SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-226
District Docket No. XIV-07-144E

IN THE MATTER OF	
WILFRID LE BLANC, JR.	
AN ATTORNEY AT LAW	

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

Decided: December 12, 2007

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

This matter came before us on a certification of default filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-4(f). A four-count amended complaint alleged that respondent acted unethically in two matters: one relating to a mortgage loan refinancing for his wife and the other to a real estate transaction for a client. We determine to impose a three-month suspension.

We originally considered this matter as a default, on February 15, 2007. By letter dated March 8, 2007, we remanded it

to the OAE for the filing of an amended complaint, to include information from which we could determine whether respondent's conduct in one of the matters, the refinancing of his wife's mortgage loan, amounted to negligent or to knowing misappropriation. We also sought to identify the particular trust account checks alleged to have caused the misappropriation of clients' funds. The OAE filed an amended complaint alleging that respondent's misappropriation was negligent, not knowing.

Respondent was admitted to the New Jersey bar in 1998. On October 31, 2006, he received a censure for multiple ethics violations in three matters, including gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, charging an unreasonable fee, failure to remit funds to a third party, failure to expedite litigation, failure to abide by a court order, failure to cooperate with disciplinary authorities, failure to comply with the rule prohibiting non-refundable retainers in family matters, and conduct prejudicial to the administration of justice (failure to appear at a fee arbitration hearing). In re LeBlanc, 188 N.J. 480 (2006).

On July 12, 2007, respondent received a reprimand, in a default matter, for failure to cooperate with an ethics investigation. In re LeBlanc, 192 N.J. 107 (2007).

On September 27, 2004, respondent was declared ineligible to practice law for failure to pay the New Jersey Lawyers' Fund for Client Protection annual fee. He remains ineligible to date.

Service of process was proper in this matter. On April 19, 2007, the OAE sent a copy of the amended complaint, by both certified and regular mail, to respondent's last known law office address, 319 East First Avenue, First Floor, Roselle, New Jersey 07203, and to a post office box address, P.O. Box 508, North Plainfield, New Jersey 07060.

The certified mail to the office address was returned, marked "Return to Sender – Not deliverable as addressed unable to forward." The regular mail to the office address was also returned, marked "Return to Sender – Attempted Not Know [sic], unable to forward." The certified mail to respondent's post office box was returned with the notation "Return to Sender – Unclaimed." The regular mail to the post office box was not returned.

On May 4, 2007, the OAE provided notice of this disciplinary matter by publication in the Star Ledger and, on May 7, 2007, in the New Jersey Lawyer.

On May 23, 2007, the OAE sent respondent a "five-day" letter, notifying him that, unless he filed an answer to the amended complaint within five days of the date of the letter, it

would certify the matter directly to us, pursuant to R. 1:20-4(f). The letter was sent to respondent's office and post office box addresses, by regular mail. The mail to the office address was returned, marked "Return to Sender – not deliverable as addressed." The mail to the post office box was not returned.

Respondent did not file an answer to the amended complaint.

I. The Poitevien Mortgage Refinancing

Count one charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.15(a) (negligent misappropriation of client funds), and RPC 1.15(b) (failure to promptly deliver funds to a third party).

On March 30, 2004, respondent closed on the refinancing of a mortgage loan for his wife, Patricia Poitevien, in connection with real property located at 817 Riffle Avenue, Rahway. Poitevien obtained financing through New Century Mortgage Corporation ("NCM"), which issued a commitment for a $212,500 mortgage loan.

On March 30, 2004, respondent prepared and signed the closing documents for the transaction and disbursed five checks from his Valley National Bank attorney trust account, totaling $197,527.40, all on account of the Poitevien matter. When respondent made those disbursements, he had not yet received the

loan proceeds from NCM. His trust account had no other funds on behalf of his wife at the time. The only funds in the trust account ($139,868.55) belonged to other clients.

As a result of respondent's premature disbursements in his wife's matter, other clients' funds were invaded. According to the complaint, respondent's "negligence and inattention" were responsible for the misappropriation. The only explanation for respondent's negligence is contained in an April 14, 2004 letter from respondent to the OAE, found in the exhibits. That letter explains that respondent inadvertently mailed the checks out prematurely, after a mix-up in his office.

Once respondent returned the closing documents to NCM, it discovered that respondent and Poitevien were husband and wife. NCM then rejected respondent's closing documents and required Poitevien to retain another attorney. The amended complaint and its exhibits contain no other information about NCM's determination not to fund the loan, unless Poitevien was represented by other counsel.

In April 2004, respondent "enlisted the aid" of attorney Charles Austin to complete the refinancing. Austin held a closing on April 8, 2004. Several weeks later, on April 21, 2004, NCM wired the loan proceeds to Austin, in the amount of $212,501.57.

