

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-199  
District Docket Nos. XIV-03-644E  
and XIV-03-736E

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IN THE MATTER OF :  
FRANK I. MARTINO, III :  
AN ATTORNEY AT LAW :  
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Decision  
Default [R. 1:20 4(f)]

Decided: August 19, 2004

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.

Respondent was admitted to the New Jersey bar in 1994. He has  
no history of final discipline. On February 24, 2004, the Supreme  
Court temporarily suspended respondent from the practice of law for  
possible knowing misappropriation of client funds and failure to

cooperate with the OAE in a demand audit of his attorney trust and business account records. In re Martino, III, 178 N.J. 484 (2004).

On October 17, 2003, the Minotola National Bank ("Minotola") notified the OAE that respondent had an overdraft in his attorney trust account in the amount of \$201,498.12, as of October 14, 2003.

On October 22, 2003, the OAE wrote to respondent requesting a written explanation and supporting documentation, returnable by November 20, 2003.

On November 21, 2003, respondent furnished a written reply, but failed to provide supporting documentation.

On December 1, 2003, the OAE wrote to respondent requesting the additional documents as soon as possible. Respondent did not reply.

On December 4, 2003, the OAE received notice from Minotola that a second overdraft, in the amount of \$2,997.34, had occurred on December 1, 2003.

On December 16, 2003, the OAE "faxed" a letter to respondent requesting a response to its December 1, 2003 letter.

Respondent again failed to reply.

Thereafter, the OAE scheduled a demand audit of respondent's records for January 20, 2004. Respondent was directed to bring his books and records from January 2003 through January 2004.

Respondent appeared for the January 20, 2004 demand audit

without the records required to have been maintained pursuant to R. 1:21-6. The missing records included: 1) client trust account ledgers; 2) checkbook stubs; 3) deposit slips; 4) a cash receipts journal; 5) a cash disbursements journal; and 6) client files related to the overdraft.

At the audit, respondent alleged that he had mailed the requested documentation to the OAE the day after his original reply to that office. That statement was false and was known by respondent to be false at the time he made it.

Respondent further advised the OAE that his client ledgers were either at his office or "in storage," and that he would produce them at a later date.

On January 21, 2004, the OAE continued the audit at respondent's office. Respondent was again unable to produce client ledger cards, trust account reconciliations, and business account records. At the time, he admitted that he had never sent any records to the OAE. Respondent also admitted that he had lied about maintaining the client ledger cards, stating that he had never maintained those and other required records, or prepared trust account reconciliations.

On May 21, 2003, the National Consumer Insurance Company issued a settlement check for \$15,000, payable to respondent and his clients, the Lertz. That check represented the gross proceeds

of settlement from a personal injury matter.

On June 2, 2003, respondent deposited that check into his attorney trust account.

According to respondent's settlement statement for the transaction, which the OAE determined to be correct, the Lerzas were entitled to receive net settlement proceeds in the amount of \$9,586.17. Respondent was to receive \$5,413.83 in fees and costs.

From June 2, 2003 through September 19, 2003, respondent disbursed to himself a total of \$11,250 out of the Lerzas' funds on hand in the trust account. He did so in order to cover shortfalls in his business account, as follows:

<u>Ck#</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>	<u>Memo</u>
1273	6/2/04	\$2,500	Frank Martino	Lerza
1274	6/2/04	\$1,500	Aurora Loan Svc.	Aurora vs. Martino
1276	6/12/03	\$1,500	Frank Martino	Lerza
1279	6/20/04	\$500	Frank Martino	Lerza vs. Suter
1278	6/25/03	\$1,500	Frank Martino	Lerza
Temp	7/8/03	\$1,500	Frank Martino	-----
Temp	7/15/03	\$1,500	Frank Martino	-----
1333	9/19/03	\$750	Frank Martino	-----

When respondent issued trust account check #1276 to himself in the amount of \$1,500, the balance in his business account was minus \$91.42. Respondent deposited trust account check #1276 into his business account on June 12, 2003 to cure the overdraft and provide a positive balance.

On July 8, 2003, respondent issued a temporary trust account check to himself in the amount of \$1,500. Respondent deposited the

check into his business account in order to cure a negative \$791.35 balance.

The balance in respondent's trust account for all clients as of October 1, 2003 was \$4,451.88. The account should have held \$9,586.17 for the Lerzas alone. The account had a shortfall of more than \$5,000.

During the OAE's investigation, the Lerzas stated that they were unaware that respondent had received their settlement funds in June 2003. In fact, the Lerzas had repeatedly requested respondent to remit their settlement funds during the fall of 2003. The Lerzas denied authorizing respondent to borrow or otherwise use their settlement proceeds.

In November 2003, respondent issued an undated attorney trust account check #1332 payable to John and Donna Lerza in the amount of \$9,586.17. On November 20, 2003, the Lerzas deposited the check, but it was returned for insufficient funds.

Respondent admitted to the OAE that the Lerzas had not agreed to or authorized his use of their settlement proceeds.

On September 4, 2003, respondent issued trust account check #1334 in the amount of \$210,000 to Aurora Loan Services ("Aurora"), on behalf of a family member. It is not known if respondent represented the family member. At the time, the balance in his trust account for all clients, including the Lerzas, was \$6,201.88.

