

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-398
District Docket No. XIV-94-43E

IN THE MATTER OF :
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:
JANE KISSLING, :
a/k/a JANE GREENBERG, :
a/k/a JANE KIRKPATRICK :
:
AN ATTORNEY AT LAW :
:
:

Decision
Default

Decided: June 25, 2008

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). The complaint alleged that respondent knowingly misappropriated client funds. We determine to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1989. She has no prior discipline. However, on September 13, 2004, the Supreme Court temporarily suspended her from the practice of law for failing to cooperate with the OAE investigation of this matter. In re Kissling, 138 N.J. 28 (1994).

In addition, on November 16, 1994, the New Jersey Lawyers' Fund for Client Protection paid a \$46,336.14 claim, as a result of respondent's actions in this matter.

The ethics complaint was filed in September 1999. Through counsel, respondent filed an answer. Thereafter, on January 8, 2002, the Supreme Court stayed the proceedings, based on respondent's assertions that she lived in Tegucigalpa, Honduras, and was too elderly and sickly to travel to New Jersey.

The matter remained inactive for the next four years, until May 2006, when the OAE filed a motion to lift the stay. On July 17, 2006, the Court granted the OAE's motion. After respondent failed to cooperate in the ethics proceeding, the OAE filed a motion with the special master for an order striking her answer and certifying the matter directly to us as a default.

On October 23, 2007, Special Master Kenneth J. Cesta ordered that respondent's answer be stricken from the record and that the matter proceed directly to us for the imposition of discipline.

In a May 15, 2008 certification of the record, the OAE related certain facts regarding service of the special master's order striking respondent's answer. Specifically, in a November 16, 2007 letter to the OAE, Cesta informed that office that he had successfully served respondent with a copy of his order

striking respondent's answer at two separate addresses for respondent in Florida. Attached to the OAE certification are copies of Cesta's letter confirming service two certified mail receipts. The first receipt indicates acceptance of the order sent to respondent at 8424 NW 56th Street, Suite HON 4135, Miami Florida, 33144 (signature illegible). The second certified mail receipt indicates acceptance on October 29, 2007 of the order sent to respondent at TGIU - 000154, PO Box 025387, Miami, Florida, 33102 (signature illegible).

This matter arises out of respondent's 1993 representation of Violet Sachs, an eighty-three year old widow.

According to the complaint, on August 20, 1993, respondent deposited a check for \$52,100.97, payable to "Jane Kirkpatrick Attorney for Violet Sachs," into her personal bank account at Midlantic Bank, titled "Jane Kirk Patrick," account number 1500200320. Prior to making the deposit, the account held only \$7,855.39.

On August 23, 1993, respondent issued check number 159 in the amount of \$36,611 to Antiques Limited, an entity owned by her husband, Mel Greenberg. On August 24, 1993, respondent's check was returned by her bank for lack of an endorsement. On August 26, 1993, respondent transferred \$36,611.16 from her

Midlantic account to another Midlantic account held by her husband's entity, Antiques Limited.

On August 3, 1994, respondent was indicted by a Bergen County grand jury for theft of Sachs' property, in violation of N.J.S.A. 2C:20-3, a third-degree felony. Following her indictment, respondent disappeared, becoming a fugitive for the next four years. She was ultimately apprehended and admitted into a one-year pre-trial intervention program, on May 28, 1998.

The complaint charged that respondent knowingly misappropriated Sach's funds, a violation of RPC 1.15(a) and RPC 8.4(c).

Following a review of the record, we find that the complaint contains sufficient facts to support a finding of unethical conduct. Because, in this instance, respondent's answer was stricken from the record, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

The theft of client funds constitutes knowing misappropriation. In re Wilson, 81 N.J. 451, 455 n.1, 461 (1979) (misappropriation "means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit there from"). Here, without the authority of her client to do

so, respondent transferred \$36,611.16 of Sach's funds to a Midlantic bank account held by her husband's entity, Antiques Limited. In so doing, she knowingly misappropriated her client's funds. Under the Wilson rule (knowing misappropriation requires disbarment), she must be disbarred. We so recommend to the Court.

Member Neuwirth 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 O'Shaughnessy, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

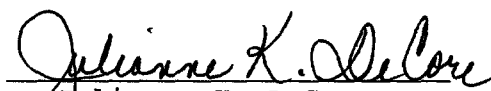
In the Matter of Jane Kissling, a/k/a Jane Greenberg, a/k/a Jane Kirkpatrick

Docket No. DRB 07-398

Decided: June 25, 2008

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	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