

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. DRB 98-~~024~~  
229

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IN THE MATTER OF :  
THAKI ISMAEL :  
AN ATTORNEY AT LAW :

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

Decided: November 2, 1998

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 the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. On April 29, 1998 the OAE mailed a copy of the complaint by regular and certified mail to respondent's last known office address, 41 Borman Avenue, Avenel, New Jersey 07001. The regular mail was not returned. The certified mail receipt (green card) was returned indicating delivery on May 2, 1998. The signature is that of Dana Ismael. Respondent did not file an answer. On May 26, 1998 the OAE sent respondent a second letter informing him that, if he did not reply within five days, the matter would be certified to the Board for the imposition of sanctions and that he might

be temporarily suspended from the practice of law. Neither the regular mail nor the certified mail or its return receipt was returned. Respondent has not filed an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1985. At the relevant times he maintained an office in Avenel, New Jersey. Respondent's ethics history began with a private reprimand in March 1992 for failure to act with diligence and failure to cooperate with the disciplinary authorities. In the Matter of Thaki Ismael, DRB 91-376 (1992). In May 1994 respondent was again privately reprimanded, this time by the Board chair pursuant to then-existing consent procedures, for failure to reconstruct financial records after a random audit. In the Matter of Thaki Ismael, DRB 94-091 (1994). More recently, respondent consented to an admonition, issued in March 1995, for failure to communicate with the client, lack of diligence and failure to reply to an investigator's requests for information. In the Matter of Thaki Ismael, DRB 95-053 (1995).

The complaint filed by the OAE contains five counts. For the sake of clarity the specific violations are included after the description of each alleged event.

#### **I. The Joseph Matter**

The complaint alleges that respondent represented Mirella G. Joseph in connection with the purchase of a property in April 1997, in which respondent was required to submit payment to Title Agency of New Jersey ("TANJ") in the amount of \$1,050 and Mid Atlantic Land Service ("Mid Atlantic") in the amount of \$375. In addition, respondent was

responsible for paying a 1995 sewer lien in the amount of \$168.33 and then-current sewer charges in the amount of \$202.93 and submitting a closing package to Intercounty Mortgage, Inc. ("Intercounty").

On June 10, 1997 an attorney for TANJ contacted the OAE claiming that respondent had failed to return the closing package to Intercounty, failed to record Joseph's deed and Intercounty's mortgage and failed to reply to any communication by TANJ in this matter. On July 14, 1997 the OAE notified respondent that a demand audit would take place on July 25, 1997. The audit actually occurred on August 14, 1997 and covered the period of time from April 1, 1996 to August 14, 1997. See infra **V. Failure to Cooperate**. The audit revealed that respondent had not paid TANJ, Mid Atlantic or the sewer lien and sewer charges and had failed to submit the closing package to Intercounty.

The OAE continued the demand audit on August 27, 1997, at which time respondent assured the OAE that he had submitted the payments to TANJ and Mid Atlantic. In fact, respondent did not issue payment to either party until September 13, 1997. On November 7, 1997, respondent told the OAE, during a telephone conversation, that he had submitted the closing package to Intercounty. That was untrue. In fact, respondent never submitted the closing package to Intercounty, as a result of which TANJ was forced to "reclose" the loan on October 16, 1997. As of that date respondent had still not paid the sewer lien and charges, and has since failed to reply to the OAE's requests for proof of payment.

The complaint charged respondent with gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, for failure to pay TANJ, Mid Atlantic and the sewer lien and charges and for failure to submit the closing package to Intercounty. The OAE investigator concluded from respondent's records that respondent never invaded the settlement funds. The complaint also charged respondent with knowingly making false statements of material fact to a disciplinary authority, in violation of RPC 8.1(a).

## **II. The Carrington Matter**

This matter stems from respondent's private reprimand in 1994. At that time, respondent was holding \$1,800 in escrow for Ann Carrington from a 1988 real estate closing, which was to be used to pay a water bill. A 1992 random compliance audit by the OAE directed respondent to reconstruct his records in order to disburse the appropriate amount of those funds to Carrington. As a result of his conduct in connection with those funds, respondent was privately reprimanded.

