SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-134
District Docket Nos. XIV-02-185E;
XIV-02-186E; and XIV-02-266E

IN THE MATTER OF :
:
JEAN D. LAROSILIERE :
:
AN ATTORNEY AT LAW :

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

Decided: August 29, 2005

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.

On February 23, 2005, the OAE sent a letter and disciplinary notice for publication, via facsimile and regular mail, to The Star Ledger, 1 Star Ledger Plaza, Newark, New Jersey 07102, Attention: Legal Advertising. Also on that date,

the OAE sent a letter and disciplinary notice for publication, via facsimile and regular mail, to the New Jersey Lawyer, 2035 Lincoln Highway, Suite 3005, Edison, New Jersey, 08817 Attention: Legal Advertising. The notice advised respondent that an ethics complaint had been filed against him. On February 28, 2005, the disciplinary notice was published in the New Jersey Lawyer. On March 4, 2005, the disciplinary notice was published in The Star Ledger.

Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1990.

On January 29, 2002, respondent was the subject of a demand audit by the OAE, which was conducted in response to allegations that he had deposited counterfeit checks into his attorney trust account and also that the account was overdrawn. The complaint states that, according to law enforcement officials, on February 27, 2002, respondent boarded a plane bound for Johannesburg, South Africa. On March 2, 2002, respondent's wife, Valerie Larosiliere, filed a missing persons' report with the Roxbury Township Police Department. Thereafter, on March 19, 2002, respondent was temporarily suspended, following his apparent abandonment of his law practice. In re Larosiliere, 171 N.J. 76 (2002). He remains suspended.

In March 2003, respondent was admonished for lack of diligence, failure to communicate with the client, using misleading letterhead, and allowing a lawyer not licensed in New Jersey to sign letters on the firm's letterhead with the designation "Esq." after his name. In the Matter of Jean D. Larosiliere, Docket No. DRB 02-128 (March 20, 2003).

Count One (The Polimeni Matter) District Docket No. XIV-02-186E

Rocco Polimeni planned to sell his business, La Rumba Bar, and transfer its liquor license to a purchaser represented by respondent.[1] As part of the transfer of the license, Polimeni was required to obtain a tax waiver from the State of New Jersey ("the State"). Consequently, prior to closing, the State directed that a $3,100 escrow be held for issuance of the waiver.

The closing took place on October 1, 2001. The $3,100 escrow was held, as evidenced by an item on the title closing statement, "Bulk Sale Transfer Tax escrow held by Jeffrey Moeller, Esq." Moeller also signed the title closing statement.

[1] It appears from a letter from Polimeni's attorney that the purchaser was originally represented by G. Jeffrey Moeller, Esq., who, at that time, was respondent's employee.

At that time, Moeller was respondent's employee, and did not have signatory authority over his attorney trust account.

Respondent's attorney trust sub-account for this transaction, "Kearny no. 4677," was opened at Summit/Fleet National Bank on October 5, 2001, with a deposit of $31,500. On October 8, 2001, respondent issued a trust account check to Polimeni for $28,400, leaving in the account $3,100 for the tax waiver escrow. On November 2, 2001, the State issued a release of the tax waiver funds held in escrow.

During November 2001, several transactions took place in the trust sub-account that affected the $3,100 escrow and were unrelated to the Polimeni matter:

Date	Amount	Check No.	Payee/Memo	Balance	
				$3,100	
11/6	-$500	#1721		$2,600	
11/8	+$1,500		Deposit	$4,100	
11/9	+$3,500		Deposit	$7,600	
11/9	-$5,000	#1673	Floyd Gilmore, "Refund of Deposit"	$2,600	(Ex. R)
11/9	-$2,600	#1674	Summit/Fleet Bank	$ 0	(Ex. S)

***Note:** The transactions indicated on the Title Closing Statement (Exhibit K) are inconsistent with the actual trust account transactions detailed in paragraphs 4 through 7, herein.

