

DRAFTED BY: Ellen  
DATE TRANSMITTED TO COURT: 6/28/02

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. 02-058

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IN THE MATTER OF :  
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MELVIN G. DUKE :  
:   
AN ATTORNEY AT LAW :  
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Decision

Argued: April 18, 2002  
Decided: June 10, 2002

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-14, following respondent's disbarment in New York.

Respondent was admitted to the New Jersey bar in 1990. He has no disciplinary history. Respondent has been ineligible to practice in New Jersey since December 1994, due

to his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Respondent was disbarred in New York for negligently misappropriating trust funds, commingling of trust and personal funds in his trust account, improperly drawing an escrow check to cash, failing to maintain required bookkeeping records and failing to timely cooperate with the grievance committee.

In January 1997, respondent deposited \$4,293 in his trust account on behalf of a client, identified only as Rollins. Although respondent was required to maintain those funds in trust, his account balance fell to \$3,300.25 in February 1997. In June 1997, respondent issued a trust account check in the amount of \$4,293 to Sutton Land Services on behalf of Rollins. The record did not reveal the reason for the payment. The check was returned for insufficient funds on June 18, 1997. It cleared the account on June 24, 1997, after respondent deposited \$160 of his own funds in the trust account. It was undisputed that the overdraft was the result of negligent, not knowing, misappropriation and that respondent corrected the overdraft before New York began its investigation.

In 1997, it was respondent's practice to deposit all of his retainer fees in his trust account and withdraw his fees from the account as he earned them, either by paying himself or a creditor. Respondent also drew at least one trust account check (for \$35) to "cash." Although respondent had a business account, he did not deposit his retainer checks in that account.

It was also undisputed that respondent did not maintain “a ledger book or similar record of deposits into and withdrawals from his attorney escrow account.” In the New York proceeding, the attorney trust account was referred to as the “escrow” account.

Finally, it was undisputed that respondent failed to reply in a timely manner to the New York disciplinary committee’s requests for information about the grievance.

There are numerous mitigating factors in this case. Respondent has a history of civic service, both in New York and in Guyana, where he was born. Although respondent did not reply to the New York investigation in a timely manner, when he finally replied, he immediately admitted his mistakes, expressed his remorse and took steps to insure that his conduct would not be repeated.

Furthermore, as set forth above, respondent covered the shortfall in his trust account even before the investigation began. Finally, respondent has no disciplinary history.

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Upon a de novo review of the full record, we determined to grant the OAE’s motion for reciprocal discipline. Pursuant to R.1:20-14(a)(5) (another jurisdiction’s finding of misconduct shall establish conclusively the facts on which the Board rests for purposes of a disciplinary proceeding), we adopted the findings of the Supreme Court of New York, Appellate Division.