

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-430  
District Docket No. IX-03-033E

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IN THE MATTER OF  
ROBERT J. HANDFUSS  
AN ATTORNEY AT LAW

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

Decided: March 3, 2005

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

Pursuant to R. 1:20-4(f), the District IX Ethics Committee  
("DEC") 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 1984. At  
the relevant times, he maintained a law office in Matawan, New  
Jersey.

In 2000, respondent was reprimanded for gross neglect, lack  
of diligence, and failure to communicate with a client. In re

Handfuss, 165 N.J. 569 (2000). He was suspended for three months in 2001 for gross neglect, lack of diligence, failure to communicate with a client, failure to promptly deliver property to a client, failure to turn over a file and provide an accounting, failure to cooperate with disciplinary authorities, and misrepresentation. In re Handfuss, 169 N.J. 591 (2001). In 2002, respondent was reprimanded for failure to promptly turn over third-party funds and failure to cooperate with ethics authorities. In re Handfuss, 174 N.J. 403 (2002). On January 26, 2005, respondent was suspended for one year for failure to promptly deliver funds to a third party, and failure to reply to a lawful demand for information from a disciplinary authority. In re Handfuss, N.J. (2005).

Respondent has not applied for reinstatement from his 2001 suspension.

On August 4, 2004, the DEC mailed a copy of the complaint to respondent's home address at 75 Rockwell Circle, Marlboro, New Jersey 07746, by regular and certified mail, return receipt requested. Lauren Handfuss acknowledged receipt of the certified mail on August 5, 2004. The regular mail was not returned. Respondent did not file an answer to the complaint.

On October 29, 2004, the DEC forwarded a second letter to respondent by regular and certified mail, return receipt

requested. The letter notified respondent that, if he did not file an answer within five days, the matter would be certified to us for the imposition of discipline, and the complaint amended to include a violation of RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority). The certified mail was returned unclaimed. The regular mail was not returned. As of the date of the certification of the record, November 30, 2004, respondent had not filed an answer to the complaint.

The eighteen-count complaint charged respondent with violations of RPC 1.1(b) (pattern of neglect) and RPC 1.3 (lack of diligence) in seventeen counts, RPC 1.15(b) (failure to deliver entrusted funds to a third party) in three counts, and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority) in one count.

Counts one through seventeen allege that, from October 1998 through November 2001, respondent represented the purchasers of property in sixteen matters, and clients who were refinancing their mortgage loan in one matter. After the closings in thirteen of the matters, respondent did not cancel the sellers' mortgages. Therefore, title policies were issued subject to the pre-existing mortgages. In another matter, respondent failed to record the new mortgage. In addition, the county clerk rejected

the discharge of the existing mortgage because it contained inaccurate book and page information, which respondent did not correct.

Three matters involved problems with title insurance. In one matter, respondent never paid for title insurance, and the title company issued only a loan policy. In two matters, respondent never paid for title insurance after ordering title work. The title company never issued the title policies and listed the files as cancelled. Respondent was charged with failure to deliver entrusted funds to a third party (RPC 1.15(b)) in these three matters, as well as lack of diligence and pattern of neglect.

The last count alleged that respondent failed to reply to any inquiries made by the DEC investigator, thereby violating RPC 8.1(b).

Service of process was properly made in this matter. The complaint contains sufficient facts to support a finding of unethical conduct. Because of respondent's failure to file an answer to the complaint, the allegations are deemed admitted. R. 1:20-4(f).

The facts alleged in the complaint provide sufficient support for findings of violations of RPC 1.3 in each of the seventeen matters handled by respondent. Although the complaint

did not label respondent's conduct as gross neglect, or include RPC 1.1(a) in the complaint, we find that gross neglect is implicit in the alleged facts. Respondent neglected to cancel the sellers' mortgages in thirteen of the seventeen matters set forth in the complaint. His failure to do so affected the sellers, because their mortgages were not canceled, the purchasers, in that they purchased property subject to the sellers' mortgage, and the lenders, as they did not have a first lien on the properties.

Respondent's failure to pay for title insurance in three matters amounted to gross neglect, not failure to deliver entrusted funds to a third party. We, therefore, dismiss RPC 1.15(b). Also, respondent's gross neglect of seventeen matters established a pattern of neglect (RPC 1.1(b)).

Finally, respondent's failure to reply to the DEC's requests for information about the grievance, and to file an answer to the complaint gave rise to a violation of RPC 8.1(b).

The only issue for determination is the quantum of discipline. In 2001, respondent was suspended for three months for grossly neglecting a real estate closing in 1999, by failing to record a deed for more than three months, and failing to make timely payments of insurance premiums, sewer charges, and real estate taxes, which resulted in financial injury to the client.

He also misrepresented to the client that the deed had been filed and that the premium for the home warranty had been paid.

In 2002, while acting as the settlement agent in a real estate transaction, respondent failed to pay certain charges. He was reprimanded for that conduct.

The charges in this matter stemmed from closings that spanned from October 1998 to November 2001, the same time frame as his conduct in two of his earlier matters. Those prior matters were just the tip of the iceberg.

Cases involving deficient real estate practices or similar violations have yielded discipline ranging from admonitions to suspensions. See, e.g., In the Matter of Diane K. Murray, Docket No. DRB 98-342 (September 26, 2000) (admonition for failure to record a deed and to obtain title insurance for fifteen months and two and one-half years after the closing, respectively; attorney also failed to reply to the client's numerous requests for information about the matter and to reconcile her trust account records in a timely fashion); In the Matter of Laura P. Scott, Docket No. DRB 96-091 (May 2, 1996) (admonition where attorney failed to remit certain fees to the title company and to the mortgage company until six months after the closing, failed to reply to her client's numerous requests for information on potential unpaid closing costs, failed to deposit

connection with the sale of the client's business; attorney had a prior reprimand); In re Gilbert, 159 N.J. 505 (1999) (three-month suspension where attorney failed to promptly return escrow funds deposited with him by a third party under a written escrow agreement, and improperly asserted a lien on the entire amount to collect fees owed to him by the client; attorney had a prior reprimand); In re Scharfetter, 159 N.J. 518 (1999) (six-month suspension in a default where the attorney neglected his responsibilities in representing the purchaser of a home by failing to file necessary documents, including the deed, and failing to pay the realty transfer fee and to reply to his client's communications, failed to cooperate with disciplinary authorities, and practiced law while ineligible for failure to pay the annual attorney registration fee; attorney had a prior private reprimand).

This is respondent's fifth default. His disciplinary record includes two reprimands, a three-month suspension, and a one-year suspension. The extent of respondent's misconduct in the present seventeen matters, coupled with his continuing disregard for the entire ethics process, would ordinarily require the imposition of a lengthy suspension of either two or three years. However, we are convinced that respondent's ethics character is unsalvageable. Under the principles of progressive discipline

and In re Kantor, 180 N.J. 226 (2004), respondent must be disbarred. We so recommend to the Court. Member Ruth Lolla 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  
Julianne K. DeCore  
Chief Counsel



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Robert J. Handfuss  
Docket No. DRB 04-430

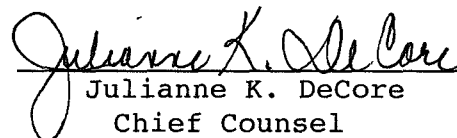
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Decided: March 3, 2005

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					
Total:	8					1

  
Julianne K. DeCore  
Chief Counsel