[CCt1¶7.][2]

[2] C refers to the complaint.

On November 30, 2001, respondent's trust sub-account had a zero balance, when it should have had the $3,100 tax waiver escrow funds. On December 28, 2001, respondent issued a $3,100 trust account check drawn on the sub-account, payable to Polimeni. The memo line on the check stated "Liquor Lic. Transfer." On January 15, 2002, Polimeni deposited respondent's $3,100 check. The check was returned for insufficient funds, however.

On November 30, 2001, respondent's attorney trust master account had a balance of $106,035.03. Two months later, on January 31, 2002, the trust master account ending balance was overdrawn by $181,146.34.

On several occasions after the State's November 2, 2001 release of the escrow, Polimeni, through counsel, requested that respondent return the $3,100 escrowed funds, to no avail. As of the date of the ethics complaint, February 22, 2005, respondent had not returned the funds.

The complaint charged respondent with knowing misappropriation of client funds, in violation of RPC 1.15(a) (failure to safeguard funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Count Two (The Clerval Matter) District Docket No. XIV-02-185E

On May 1, 2001, Marie-Lucie Clerval met with respondent to discuss the purchase of real estate, at which time she signed unspecified documents. On that date, Clerval wrote a check for $10,000, payable to respondent's law firm, for a "down payment for 333 E.34 St Brooklyn, NY." Respondent told Clerval that the closing would take place in two weeks.

On May 1, 2001, respondent deposited Clerval's check into attorney trust sub-account 811. According to the complaint, Clerval's grievance claimed that she had paid respondent an additional $2,000 in cash.[3] The OAE was unable to find a record of the cash transaction in respondent's attorney records.

On May 31, 2001, respondent's sub-account 811 had a balance of $1,517.83, indicating a shortage of $8,482.17, taking into account only the $10,000 deposit from Clerval, minus the $1,517.83 balance. On May 31, 2001, respondent's trust master account had a balance of $17,953.86.

From May 2001 through August 2001, respondent's office repeatedly advised Clerval that the closing would be "next week." She tried to contact respondent without success. Finally, in August 2001, respondent's office told Clerval that they were having trouble finalizing the mortgage loan. Clerval

[3] It appears from the grievance, exhibit AA, that the $2,000 was given to a third party.

cancelled the purchase contract and spoke with respondent, who stated that he would mail her refund to her. As of the date of the formal ethics complaint, Clerval had not received any of the $12,000 from respondent.

A review of respondent's trust sub-account 811 revealed that he failed to maintain Clerval's $10,000 escrow funds. For example, on June 30, 2001, the sub-account had a balance of $3,000, indicating a shortage of $7,000; on August 31, 2001, the sub-account balance was $9,031.96, indicating a shortage of $968.04; on September 30, 2001, the sub-account balance was $63.96, indicating a shortage of $9,936.04; on November 30, 2001 and December 31, 2001, the sub-account balance was $13.98, indicating a shortage of $9,986.02.

On December 31, 2001, the balance in respondent's master trust account was $914.04, indicating a shortage of $9,085.96 for Clerval's $10,000 deposit alone. Furthermore, in January and February 2002, respondent's attorney trust account had a negative balance of -$181,146.34, just prior to his abandonment of his law practice.

Clerval retained Richard G. Fontana, Esq., to help her obtain her funds from respondent. Fontana made a number of attempts to contact respondent about the funds, to no avail. In

March 2002, Fontana filed suit against respondent for the return of Clerval's funds.[4]

The complaint charged respondent with knowing misappropriation of client funds, in violation of RPC 1.15(a) and RPC 8.4(c).

