eugene was appointed administrator of Jennie's estate. At the time of his appointment, the estate assets totaled $118,000: an automobile valued at $3,000 and real property valued at $115,000. The estate debts totaled $16,700, leaving a net value of $101,300.

Eugene served as the guardian for his brother Lewis, who suffered from dementia and resided at the Berkeley Heights Convalescent Center ("BHCC"). Robert L. Parsil ("Robert"), Eugene's son, advised Eugene to retain respondent to represent Jennie's estate and to assist Eugene in the administration of Lewis' affairs.[1] In an agreement dated September 12, 1996, respondent set his fees at five percent of the gross estate or at $175 per hour, whichever was greater.

The sale of Jennie's real property closed on February 7, 1997. Respondent deposited the settlement proceeds, $88,622.01, into his trust account on February 14,

[1] Robert had previously retained respondent to draft his will and to handle a real estate closing.

1997, crediting the Parsil ledger card. This deposit marked the first time that funds from Jennie's estate were deposited into respondent's trust account. By that time, however, respondent had already disbursed fourteen checks, totaling $11,723.45, against the Parsil ledger card, dating back to September 18, 1996. Of this amount respondent had disbursed $8,154.61 to himself, without the knowledge of the Parsil family. As noted in the investigative report, because there were no funds on deposit for Parsil, respondent invaded other clients' funds to make these disbursements.

Respondent failed to pay a $4,500 bill for Jennie's funeral expenses. The bill remained outstanding until respondent ultimately paid it from his trust account, on March 17, 1997, just over one month after the closing on the property. The amount paid included interest of $417.36 against the estate.

On February 28, 1997 respondent disbursed a trust account check in the amount of $1,000 to himself, which he deposited into his business account to cover a shortage. The disbursement was made without the knowledge of the Parsil family.

Prior to the sale of Jennie's house, Robert and his wife, Pam Parsil ("Pam"), cleaned the premises. Respondent compensated Robert and Pam from estate funds by way of two trust account checks ($7,000 and $9,250) on February 18, 1997. Respondent recorded the disbursements on the Parsil ledger card. The Parsil ledger card also reflected a third trust account check issued to Robert on March 13, 1997, check number 6472, in the amount of $6,000. Robert denied having either received the funds or endorsed that check. The endorsement incorrectly listed Robert's middle initial as "T." Respondent deposited the $6,000 into his trust account on March 20, 1997, along with

two other deposit items. Respondent credited the deposit to his own client ledger card and transferred the funds to cover negative balances in other client accounts. Respondent's use of the estate funds was without the knowledge of the Parsil family.

On February 26, 1997 respondent issued three trust account checks to the Internal Revenue Service, in the amounts of $1,368.03, $466.57 and $23.77. All three checks were drawn on Jennie's estate funds. The memo references for each of the checks recite a social security number. Two of the three checks list respondent's social security number. The number on the third check is very close to respondent's social security number. Respondent's use of Jennie's estate funds to pay his personal IRS obligations was without the knowledge of the Parsil family.

From September 1996, when respondent was retained, through March 1997, he disbursed $17,012.98 in Jennie's funds to himself or others, but to his benefit. None of the disbursements were with the knowledge of the Parsil family.

* * *

While Lewis was residing at BHCC, he received monthly checks representing pension benefits and social security payments. After respondent was retained, Eugene arranged for the checks to be forwarded to respondent so the proceeds could be utilized for Lewis' benefit, including payments to BHCC.

Between November 12, 1996 and April 22, 1997, respondent deposited thirty-six checks in Lewis' funds, totaling $19,917.46. Respondent used none of the funds for Lewis' benefit or to pay BHCC. Instead, he credited the funds to his own ledger card and

used them for purposes unrelated to the Parsils. Respondent used those funds without the Parsils' knowledge.

Also, Lewis maintained a passbook account at Investors Savings Bank ("Investors"). Arrangements were made to withdraw the funds from the account, totaling $8,979.80 plus $80.33 in interest, and forward them to BHCC to pay Lewis' outstanding bills. Eugene gave respondent Investors' check, issued December 5, 1996, in the amount of $8,979.80. Respondent neither forwarded the funds to BHCC nor used them for Lewis' benefit. He deposited those funds, along with a second Investors' check for $80.33, into his trust account on March 4, 1997, and used the funds for purposes unrelated to the Parsils. Respondent's use of those funds was without the Parsils' knowledge.

On February 5, 1998 Paul F. Fenmore, the attorney for BHCC, requested that respondent provide an accounting for Jennie's estate. Respondent failed to comply with that request. On March 10, 1998 Fenmore requested that respondent pay the obligations due BHCC out of the estate funds. Fenmore indicated that, if payment were not made, he would file a suit. Soon thereafter, on March 17, 1998, Eugene died, survived by his wife Florence and son Robert. On April 15, 1998, following Eugene's death, Fenmore again contacted respondent about payment of the BHCC debt and requested an accounting of Jennie's estate and Lewis' funds. Fenmore advised respondent that Lewis could be evicted from BHCC.

On June 1, 1998 Fenmore filed a civil action against Lewis, Jennie's estate and Eugene for the non-payment of the BHCC bills.[2] Despite having received the warnings from Fenmore and being aware of the civil suit, on July 1, 1998 respondent issued a trust account check to himself in the amount of $7,345.95, representing the remainder of Jennie's estate, as noted on the Parsil ledger card. Respondent did so without the knowledge of the Parsil family.

From the time respondent was retained on September 12, 1996 through July 1998, respondent disbursed to himself or for his benefit $53,336.52 from Jennie's estate and from Lewis' funds, without the knowledge of the Parsil family.

The complaint charged respondent with violations of RPC 1.15(a) and (b) (knowing misappropriation), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985).

* * *

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 respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R.1:20-4(f)(1).

By way of default, respondent admitted that he deposited Jennie's estate funds and Lewis' funds in his trust account and did not turn them over to the heirs or third parties,

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[2] On November 11, 1998 Lewis died. BHCC wrote off the debt of $113,701.54.

using them for his personal benefit. Respondent used the funds without the Parsils' authorization. He, therefore, knowingly misappropriated funds from the estate of Jennie Parsil and from her incapacitated brother, Lewis. In addition, he invaded other clients' funds when he disbursed trust funds attributed to Parsil, prior to the closing on Jennie's property. We, therefore, unanimously recommend that, under In re Wilson, supra, 81 N.J. 451 (1979), and In re Hollendonner, supra, 102 N.J. 21 (1985), respondent be disbarred.

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

Rocky L. Peterson
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael L. Magnola
Docket No. DRB 02-272

Argued: October 17, 2002

Decided: December 6, 2002

Disposition: Disbar

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not Participate*
Hymerling	X						
Peterson	X						
Boylan	X						
Brody	X						
Lolla	X						
Maudsley	X						
O'Shaughnessy	X						
Schwartz	X						
Wissinger	X						
Total:	9						

Robyn M. Hill 12/16/02
Robyn M. Hill
Chief Counsel