

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 16-249  
District Docket No. XIV-2015-0274E

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IN THE MATTER OF  
EMMANUEL N. ABONGWA  
AN ATTORNEY AT LAW

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Decision

Decided: February 22, 2017

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with having violated RPC 1.15 (presumably (a)) (failure to safeguard funds) and RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities). We determined to impose a censure.

Respondent was admitted to the New Jersey bar in 1993 and the New York bar in 1996. He has been ineligible to practice law in New Jersey since September 24, 2012 for having failed to pay his

annual fee to the New Jersey Lawyers' Fund for Client Protection (the Fund).

On November 4, 2015, respondent was temporarily suspended by the Supreme Court, based on his failure to cooperate with the OAE's investigation in this matter. In re Abongwa, 223 N.J. 345 (2015).

Service of process was proper in this matter. On May 23, 2016, the OAE sent a copy of the complaint to respondent, in accordance with R. 1:20-7(h), to his last known business and home addresses, by certified mail, return receipt requested, and by regular mail. The certified mail and regular mail envelopes sent to both addresses were returned to sender marked "Undeliverable".

Also on May 23, 2016, the OAE sent a copy of the complaint to respondent to another home address, by certified mail, return receipt requested, and by regular mail. The regular mail was not returned. On May 28, 2016, the certified mail return receipt was signed for by an unknown individual.

The OAE then arranged for notice of the ethics complaint to be published in the New Jersey Law Journal on June 6, 2016, and in the NJ Advance Media/Star-Ledger on June 3, 2016.

As of July 1, 2016, the date of the certification of the record, respondent had not filed an answer to the complaint.

On June 11, 2015, Jeffrey Hartlaub, Esq., filed a grievance against respondent, after Hartlaub had been unsuccessful in attempting to reach respondent to obtain his client's escrowed funds.

In 2004, respondent had represented Damian C. Mbadugha in connection with his purchase of real property in North Plainfield, from Paul Mellen, Jr. A title search of the property revealed a \$1,308 judgment against Mellen, dated July 27, 1992, in favor of Hand Rehabilitation Center, A. Gloria Hershman (Hand). Because the parties could not find contact information for Hand, they agreed to proceed to closing on condition that respondent hold \$2,500 in escrow, pending satisfaction of the judgment. The closing took place on November 8, 2004, and respondent retained the required escrow of \$2,500 from the closing proceeds.

In 2014, Hartlaub, the attorney for Mellen's Estate, contacted the title agency to discuss the judgment. Because more than twenty years had passed since the docketing of the judgment, the title agency conducted another search, which revealed no pending judgments against Mellen. Consequently, the title agency authorized the release of the escrow to Mellen's Estate. On numerous occasions thereafter, Hartlaub attempted to contact respondent by phone and by mail to notify him of the authorization

for the release of the escrow and to request the return of the funds. All of Hartlaub's letters to respondent were returned marked "Undeliverable" or "Vacant," and his phone calls to respondent went unanswered.

The OAE docketed the grievance against respondent on June 11, 2015. On June 22, 2015, the OAE subpoenaed respondent's trust and business account bank records. Respondent's February 29, 2012 attorney trust account bank statement for the Mbadugha sub-account revealed that respondent failed to safeguard the escrowed funds. Specifically, respondent maintained only \$1,650 of the escrowed funds, which was \$850 less than the amount he should have been safeguarding.

On July 7, 2015, the OAE sent, by regular and certified mail, an initial letter to respondent at his office address and at his home address, enclosing a copy of the grievance and requesting a reply. Both the regular mail and certified envelopes to his office address were returned to the OAE marked "Unable to Forward, Return to Sender". The certified mail envelope to respondent's home address was returned to the OAE marked "Unclaimed, Unable to Forward, Return to Sender." However, the letter sent by regular mail was not returned. The next day, on July 8, 2015, the OAE sent

an e-mail to respondent requesting that he contact the OAE. Respondent did not reply to the e-mail.

On July 21, 2015, the OAE sent another letter to respondent, at another possible address, by regular and certified mail. The letter also enclosed a copy of the grievance and requested his response thereto. The regular mail envelope was returned to the OAE marked "Vacant, Unable to Forward, Return to Sender." The certified mail envelope was returned to the OAE marked "Vacant, Return to Sender".