Upon his receipt of the NCM funds, Austin wire-transferred them to respondent's trust account. Respondent then issued four checks from his trust account, totaling $194,692.33, in connection with Poitevien matter. The complaint alleged that "due to respondent's negligence and inattention to this closing, respondent did not notify the lender that he had received the net mortgage proceeds and was disbursing the funds out of his trust account.[1]

The complaint also charged respondent with having violated RPC 1.15(b) (failure to promptly disburse funds to clients or to a third party) in connection with the Poitevien transaction. Presumably, the conduct that gave rise to that charge was respondent's failure to promptly disburse all sums originated from the closing. The complaint alleges that respondent disbursed a total of $208,356.70 from the NCM loan, leaving an undistributed balance of $3,144.87.

II. The Abel Muhammad Real Estate Matter

Count three of the amended complaint charged respondent with having violated RPC 1.3 (lack of diligence) and RPC 1.15(b)

[1] Missing from the amended complaint is the allegation, contained in the prior complaint, that respondent did not have NCM's consent to receive the loan proceeds and that NCM was unaware of the arrangement between respondent and Austin regarding the loan proceeds. It is unclear to us why the amended complaint omitted that allegation.

(failure to promptly deliver funds to clients or to a third party) in a real estate purchase.

On July 14, 2003, respondent represented Abel Muhammad, the buyer of real property in East Orange. Respondent acted as closing agent in the transaction.

After the closing, respondent retained $8,157.77 in his trust account to pay an outstanding tax obligation to the City of East Orange. On September 18, 2003, he issued a $8,157.77 trust account to the City, in payment of the taxes. On September 23, 2003, the City returned respondent's check, refusing to deposit it until a court order set the amount of the obligation, which was still the subject of litigation.

About a year later, on September 24, 2004, counsel for the lender, William Sandelands, advised respondent that the tax issues had been resolved. Sandelands requested that respondent remit payment to the City, in the original amount of $8,157.77. Respondent ignored Sandelands' request.

On October 26, 2004, Sandelands wrote a second letter to respondent, again requesting that he forward the payment to the City. Respondent failed to reply to that correspondence as well, or to take any action regarding the funds. In order to avoid the accrual of interest to his client on the tax obligation, in

February 2005, Sandelands forwarded his own trust account check to the City for $8,157.77.

Finally, on June 15, 2005, respondent sent Sandelands a trust account check for $8,157.77.

III. Failure to Cooperate with Ethics Authorities

Counts two and four of the amended complaint alleged that respondent's repeated failure to reply to the OAE's requests for information or to appear at scheduled demand audits violated RPC 8.1(b).

In the Poitevien refinancing, respondent ignored several April and May 2004 letters from OAE investigators, seeking information about the case. Thereafter, in June 2004, respondent ignored two additional letters from the OAE and failed to provide that office with requested documents. The second letter notified respondent of his required appearance at the OAE for a demand audit on June 22, 2004. Respondent did not appear. He also ingnored the July 13, 2004 rescheduled audit.

In the Muhammad matter, respondent also failed to reply to at least three written and one telephonic requests from the OAE, seeking information about that matter.

Following a review of the record, we find 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)).

In the Poitevien matter, respondent "jumped the gun," disbursing $197,000 from his trust account prior to receiving the loan proceeds. In doing so, respondent violated RPC 1.15(a) by invading other client's funds on deposit at the time. According to the complaint, the misappropriation was negligent, not knowing. Presumably, the OAE was satisfied with respondent's explanation for his office mix-up.

The complaint also alleged that respondent left a $3,144.87 balance in his trust account, thereby violating RPC 1.15(b), which requires that all funds to which clients or third parties are entitled be promptly disbursed. The complaint does not identify the owner of those funds, however. It is possible that they may have been respondent's fee. In that case, respondent would be guilty of violating RPC 1.15(a), in that he commingled personal and trust funds by not promptly removing his fee from the trust account. The complaint, however, did not charge respondent with a violation of RPC 1.15(a), only (b). Because the record does not contain clear and convincing evidence that the $3,000 belonged to either clients or to third parties,

instead of respondent, we are unable to find a violation of RPC 1.15(b). We, therefore, dismiss that charge.

For the absence of any factual basis to support the allegation that respondent grossly neglected the Poitevien matter, we also dismiss the charged violation of RPC 1.1(a).

An additional point should be mentioned in connection with the Poitevien matter. One stated reason for our remand to the OAE was our concern that respondent may have acted with deception by involving Austin as a "straw man" in the transaction, after the lender had clearly instructed respondent not to represent his wife. Yet, respondent accepted $212,501.57 from Austin and made disbursements as though he was authorized by the lender to do so. Neither the prior complaint nor the amended complaint charged respondent with a violation of RPC 8.4(c) (deceit or fraud). Without more, we may only conclude that the OAE found no clear and convincing evidence of any wrongdoing in this regard.

In the Muhammad matter, respondent acted as the closing agent for his client's real estate purchase. He issued a trust account check for $8,157.77 to the City of East Orange, which was returned to the seller, pending the City's receipt of a court order. When the attorney for the lender twice asked respondent to submit a new check to the City, respondent failed

to do so. Five months later, on February 14, 2005, the lender's attorney was forced to pay the taxes from his own funds, in order to clear title. Respondent did not reimburse the attorney until June 15, 2005.

Respondent's conduct in the Muhammad matter amounted to lack of diligence and failure to promptly deliver funds to a third party, violations of RPC 1.3 and RPC 1.15(b), respectively.

Counts two and four of the amended complaint amply demonstrate respondent's failure to cooperate with the investigations of both the Poitevien and the Muhammad matters. Moreover, he allowed this matter to proceed to us on a default basis. He did so not once, but twice. We find, thus, that he violated RPC 8.1(b).

Ordinarily, a reprimand is imposed for negligent misappropriation of client's funds, usually found alongside recordkeeping violations. See, e.g., In re Conner, N.J. (2007) (in two matters, the attorney inadvertently deposited clients' funds into his business account, instead of his trust account, an error that led to his negligent misappropriation of clients' funds; the attorney also failed to promptly disburse funds to which both clients were entitled); In re Winkler, 175 N.J. 438 (2003) (attorney commingled personal and trust funds,

negligently invaded clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew from his trust account $4,100 in legal fees before the deposit of corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account); In re Rosenberg, 170 N.J. 402 (2002) (attorney negligently misappropriated clients' trust funds in amounts ranging from $400 to $12,000 during an eighteen-month period; the misappropriations occurred because the attorney routinely deposited large retainers in his trust account and then withdrew his fees from the account as he needed funds, without determining whether he had sufficient fees from a particular client to cover the withdrawals; prior private reprimand for unrelated violations); In re Blazsek, 154 N.J. 137 (1998) (attorney negligently misappropriated $31,000 in clients' funds and failed to comply with recordkeeping requirements); In re Goldstein, 147 N.J. 286 (1997) (attorney negligently misappropriated clients' funds and failed to maintain proper trust and business account records); In re Liotta-Neff, 147 N.J. 283 (1997) (attorney negligently misappropriated approximately $5,000 in clients' funds after commingling personal and client funds; the attorney left $20,000 of her own funds in the account, against which she drew funds for her personal

obligations; the attorney was also guilty of poor recordkeeping practices); and In re Gilbert, 144 N.J. 581 (1996) (attorney negligently misappropriated in excess of $10,000 in clients' funds and violated the recordkeeping rules, including commingling personal and trust funds and depositing earned fees into the trust account; the attorney also failed to properly supervise his firm's employees with regard to the maintenance of the business and trust accounts).

If compelling mitigating factors are present, the reprimand may be reduced to an admonition. See, e.g., In re Michals, 185 N.J. 126 (2005) (attorney negligently misappropriated $2,000 and $187.43 for one and two days, respectively, commingled personal and trust funds, and violated the recordkeeping rules; in mitigation, the trust account shortage was limited to a few days and the attorney fully cooperated with ethics authorities, had no prior encounters with the disciplinary system, assumed full responsibility for the problems with this practice, and subsequently made recordkeeping a priority); In the Matter of Philip J. Matsikoudis, DRB 00-189 (September 25, 2000) (attorney miscalculated fees in his favor, thereby negligently misappropriating client funds, and failed to pay a physician's lien, as a result of poor recordkeeping; mitigation included steps taken to remedy the recordkeeping deficiencies and the

use of his own personal funds to pay the physician's lien); In the Matter of Cassandra Corbett, DRB 00-261 (January 12, 2001) (attorney's deficient recordkeeping resulted in a $7,011.02 trust account shortage; in mitigation, the attorney reimbursed all missing funds, admitted her wrongdoing, cooperated with the OAE, and hired an accountant to reconstruct her records); and In the Matter of Bette R. Grayson, DRB 97-338 (May 27, 1998) (attorney negligently misappropriated $6,500 in clients' trust funds as a result of poor recordkeeping practices; mitigating factors were the attorney's full cooperation with the OAE, her subsequent steps to straighten out her records, and her lack of prior discipline).

Here, there are no mitigating factors to downgrade the usual reprimand to an admonition.

Respondent also failed to promptly deliver funds to third parties in two matters, a violation generally met with an admonition. See, e.g., In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney failed to promptly deliver balance of settlement proceeds to client) and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for more than three years, attorney held in his trust account $4,800 earmarked for the payment of a client's outstanding hospital bill).

In aggravation, we must consider that respondent has recently been censured (October 2006) for similar misconduct, including failure to remit funds to third parties and failure to cooperate with ethics authorities, and that he received a reprimand in July 2007. We must further consider that this is respondent's third default. We, therefore, determine that a three-month suspension is the appropriate discipline in this matter.

Member Lolla did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Wilfrid LeBlanc, Jr.
Docket No. DRB 07-226

Decided: December 12, 2007

Disposition: Three-month suspension

Members	Three-month Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman	X				
Baugh	X				
Boylan	X				
Frost	X				
Lolla					X
Neuwirth	X				
Stanton	X				
Wissinger	X				
Total:	8				1

Julianne K. DeCore
Chief Counsel