At the August 14, 1997 demand audit, the OAE discovered that respondent still had not disbursed the funds to Carrington. There is, however, no charge of misappropriation, as the OAE investigator found that respondent had retained the Carrington funds in his account at all times. The OAE instructed respondent to either find Carrington and return her funds or, if Carrington could not be located, to deposit the funds with the Superior Court Trust Fund. After four reminders by the OAE, it appears that respondent delivered an attorney

trust account check to Carrington for \$1,800. However, he has not furnished any proof of the payment, as requested by the OAE.

The complaint charged that respondent's failure to return the \$1,800 to Carrington for almost a decade violated RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence).

### **III. Recordkeeping Violations**

Respondent was instructed to correct his recordkeeping deficiencies after the 1992 random compliance audit. At the 1997 demand audit, respondent failed to provide any evidence that he had corrected the deficiencies. Respondent also failed to produce client ledger cards, deposit slips, cash receipts and cash disbursement journals for his trust account, business account records and quarterly reconciliations of his trust account.

The complaint charged that respondent's conduct in failing to correct the deficiencies noted in the 1992 random compliance audit violated RPC 1.15(d) (compliance with recordkeeping rules), R. 1:21-6 (recordkeeping; examination of records) and RPC 1.1(a) (gross neglect). The complaint further charged that respondent's failure to abide by the recordkeeping rules in connection with the 1997 audit constituted an additional violation of RPC 1.15(d) and R. 1:21-6.

#### **IV. The Dixon Matter**

On December 23, 1997 the District VIII Ethics Committee dismissed an ethics grievance filed by respondent. The facts alleged in that matter (Dixon) were that respondent accepted one-third of a legal fee and then took no action on behalf of his client. After the client filed a grievance, respondent returned the fee and the grievance was dismissed.

The complaint charged that respondent's actions, when added to those in the Joseph and Carrington matters, constituted a violation of RPC 1.1(b) (pattern of neglect).

#### **V. Failure to Cooperate**

Respondent was scheduled for a demand audit on July 25, 1997 and failed to appear at the OAE. The OAE rescheduled the audit for August 12, 1997. Again, respondent did not appear. Respondent claimed that he had attempted to telephone the OAE to request an adjournment, but was unable to reach anyone. The audit was scheduled for the third time on August 14, 1997, when respondent appeared two hours late.

At that time, respondent produced his trust account checkbook and a few trust account bank statements and canceled checks. He failed to produce his client ledgers, bank statements, canceled checks, checkbook stubs, deposit slips, cash receipts and cash disbursement journals, as requested by the OAE. The OAE instructed respondent to remove any personal funds from his trust account, except for a small balance to cover bank charges.

As noted previously, respondent was also instructed to disburse the Carrington funds. The OAE asked respondent to return with the rest of his records on August 26, 1997.

On August 26, 1997, just before the audit was to begin, respondent telephoned the OAE, requesting that the audit be adjourned until the next day. Although respondent appeared on August 27, 1997, he still did not produce the requested bank records. He claimed that he was trying to obtain the documents. Respondent's personal funds were still commingled with his trust funds and the Carrington funds were still in the trust account. The OAE directed respondent to return on September 30, 1997 with the required trust and business account records and to bring proof that he had removed his personal funds and the Carrington funds from his trust account.

Respondent rescheduled the September 30, 1997 audit for October 3, 1997, when respondent failed to appear for the audit and did not inform the OAE that he would not appear. On October 8, 1997 the OAE received the balance of the trust account bank statements in the mail, but has not yet received any other trust account records or any business account records.

The OAE investigator reached respondent by telephone on November 7, 1997, when respondent promised to "fax" him a written statement explaining his failure to appear on October 3, 1997 and also promised to provide proof that he had submitted the Joseph closing package and disbursed the Carrington funds. Despite his promise, respondent did not send the "fax" to the OAE. On November 12, 1997 the OAE wrote to respondent instructing him

to immediately "fax" an explanation. The OAE also informed respondent that, if he failed to do so, he could be charged with failure to cooperate with the disciplinary authorities. Respondent did not comply with the OAE's instructions.