On August 13, 2015, OAE Disciplinary Auditor, Jasmin Razanica, conducted a field visit to respondent's office in Maplewood, New Jersey. There, Razanica spoke with Stanley M. Varon, Esq., who informed Razanica that, although he did not know respondent, his office occasionally received mail for him. Varon then introduced Razanica to Jerome H. Leifer, CPA, who informed Razanica that respondent had been working at that office, but had returned to Africa approximately three or four years earlier. According to Leifer, respondent had left no contact information and had not returned to the United States. Before Razanica returned to the OAE, he visited the address listed by respondent as his home address on his last registration statement. No one answered the door.

On September 28, 2015, the OAE filed a Petition for Emergent Relief seeking respondent's immediate temporary suspension from the practice of law. On November 4, 2015, the Court granted the petition. On November 16, 2015, the OAE received a \$29,580.22 check from respondent's trust account maintained with Bank of America in compliance with the Court's Order of November 4, 2015. On November 17, 2015, the OAE forwarded the Bank of America check to the Superior Court.

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The complaint alleges sufficient facts to support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent violated RPC 1.15(a) by failing to safeguard the \$2,500 he was required to hold in escrow in connection with the sale of the Mellen property. A review of his accounts shows that \$850 of the \$2,500 in escrow was unaccounted for.

Further, when counsel for Mellen's estate unsuccessfully attempted to reach respondent to negotiate the release of the escrow funds, he filed a grievance to which respondent never replied. Rather respondent apparently had left the country and

failed to update the Fund with his current address; hence, the OAE was not able to contact him. Respondent failed to reply to the grievance or cooperate in the OAE's investigation, a violation of RPC 8.1(b).

The record lacks any detail regarding how the escrow funds were invaded. Therefore, we cannot determine whether respondent negligently misappropriated funds as a result of recordkeeping violations, or whether he knowingly misappropriated them. It is noteworthy, however, that the OAE did not charge respondent with knowing misappropriation of escrow funds. We presume, therefore, that any misappropriation on respondent's part was the result of negligence and not design. Further, it does not appear that respondent was looking to bilk his clients. If he intended to abscond to Africa with client funds, he would have removed all of the funds in his attorney bank accounts. Instead, he left almost \$30,000 in those accounts.

Generally, a reprimand is imposed for negligent misappropriation of client funds, even when accompanied by other, non-serious infractions, such as recordkeeping deficiencies, commingling, or failure to promptly deliver funds to clients. See, e.g., In re Arrechea, 208 N.J. 430 (2011), (in a default matter, attorney negligently misappropriated client funds when he removed

them from the trust account for his own purposes, believing that he had sufficient personal funds in the account against which to draw; attorney "routinely commingled" personal and client funds in the trust account; he also failed to promptly deliver funds to his client and violated the recordkeeping rules by writing trust account checks to himself for cash and making cash withdrawals from the account; significant mitigating factors included the attorney's cognitive issues and unblemished disciplinary record since his admission to the bar in 1975); In re Macchiaverna, 203 N.J. 584 (2010) (minor negligent misappropriation of \$43.55 occurred in attorney trust account, as the result of a bank charge for trust account replacement checks; the attorney was also guilty of recordkeeping irregularities); In re Clemens, 202 N.J. 139 (2010) (as a result of poor recordkeeping practices, attorney over-disbursed trust funds in three instances, causing a \$17,000 shortage in his trust account; an audit conducted seventeen years earlier had revealed virtually the same recordkeeping deficiencies, but the attorney was not disciplined for those irregularities; the above aggravating factor was offset by the attorney's clean disciplinary record of forty years); and In re Conner, 193 N.J. 25 (2007) (in two matters, the attorney inadvertently deposited client funds into his business account, instead of his trust account, an error that led to his negligent



misappropriation of clients' funds; the attorney also failed to promptly disburse funds to which both clients were entitled).


Ordinarily, admonitions are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance; default case); In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney did not promptly reply to the district ethics committee's investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to district ethics committee's requests for information about two grievances); and In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (attorney did not reply to the district ethics committee's numerous communications regarding a grievance).

Respondent negligently misappropriated escrow funds, which ordinarily would result in a reprimand, and failed to cooperate with the OAE by not responding in writing to the ethics grievance against him, which would merit an admonition. We determine that these violations together, coupled with the default nature of the complaint, merit the imposition of a censure.

Vice-Chair Baugh voted for a three-month suspension. Member Clark did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Emmanuel N. Abongwa  
Docket No. DRB 16-249

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Argued: September 15, 2016

Decided: February 22, 2017

Disposition: Censure

<i>Members</i>	Censure	Three Month Suspension	Did not participate
Frost	X		
Baugh		X	
Boyer	X		
Clark			X
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	1	1

  
Ellen A. Brodsky  
Chief Counsel