Respondent's trust account records show that there were insufficient funds on deposit in his trust account to cover the \$210,000 disbursement.

During the OAE demand audit, respondent admitted that he issued the \$210,000 check to Aurora knowing that his trust account contained insufficient funds to cover that amount. Respondent delivered the check to Aurora with instructions to hold it, pending his anticipated receipt of a wire transfer of equal funds from a third party. In respondent's November 20, 2003 letter to the OAE, he explained that the transaction was an attempt to prevent a foreclosure, that his trust account check was given to appease the foreclosing bank, and that the wire transfer to his trust account never took place. Respondent denied that he intended to defraud the bank by his actions.

The complaint alleges knowing misappropriation, in violation of RPC 1.15(a) (knowing misappropriation of client funds), RPC 8.4(c) (dishonesty, fraud, deceit or misrepresentation), RPC 1.15(c) (failure to safeguard client funds) and the principles of In re Wilson, 81 N.J. 451 (1979).

On April 24, 2004, the OAE sent a copy of the complaint to respondent's last known addresses at 200 Haddonfield-Berlin Road, Suite 101, Gibbsboro, New Jersey, 08026, and 408 West Spring Road, Hammonton, New Jersey, 08037, by certified and regular mail. A copy

of the complaint was also sent by regular mail to respondent's counsel, Philip J. Mammano, Jr., Esq., at Marmero & Mammano, P.C., 1040 Route 73, Berlin, New Jersey, 08009.

The signed certified mail receipt for the complaint sent to respondent's Gibbsboro address was returned indicating delivery on April 20, 2004. The signature is illegible.

The signed certified mail receipt for the complaint sent to respondent's Berlin address was signed by respondent, indicating delivery on April 19, 2004.

The outcome of the regular mail is not known.

On April 22, 2004, the OAE received an April 15, 2004 acknowledgment of service from respondent's counsel.

Having received no answer to the complaint, on May 20, 2004, the OAE sent a "five-day" letter to respondent advising him that, unless an answer was filed within five days of the date of the OAE letter, the allegations would be deemed admitted and that, pursuant to R.1:20-4(f) and R.1:20-6(c) (1), the record in the matter would be certified directly to us for the imposition of discipline. That letter was sent to respondent at the same addresses, by regular mail. The outcome of this mailing is unknown.

Respondent did not file an answer to the complaint.

Service of process was properly made. 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).

With regard to the \$210,000 trust account check to Aurora, respondent drafted that check for personal reasons unrelated to any client. Respondent had told Aurora not to negotiate the check, pending his receipt of wired funds from a third party. Respondent knew at the time that he drafted the check that the trust account contained insufficient funds to cover it.

Aurora's later attempt to negotiate the check resulted in its return for insufficient funds. The knowing misappropriation of those funds in the trust account at the time was averted upon the check's return, client funds were not affected, and no misappropriation of funds occurred. However, respondent acted deceitfully by issuing the trust account check against insufficient funds, in order to give the foreclosing bank the false impression that those funds were in Aurora's possession. We find that, in so doing, respondent violated RPC 8.4(c).

Respondent's handling of the Lerzas' funds was extremely serious. He deposited their personal injury settlement funds (\$15,000) in his trust account and did not inform his clients of the deposit for several months. Of the \$15,000, \$9,586.17 belonged to the Lerzas and \$5,413.83 to respondent. Yet, respondent did not

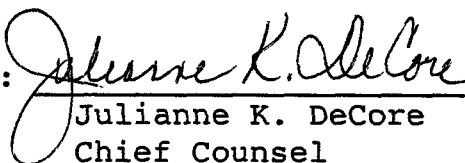


disburse those funds to his clients. Instead, he wrote a series of checks to himself, totaling \$11,250, in order to cover shortfalls in his business account. Respondent thereby used over \$5,800 of the Lerzas' funds for his own personal benefit, without the Lerzas' knowledge or consent. He later wrote a check to the Lerzas for \$9,586.17, which was returned by the bank for insufficient funds. Respondent, therefore, knowingly misappropriated in excess of \$5,800 of the Lerzas' funds.

Under the principles of In re Wilson, supra, 81 N.J. 451 (1979), we recommend respondent's disbarment. Vice Chair William J. O'Shaughnessy, Esq. recused himself. Robert C. Holmes, Esq. did not participate.

We also determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board  
Mary J. Maudsley, Chair

By:   
Julianne K. DeCore  
Chief Counsel

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

In the Matter of Frank I. Martino, III  
Docket No. DRB 04-199

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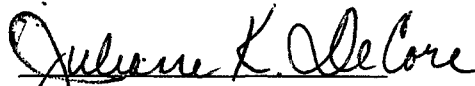
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Argued: July 15, 2004

Decided: August 19, 2004

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X					
O'Shaughnessy					X	
Boylan	X					
Holmes						X
Lolla	X					
Pashman	X					
Schwartz	X					
Stanton	X					
Wissinger	X					
<b>Total:</b>	7				1	1

  
Julianne K. DeCore  
Chief Counsel