The OAE scheduled a continuation of the demand audit for December 3, 1997. Respondent appeared and, although respondent admitted that he had not complied with the OAE's instructions, he assured the OAE that by December 18, 1997 he would submit proof that he had sent the Joseph closing package, removed his personal funds from his trust account and disbursed the Carrington funds. Respondent's last contact with the OAE was on December 17, 1997, when he stated that he was in the process of preparing the Joseph closing package. Respondent has not since replied to a host of telephone calls to respondent's telephone and pager numbers from the OAE. In addition, respondent never responded to a subpoena, dated March 3, 1998, seeking information about the Carrington funds. Respondent has also ignored subsequent letters by the OAE about the funds entrusted to him to pay the sewer lien and charges in the Joseph matter.

The complaint charged that respondent failed to cooperate with the disciplinary authorities, in violation of RPC 8.1(a).

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Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. The record contains sufficient factual basis to support a finding of unethical conduct.

In the Joseph matter, respondent violated RPC 1.1(a), RPC 1.3 and RPC 8.1(a). Respondent was entrusted with funds to pay certain creditors and to deliver a closing package to the mortgage company but, to date, he has paid only two creditors, and then only after an ethics complaint was filed. Respondent's failure to submit the closing package to the mortgage company necessitated a second closing on the property, bringing his conduct to the level of gross neglect. In addition, respondent knowingly made a false statement of material fact to the OAE, claiming that he had made payments to TANJ and Mid Atlantic and submitted the closing package to Intercounty.

Respondent also violated RPC 1.1(a) and RPC 1.3 when he failed to disburse \$1,800 for almost a decade in the Carrington matter, despite having been privately reprimanded more than three years earlier for the same neglect.

During the 1997 demand audit, respondent failed to produce a plethora of required records, contrary to R. 1:21-6(c), which states that bookkeeping records "shall be available for inspection, checks for compliance with this Rule and copying at [the attorney's office] by a duly authorized representative of the Office of Attorney Ethics." Thus, respondent violated RPC 1.15(d) and R. 1:21-6.

Moreover, respondent did not certify to the OAE, as required, that he had corrected the recordkeeping deficiencies uncovered by the 1992 random audit. His failure to do so violated RPC 1.15(d) and R. 1:21-6.<sup>1</sup> Even after the OAE notified respondent that he would be facing disciplinary charges if he did not certify that the noted violations had been remedied, respondent ignored the OAE's request for proof of compliance.

The record also supports the finding of a pattern of neglect, in violation of RPC 1.1(b). Ordinarily, the Board will find a pattern of neglect if more than two matters are involved. The facts support a finding of gross neglect in both the Joseph and Carrington matters, as well as simple neglect in the dismissed matter, Dixon. Lastly, the record supports a finding of a violation of RPC 8.1(b) [mistakenly cited as RPC 8.1(a)] for respondent's failure to cooperate with the OAE audits.

When a complaint fails to charge a specific ethics violation, but the facts in the record are sufficient to put respondent on notice of that violation, the allegations may be deemed amended to conform to the proofs of the record. In re Logan, 70 N.J. 223, 232 (1976). Here, respondent commingled personal and client funds in his trust account. On several occasions, the OAE directed respondent to remove his personal funds from the trust account. He did not provide proof that he had complied with the OAE's directive. The Board, thus, found a violation of RPC 1.15(a).

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<sup>1</sup> Respondent's conduct in this regard was more properly a violation of RPC 1.15(d), rather than RPC 1.1(a) (gross neglect), as charged in the complaint.

Additionally, in the Carrington matter respondent violated RPC 1.15(b) by failing to promptly deliver to a client funds that the client was entitled to receive. Respondent placed the \$1,800 Carrington funds in his trust account in 1988. He was made aware of the existence of these funds in his trust account during a 1992 audit that resulted in his 1994 reprimand. In August 1997 respondent was again reminded of the \$1,800 during the demand audit, but nonetheless failed to deliver the funds to Carrington for months. In fact, respondent has not yet demonstrated that he no longer has the \$1,800. Accordingly, the Board found a violation of RPC 1.15(b).

In summary, respondent violated RPC 1.1(a) in two matters, RPC 1.3 in two matters, RPC 1.15(d) in two matters and also violated RPC 1.1(b), RPC 1.15(a), RPC 1.15(b), RPC 8.1(a) and RPC 8.1(b).

Respondent's dilatory attitude toward the OAE and his failure to reply to the OAE's requests on numerous occasions warrants at least a reprimand. An attorney has an obligation to cooperate fully with the OAE and its investigations. In re Smith, 101 N.J. 568, 572 (1986). In re Winberry, 101 N.J. 557, 566 (1986); In re Gavel, 22 N.J. 248, 263 (1956). "Disrespect to an ethics committee agent constitutes disrespect to [the Supreme] Court, as such a committee is an arm of the Court." In re Grinchis, 75 N.J. 495, 496 (1978).

In In re Macias, 121 N.J. 243 (1990), the OAE found thirteen recordkeeping violations during a random audit. Macias subsequently failed to reply to the OAE's requests for information. When he did reply, Macias presented inadequate information to substantiate

compliance with the recordkeeping rules. The only charge in the ethics complaint was Macias's failure to cooperate with the disciplinary authorities. However, Macias's actions went beyond the typical charge in which a respondent has failed to cooperate with an ethics investigation. The Board determined that, when an attorney fails to cooperate with the OAE during an audit, the sole violation of RPC 8.1(b) warrants a reprimand.

Respondent's behavior went far beyond that of Macias's and bears similarities to that displayed by the attorney in In re Dashoff, 142 N.J. 555 (1995). In Dashoff, the attorney received a three-month suspension after he repeatedly failed to abide by the OAE's instructions to bring his records into compliance with the rules and ignored the OAE's requests for an explanation of those deficiencies. Additionally, Dashoff failed to comply with his recordkeeping responsibilities. Dashoff received a three-month suspension, rather than a reprimand as in Macias, because he had twice before been reprimanded.

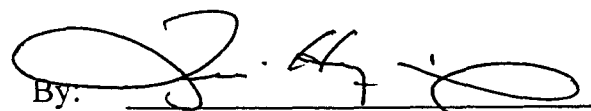
Like the attorney in Macias, respondent has failed to demonstrate that he is in compliance with the recordkeeping requirements of R. 1:21-6. Respondent has also failed to reply to the OAE's numerous requests for documents and repeatedly failed to appear before the OAE for audits, even after a subpoena. Also, respondent's previous admonition and one of his reprimands included a finding of failure to cooperate with the disciplinary authorities. However, respondent went even further when he made misrepresentations to the OAE about three separate incidents, claiming that he made payments to TANJ and Mid Atlantic and submitted the closing package to Intercounty. When the charges of gross

neglect and lack of diligence are considered in light of these violations, which include holding a client's funds, \$1,800, in his trust account for almost a decade, a three-month suspension, as in Dashoff, does not sufficiently address the seriousness of respondent's misconduct. Additionally, respondent continued his indifferent attitude toward the disciplinary system when he did not file an answer to this complaint, forcing these matters to proceed on a default basis. An eight-member majority of the Board, therefore, determined that a six-month suspension is warranted for respondent's ethics offenses. One member would have imposed a one-year suspension.

The Board also determined that respondent's reinstatement should be conditioned on demonstration that his records comply with R. 1:21-6 and that he has returned \$1,800 to Carrington. The Board further determined that, once respondent is reinstated, he should practice under a proctor for two years.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 11/2/98

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

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*SUPREME COURT OF NEW JERSEY*

*DISCIPLINARY REVIEW BOARD  
VOTING RECORD*

**In the Matter of Thaki Ismael  
Docket No. DRB 98-229**

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**Decided: November 2, 1998**

**Disposition: Six-Month Suspension**

Members	Disbar	Six-Month Suspension	One-Year Suspension	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz			x				
Thompson		x					
<b>Total:</b>		<b>8</b>	<b>1</b>				

*Robyn M. Hill 11/9/98*  
Robyn M. Hill  
Chief Counsel