

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-347

IN THE MATTER OF :
 :
STEVEN T. KEARNS :
 :
AN ATTORNEY AT LAW :
 :

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

Decided: February 18, 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.

On August 12, 2003, the OAE sent a copy of the complaint to respondent, by certified and regular mail, to 77 Hudson Street, Hackensack, New Jersey 07601. The certified mail was returned marked “Unclaimed.” The regular mail was not returned. On September 16, 2003, the OAE sent a second letter to respondent at the above address, via regular mail only. The letter advised respondent that, unless he filed an answer within five days, the allegations of the complaint would be deemed admitted and the record certified to us for the imposition of sanction. The letter stated further that it served to amend the complaint to charge respondent with a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities). He was,

however, already charged with a violation of that rule in the complaint. He did not file an answer.

Respondent was admitted to the New Jersey bar in 1982. During the relevant time, he maintained an office for the practice of law in Hackensack, Bergen County. Respondent was temporarily suspended by Order dated June 16, 2003, effective July 17, 2003, for failure to pay a \$250 sanction imposed by us in proceedings that arose from his failure to comply with a fee arbitration determination. He remains suspended to date. In re Kearns, 177 N.J. 225 (2003).

Count One

On February 13, 2002, respondent represented Paul and Sara Finkler in connection with the refinancing of their home mortgage. He was to pay off the Finklers' Bank of America mortgage, and their Fleet Bank home equity loan. Respondent, however, did not timely make the payments, and did not forward the closing documents to the new mortgagee until approximately five weeks after the closing. As a result of respondent's failure to pay off Bank of America's mortgage, which the Finklers had rightfully stopped paying after the refinancing, Bank of America threatened the Finklers with foreclosure. They made repeated calls to respondent to attempt to resolve the situation. He did not return their calls and the Finklers retained new counsel to assist them. Respondent ultimately disbursed the funds, and the mortgage and home equity loan were posted paid as of April 1, 2002. He paid the additional per diem interest from his own funds.

The OAE reviewed respondent's bank records and found that no misappropriation of funds had taken place. The money designated to pay off the Finklers' two mortgages remained in his trust account from the date of closing until they were finally paid over.

The complaint charged respondent with a violation of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), and RPC 1.15(b) (failure to pay over funds to third parties).

Count Two

As a result of the Finklers' grievance, a demand audit of respondent's attorney books and records was scheduled for August 12, 2002. Although respondent appeared for the audit, he failed to bring with him the Finklers' file and his bank records, as required by the July 16, 2002, demand audit notice. Respondent was given until November 27, 2002, to provide the missing documentation.¹ Despite the OAE's numerous demands for the documents and several extensions of time given to respondent in which to comply, he did not provide the OAE with the documentation.² The OAE recreated respondent's trust account records from subpoenaed bank information to complete its investigation.

The complaint charged respondent with a violation of RPC 1.15(d) and R.1:21-6(b) (failure to comply with recordkeeping requirements), and RPC 8.1(b) (failure to cooperate with the OAE).

Service of process was proper. The regular mail sent to respondent forwarding the complaint was not returned. Thus, delivery is presumed. Following a review of the record, we found that the facts recited in the complaint support the charges of unethical conduct.

¹ According to the investigative report, respondent admitted that he did not maintain his records in accordance with the requirements of R.1:21-6. He was, therefore, given until November 27, 2002, to reconstruct his records.

² The investigative report, exhibit E to the OAE's certification, provides more detail on respondent's failure to produce the requested documents.

Exhibit 2 to the investigative report consists of several documents indicating that respondent had been admitted to Hackensack Medical Center's psychiatric unit. In addition, a memo to the file from the investigator, exhibit 6 to the investigative report, states that when respondent appeared for the demand audit he advised the OAE that he is a recovering alcoholic, and suffers from many health problems. He disclosed further that he was going through a divorce. There are no medical or psychiatric reports in the record to shed light on respondent's condition, or to link it to his derelictions in this matter. We, therefore, did not consider this information in mitigation.

In In the Matter of Charles Deubel, III, Docket No. DRB 95-051 (1995), an admonition was imposed where the attorney failed to record his client's deed for approximately fifteen months after the closing of title. In In re Halpern, 117 N.J. 678 (1989), a reprimand was imposed on an attorney for gross neglect and lack of diligence in failing, for thirteen months, to remit real estate proceeds to pay off an existing mortgage and failing to maintain proper trust and business account records.

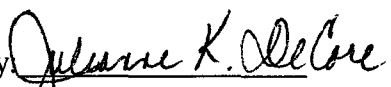
In the matter at bar, although respondent eventually paid off the mortgages, and forwarded the closing documents, his derelictions caused his clients a great deal of distress. His actions are unexplained and unmitigated. Furthermore, he failed to maintain the required trust and business account records, and failed to comply with the OAE's demands for documents, making this matter more akin to Halpern. A reprimand is clearly warranted.

It is our usual practice to increase the level of discipline in default matters. In this case, however, the imposition of a term of suspension, even a brief one, is too severe a penalty. We instead unanimously determined to impose a reprimand, and to require respondent to submit proof of fitness to practice law, as attested by a mental health professional approved by the

Office of Attorney Ethics, within ninety days of this decision. In addition, he should practice under the supervision of a proctor for one year to ensure that no harm befalls the public. Four members did not participate.

We further determined 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

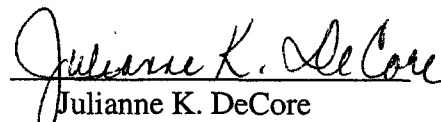
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Steven T. Kearns
Docket No. DRB 03-347

Decided: February 18, 2004

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>			X				
<i>O'Shaughnessy</i>							X
<i>Boylan</i>							X
<i>Holmes</i>							X
<i>Lolla</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>							X
<i>Stanton</i>			X				
<i>Wissinger</i>			X				
Total:			5				4


Julianne K. DeCore
Chief Counsel