

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-275

IN THE MATTER OF :
:
ANTONIO VELAZQUEZ, :
:
AN ATTORNEY AT LAW :
:

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

Decided: JANUARY 11, 1999

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

Pursuant to R. 1:20-4(f)(1), 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 May 4, 1998, the OAE sent a copy of the complaint and cover letter via certified and regular mail to respondent at an address in Virginia provided by respondent.¹ The regular mail was returned, indicating that

¹ Although it was neither respondent's office address of record nor his home address of record, the Virginia address was used because it had been provided by respondent himself in a letter to the OAE dated September 5, 1997. In addition to that letter, in which respondent indicated that he would comply with the OAE's request

respondent had moved and left no forwarding address. The complaint does not specify the result of the certified mail; it merely states that "[t]his attempt at mail service was not successful as respondent moved and left no forwarding address." Respondent's home address of record is no longer valid and, according to the certification of OAE Deputy Ethics Counsel Lee A. Gronikowski, respondent has abandoned his law offices. Notice of the proceedings against respondent was published in The Record (Bergen County, New Jersey), The Virginian-Pilot (Virginia Beach, Virginia) and The New Jersey Lawyer. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1988. He was temporarily suspended by the Court on September 9, 1997, after his former secretary filed a grievance alleging financial improprieties. In November 1998 (DRB 97-455), the Board filed with the Supreme Court its determination to suspend respondent for three months for his abandonment of seven matters. Thereafter, in DRB 98-164, the Board voted to reprimand respondent for gross neglect, lack of diligence, failure to communicate and pattern of neglect in a bankruptcy matter and in an immigration matter.

According to the complaint, respondent represented Pablo Rodriguez in connection with personal injuries Rodriguez sustained in a fall that took place in November 1995. On or about June 17, 1997, respondent settled the case for \$20,000. The Scottsdale Insurance Company subsequently issued a settlement draft for \$20,000 payable to respondent and to

for information, respondent offered the Virginia address in his September 25, 1997 letter to the Clerk of the Supreme Court, where respondent opposed the OAE's motion to temporarily suspend him.

Rodriguez. After both endorsed the draft, respondent deposited it into his trust account on June 23, 1997.

Rodriguez had incurred medical bills in connection with the case, totaling \$5,444.91. Specifically, he owed \$4,220 to Clifton Chiropractic Associates, \$1,507.41 to Dr. Ziauddin Ahmed and \$172.50 to the City of Paterson for ambulance services. Respondent represented to Rodriguez that he would pay these bills out of the settlement proceeds but failed to do so. In addition, respondent represented to Rodriguez that he would take an attorney's fee of \$5,066.66 out of the settlement proceeds. However, respondent's bank records indicate that respondent issued trust account checks totaling \$7,500 to himself against the Rodriguez settlement. Thus, the complaint alleges, respondent overdisbursed his fee to the extent of \$2,433.34 without his client's knowledge or consent. Moreover, according to respondent's bank records, his trust account balance as of August 25, 1997 was only \$14.11. At that time, because he had not yet paid Rodriguez's medical bills, respondent should have been holding at least \$5,444.91 in his trust account.

The OAE scheduled a demand audit of respondent's books and records for July 31, 1997 at respondent's office. Respondent failed to appear. The OAE scheduled a second audit at its offices for August 19, 1997. Again, respondent failed to appear. On August 27, 1997, the OAE moved for respondent's temporary suspension for his failure to cooperate and to appear at the audits. The motion for suspension was granted. On November 13, 1997, and again on December 10, 1997, the OAE wrote to respondent requesting a specific explanation

of his handling of the Rodriguez settlement and of his failure to pay Rodriguez's medical bills. Respondent did not respond to either inquiry. The complaint alleges that, throughout the investigation into this matter, respondent has repeatedly made written representations that he would cooperate with the investigation, but did not.

The complaint charges respondent with violations of RPC 1.15 (knowing misappropriation of client trust funds), RPC 8.4(c) (conduct involving dishonesty, deceit, fraud or misrepresentation) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities).

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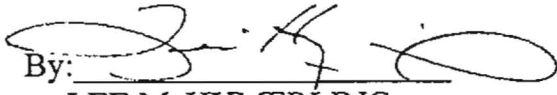
Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. R. 1:20-4(f)(1). Respondent represented to Rodriguez that he would use settlement funds to pay Rodriguez's medical bills, and then failed to do so. In addition, although respondent told Rodriguez that he would take an attorney's fee of \$5,066.66, respondent's records indicate that he issued checks totaling \$7,500 to himself from the Rodriguez settlement funds. Although respondent's trust account should have contained the \$5,441.91 that respondent was to have used to pay Rodriguez's medical bills, it held only \$14.11 when audited. Because respondent has not accounted for the missing funds (despite ample opportunity to do so), the only inference is that he used them for personal purposes

and without the client's consent. Under these circumstances, he was guilty of knowing misappropriation of client trust funds, in violation of RPC 1.15 and RPC 8.4(c). Also, respondent failed to appear at two scheduled audits and failed to cooperate with the OAE's numerous requests for information, in violation of RPC 8.1(b).

Knowing misappropriation of client funds in New Jersey requires disbarment. In re Wilson, 81 N.J. 451 (1979). See also In re Noonan, 102 N.J. 157 (1986). The goal of discipline, not only in cases of misappropriation but in all cases of attorney misconduct, "is to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general." In re Wilson, *supra*, 81 N.J. at 456. Clients permit lawyers to handle their funds because they trust the lawyers to properly dispose of (or hold onto) those funds. When a lawyer violates that trust, the discipline must be such that the public's trust in the bar remains unshaken. Respondent told his client that he would take a fee of \$5,066.66. He then proceeded to take \$7,500 from the client's funds, thereby knowingly misappropriating \$2,433.34 in trust funds. Under Wilson, respondent must be disbarred. The Board unanimously so recommends.

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

Dated: 1/11/89

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board