Count Three (Alliance Global Investor Services, Inc.) District Docket No. XIV-02-266E

On July 3, 2002, Anthony D'Elia filed a grievance on behalf of his company, Alliance Global Investor Services, Inc. ("AGIS"), alleging that respondent had participated in fraudulent redemptions/withdrawals. Specifically, on February 22, 25, 26, and 27, 2002, five fraudulent mutual fund redemptions/withdrawals, totaling approximately $4,000,000 were processed to three of AGIS' customer accounts. Associated with the five redemptions were five corresponding federal fund wire transfers to two off-shore destinations and three domestic destinations. AGIS traced one of the fraudulent transfers, involving non-client funds, to respondent's law practice.

On February 22, 2002, a wire initiated by AGIS' bank in Boston, Massachusetts, transferred $200,000 to a Hudson City Savings Bank account in Paramus, New Jersey, in the name of Sandra S. Mhlanga. Mhlanga was respondent's secretary and the

[4] The record does not reveal the status of that matter.

mother of his child. The transfer was later found to be fraudulent, in that it was not authorized by the AGIS customer. On February 25, 2002, $159,990 was wire transferred from Mhlanga's Hudson City account to respondent's attorney trust account at City National Bank. The funds were not related to any client matter. During February 2002, ten of respondent's City National Bank attorney trust account checks were cashed. Five of the ten, totaling $31,738, were payable to respondent, four of which he cashed, knowing that he had no authority to do so.

On April 8, 2002, the OAE received information from the Fraud Unit of the Federal Bureau of Investigation ("FBI"), advising that it was investigating Mhlanga regarding the AGIS transactions, among other things, and that Mhlanga and respondent had been involved in fraudulent activities together. According to law enforcement officials, Mhlanga fled with respondent to Johannesburg, South Africa, at the end of February 2002.

The complaint charged respondent with the embezzlement of AGIS funds, in violation of RPC 8.4(c).

Count Four (Abandonment)

Respondent abandoned the above clients, as well as a substantial number of others, by fleeing the United States to avoid criminal prosecution.

The complaint charged respondent with having violated RPC 1.16(d) (improperly withdrawing from representation).

Count Five (R.1:20-20)

As noted above, on March 19, 2002, respondent was temporarily suspended. The Court's order directed him to comply with the provisions of R. 1:20-20. As of the date of the complaint, respondent had failed to file an affidavit evidencing his compliance with the requirements of the rule.

Service of process was properly made in this matter. The allegations are deemed admitted when the matter proceeds as a default. R. 1:20-4(f)(1).

The facts in this matter speak for themselves. Respondent stole from clients, abandoned his practice, and fled the country to avoid the consequences of his actions. His knowing misappropriation of client funds, in and of itself, warrants disbarment.

Twenty-six years ago, the Court announced the bright-line rule that knowing misappropriation of client funds will, almost

invariably, result in disbarment. In re Wilson, 81 N.J. 451 (1979). Wilson placed the highest priority on the maintenance of public confidence in the Court and in the bar, ruling that "mitigating factors will rarely override the requirement of disbarment." Id. at 461. Although the use of such terms as "almost invariably" and "rarely override" might raise the possibility of a departure from the automatic disbarment rule, since 1979 the Wilson rule has been applied without exception. Every attorney who has been found to have knowingly misappropriated client funds has been disbarred. In In re Noonan, 102 N.J. 157, 159-60 (1986), the Court detailed the requirements for a finding of knowing misappropriation:

> The misappropriation that will trigger automatic disbarment under In re Wilson, 81 N.J. 451 (1979), disbarment that is 'almost invariable,' id. at 453, consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money was used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of Wilson is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment.

Respondent's knowing misappropriation of client funds alone requires his disbarment. We so recommend to the Court. His other acts merely add fuel to the fire that mandates his removal from the roll of attorneys.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore

Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jean D. Larosiliere
Docket No. DRB 05-134

Decided: August 29, 2005

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X					
O'Shaughnessy	X					
Boylan	X					
Holmes	X					
Lolla	X					
Neuwirth	X					
Pashman	X					
Stanton	X					
Wissinger	X					
Total:	9					

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel