

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-105
District Docket No. XIV-02-191E

IN THE MATTER OF :
 :
TANYA LAWRENCE :
 :
AN ATTORNEY AT LAW :

Decision

Argued: May 19, 2005

Decided: July 27, 2005

Janice L. Richter appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice.

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

This matter was before us on a recommendation for discipline (disbarment) filed by Special Master Kenneth J. Cesta. The complaint charged respondent with two counts of knowing misappropriation, in violation of RPC 1.15(a) (failure

to safeguard client funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

This case was originally scheduled to be heard at our March 2005 session. A review of the transcript of the hearing below revealed that respondent was unable to afford representation at that hearing. She was not advised on the record of her right to apply for appointed counsel. In a letter to the Office of Board Counsel ("OBC"), respondent indicated that, had she been aware of that right, she would not have proceeded pro se at the hearing. Consequently, after consultation with the Board Chair, by letter dated February 22, 2005, the OBC remanded this matter to the Office of Attorney Ethics ("OAE") to afford respondent the opportunity to obtain counsel. According to a subsequent letter from the OAE, that office provided respondent with the name, address, and telephone number of the Essex County assignment judge. As of the date of the OAE's letter, March 31, 2005, respondent had not contacted the judge. The OAE, therefore, re-submitted the matter for our review.

Respondent was admitted to the practice of law in New Jersey in 1998. In 2002, she received a three-month suspension for lack of diligence, failure to communicate with client(s), unreasonable fee, unauthorized practice of law, the use of a misleading letterhead, conduct involving dishonesty, fraud,

deceit or misrepresentation, and failure to cooperate with disciplinary authorities. In re Lawrence, 170 N.J. 598 (2002). That matter proceeded as a default. Thereafter, in 2003, she was admonished for practicing law while ineligible. In imposing only an admonition, we considered that respondent was unaware of her ineligible status at the time. In the Matter of Tanya Lawrence, Docket No. DRB 03-044 (April 24, 2003). Respondent has not applied for reinstatement.

During the time relevant to the within matters, respondent maintained attorney trust accounts at Citibank in New York, and at Fleet National Bank, in New Jersey. She maintained an attorney business account at Citibank. She is not admitted to practice in New York.

The clients that are the subjects of the within matters were respondent's only clients in New Jersey.

Count One (The Marchetti Matter)

In March 1999, Janine Marchetti retained respondent to represent her in connection with a claim for wrongful termination of employment against CHR-ILL Services, Inc. ("CHR"). In March 1999, respondent confirmed, in writing, that she would represent Marchetti on an hourly basis. She requested a \$500 retainer, which Marchetti paid.

Respondent settled Marchetti's claim for \$2,000. In July 2000, CHR's attorney sent respondent a check in that amount. On July 14, 2000, respondent cashed the Marchetti settlement check. She did not deposit the funds into her attorney trust or business account. It was not until eight months later, March 2001, that respondent attempted to send the settlement funds to Marchetti. At that time, she sent a check drawn on her Citibank trust account in the amount of \$1,212.20 to John R. Lanza, Esq., a member of the District XIII Ethics Committee.¹ Lanza returned the check to respondent and instructed her to deal directly with Marchetti. Respondent then issued another check to Marchetti, in the amount of \$1,212.20, drawn on the Citibank account. Although the check was dated April 2, 2001, respondent did not mail the check until June 28, 2001. Marchetti refused to accept the check. Respondent also sent Marchetti a letter that purported to set out expenses incurred in the case and included a final bill. The letter and bill were dated March 26, 2001, but Marchetti did not receive them until June 30, 2001. Ultimately, respondent sent a check for the entire \$2,000 to Marchetti. The check was dated November 6, 2001, and was drawn

¹ The Marchetti matter was the subject of a prior ethics proceeding that resulted in a recommendation by the DEC that respondent be admonished. Docket No. DRB 02-024. We remanded the matter for an inquiry into whether the settlement funds had remained intact.

on respondent's Citibank trust account. Marchetti accepted the check.

Respondent's trust account bank records revealed that she was required to make deposits each time she wrote a check to Marchetti to cover the disbursement. On March 30, 2001, she deposited \$1,212.20, presumably to cover the check she wrote to Lanza. At the time of the deposit, respondent's trust account had a negative balance of \$110.30.² On June 28, 2001, respondent deposited \$1,300 to the Citibank trust account to cover the second check she wrote to Marchetti. The funds came from a transfer from respondent's Citibank business account. Respondent made deposits to her Citibank trust account to cover the third and final check to Marchetti.

The ethics complaint filed against respondent stated:

7. The canceled check showed Respondent cashed this check on or about July 14, 2000 and received the \$2,000.00 in cash. Respondent's Citibank trust account statements (No.95768476) and Fleet trust account statement (No.9404107219) showed that the above check was not deposited into either of these accounts in July of 2000, nor thereafter.

[Cct117.]³

² In respondent's answer, she blamed the negative balance on recurring monthly bank service fees.

³ C refers to the complaint.

In her answer, respondent denied that she misappropriated Marchetti's funds, stating: "Ms. Lawrence cashed the aforementioned check and held such funds for disbursement to Ms. Marchetti following a final accounting of the total expenses and costs incurred from the Marchetti matter." Respondent stated that, after she cashed the settlement check in July 2000, she used the proceeds to open a Citibank account in New York. Later during the hearing, respondent testified that there was an account at Chase Manhattan Bank where the Marchetti funds were maintained, before she transferred them to Citibank. Contrarily, in her answer to the complaint in the first Marchetti proceeding, respondent stated that she deposited the settlement funds in her attorney trust account. Neither her business nor trust account statements reflect any such deposit.

In October 2000, respondent wrote a \$1,000 check from her Citibank business account payable to cash, with a notation on the check, "Marchetti/Closing." Respondent testified that the check was to cover her expenses in the Marchetti matter. The source of the funds was a settlement check she had received for her other client, Victorio Tolentino. (See discussion below).⁴

⁴ As the special master noted, if the Marchetti funds were on deposit as of October 2000, respondent would not have had to use the Tolentino funds to cover her expenses.

Marchetti testified that she did not authorize respondent to use her settlement proceeds.

Count Two (The Tolentino Matter)

Victorio Tolentino was involved in an automobile accident in January 1999. He was one of seven drivers involved when his car was hit from the rear and pushed into another car. Tolentino was unsuccessful in his efforts to obtain compensation from Travelers Property Casualty ("Travelers"), the responsible insurance carrier. He, therefore, sought respondent's representation in the matter. Respondent characterized Tolentino as both a client and a friend.

Respondent accepted a settlement offer of \$3,478.07. Travelers forwarded to her a check dated October 14, 2000, in that amount, payable to "Tanya Lawrence as Trustee for V. Tolentino." Respondent endorsed the check, which was not certified, and deposited it into her Citibank business account on October 17, 2000.⁵ The account had a zero balance at the time of the deposit.

Respondent's bank records showed that the Tolentino funds were dissipated by November 15, 2000, when the account had a negative balance of \$4.95. The bank statement reveals that,

⁵ Respondent initially advised the OAE that the funds were deposited into her trust account.

after respondent deposited the Tolentino funds, she wrote a check for \$1,000 and made fifteen automatic teller machine ("ATM") withdrawals, resulting in the negative balance. The \$1,000 check, which was dated October 19, 2000, was made payable to cash and had the notation "Marchetti/Closing" on the bottom. Respondent explained that the reference was to her client Janine Marchetti, and that she had cashed the check to cover her expenses in the Marchetti matter.

Respondent used the remainder of the Tolentino funds to cover her law firm expenses. She testified that, when she deposited the Tolentino settlement check in October 2000, she obtained a cashier's check from the bank in the amount of \$2,000, which, she contended, she was planning to send to Tolentino as the net proceeds from his settlement with Travelers. Respondent did not produce a copy of the cashier's check or any other evidence to support her contention that Tolentino's portion of the settlement funds remained intact before they were paid to him.

Tolentino testified that he did not loan respondent any portion of his settlement proceeds. She paid him by check in November or December 2001. He could not recall any particular

identification on the check. Respondent testified that the delay in payment was due to her inability to contact Tolentino.⁶

OAE investigator G. Nicholas Hall testified below. He established that nothing on Travelers' check identified it as a certified check. He explained further that, if respondent had taken cash back from the deposit, it would have appeared as a notation on the check. There was no such notation on the check in question.

The special master considered respondent's testimony in the Marchetti matter that she held her client's funds in another account or accounts, and also reviewed the documentary evidence. He found respondent's testimony not credible. Respondent's trust account records revealed that she had to make deposits each time she wrote a check to Marchetti to cover the disbursement. In the special master's view, the picture that arose from the bank records was that respondent cashed the settlement check, did not maintain the funds for her client, and then replenished her trust account when she attempted to send Marchetti her share of the settlement proceeds. Respondent did not produce any bank records or other documents to support her contention that she had maintained Marchetti's funds in another account at Chase Manhattan Bank, Citibank, or any other

⁶ Respondent's contention that she was unable to reach Tolentino is not fully explored in the record.

institution.⁷ The special master also found significant that respondent contradicted herself on several occasions as to where she maintained Marchetti's funds, after she cashed the settlement check.

The special master found clear and convincing evidence that respondent did not maintain Marchetti's settlement funds in any account; rather, they were depleted and then replaced fifteen months later, when respondent paid Marchetti.

As to Tolentino, the special master found not credible respondent's contention that she obtained a cashier's check from Citibank when she deposited the check from Travelers. The bank statements did not reflect a withdrawal of \$2,000 for a cashiers' check, or otherwise. Rather, as noted above, the statements showed that respondent wrote a \$1,000 check, which she cashed, then made fifteen ATM withdrawals, leaving a negative balance in the account after minimal bank charges. Moreover, as the special master pointed out, given that respondent's balance at the time of the deposit was zero, it is unlikely that the bank would have allowed respondent to cash the check or would have issued a cashier's check until Travelers' check cleared.

⁷ Respondent was allowed thirty days after the hearing to submit documents in support of her testimony in this matter. Respondent did not provide any such records.

Further undermining respondent's argument was her failure to send Tolentino his share of the proceeds for over thirteen months, after she claimed to have obtained the cashier's check. The special master disbelieved respondent's testimony that she held the check because she could not contact Tolentino.

The special master found clear and convincing evidence that, in both the Marchetti and Tolentino matters, respondent knowingly misappropriated her clients' funds, in violation of RPC 1.15 and RPC 8.4(c), for which he recommended her disbarment.

Upon a de novo review of the record, we are satisfied that the conclusion of the special master that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The OAE's position is that the law and facts of this case require that respondent be disbarred. We agree. 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.

Despite respondent's ardent contentions that her clients' funds remained intact prior to her disbursing them, she was unable to produce any evidence to buttress her claims. For example, she contended that she received the cashier's check when she deposited Tolentino's settlement check, and that the

transaction was not recorded on her bank statement. Were her contention true, she could have produced a witness from Citibank to testify about bank procedures, and that the cashier's check might indeed have been provided to her and not recorded. Her failure to do so, or indeed to produce any support for her claims, hinders her credibility.


In light of the clear and convincing evidence against respondent, and in the absence of any support for her statements, we find that she knowingly misappropriated the Marchetti and the Tolentino funds.

There are no circumstances in this case that would warrant a departure from the Wilson rule. We, therefore, unanimously recommend that respondent be disbarred.

Member Matthew P. Boylan did not participate.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Tanya E. Lawrence
Docket No. DRB 05-105

Argued: May 19, 2005

Decided: July 27, 2005

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Admonition	Did not participate
Maudsley	X				
O'Shaughnessy	X				
Boylan					X
Holmes	X				
Lolla	X				
Neuwirth	X				
Pashman	X				
Stanton	X				
Wissinger	X				
Total:	8				1


Julianne K. DeCore
Chief Counsel