SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-370
District Docket No. XIV-2009-349E

IN THE MATTER OF

CONSTANTINE BARDIS

AN ATTORNEY AT LAW

Decision

Argued: January 19, 2012

Decided: March 27, 2012

Melissa A. Czartoryski appeared on behalf of the Office of Attorney Ethics.

Ronald M. Gutwirth appeared on behalf of respondent.

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

This matter was originally before us on a recommendation for an admonition, filed by the District IX Ethics Committee (DEC), which we determined to treat as a recommendation for discipline greater than an admonition. R. 1:20-15(f)(4). The

DEC's recommended admonition was based on respondent's negligent misappropriation of trust account funds (RPC 1.15(a)), failure to comply with the recordkeeping provisions of R. 1:21-6 (RPC 1.15(d)), and failure to supervise a nonlawyer employee (RPC 5.3(b)). For the reasons set forth below, we determine to impose a reprimand on respondent for his misconduct.

Respondent was admitted to the New Jersey bar in 1999. At the relevant times, he maintained an office for the practice of law in Lake Como, New Jersey. He has no disciplinary history.

The amended complaint charged respondent with negligent misappropriation, recordkeeping violations, and failure to supervise a nonlawyer employee. On May 18, 2011, the matter proceeded to a hearing before the DEC chair, Michael R. DuPont, who, presumably, acted in the role of special master.

At the hearing, the parties entered into a stipulation of facts, stipulating only to violations of RPC 1.15(a) and RPC 1.15(d). However, the stipulation required the special master to "make a determination as to whether there were additional violations of the Rules of Professional Conduct as set forth in the Amended Complaint," that is, the failure-to-supervise charge. With two exceptions, which will be noted below, the stipulation tracked the allegations of the amended complaint.

According to the stipulation, on July 20, 2009, respondent's attorney trust account at Sovereign Bank was overdrawn by $175.48, when the bank paid check no. 3622, in the amount of $1772. The next day, the negative balance grew to more than $7000, when Sovereign paid three checks issued against the trust account, in the amounts of $5000, $1,991.90, and $310.

On December 4, 2009, the OAE conducted a demand audit at respondent's office, at which time he explained that an individual named Doreen Morris had made unauthorized disbursements from the trust account.[1] In support of his claim, respondent produced a copy of a November 9, 2009 settlement agreement between him and Morris, in which she acknowledged making the disbursements and also using respondent's credit card to pay for personal expenses. Under the terms of that agreement, Morris agreed to repay $165,000.

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[1] The amended complaint identified Morris as respondent's "secretary."

According to the OAE's analysis, Morris removed a total of $142,000 from respondent's attorney trust account, between February 2 and July 7, 2009, and deposited the funds into the bank account of her business, American Work Exchange, LLC. Morris was able to take the funds from respondent's trust account without his knowledge because he did not perform monthly three-way reconciliations and did not review his trust account records.[2]

According to the OAE's analysis, as of July 6, 2009, Morris's removal of $142,000 from the trust account caused a $94,593.04 shortage in the account. The shortage was not larger because a $416,250 legal fee of respondent had remained in the trust account.

Between July 7 and 19, 2009, respondent made eleven deposits, totaling $122,494.58, in an effort to correct the shortage. However, as of July 31, 2009, four client ledgers had

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[2] The amended complaint alleged that respondent had "delegated the responsibility of maintaining and reviewing the trust account to Morris," which allowed her to take the monies "without detection."

negative balances totaling $3,331.11. As of the date of the hearing below, the shortages had been rectified.

Based on these facts, respondent stipulated to negligent misappropriation and recordkeeping violations.

At the hearing, respondent testified that, when he met Morris, she owned a company that recruited foreign "kids" on behalf of Great Adventure and then arranged for their visas, housing, and transportation. Respondent prepared and signed the visa applications and reviewed lease agreements.

According to respondent, by 2008, Morris "had been around the office long enough to know how everything worked." He denied, however, that she was an employee. After an immigration moratorium was put into place and Morris's work "really disappeared," she began to take care of "some of the day-to-day functions that the secretary would do than an officer would do," and respondent became "more reliant" on her." In describing their relationship, respondent stated:

> I mean, I considered [sic] more than just an employment status. There was a friendship, a sense of trust. . . . And what grew into just making deposits for me or writing checks on my closing or delivering documents

> grew into more exercise of authority, especially when I would travel abroad.
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> [T15-4 to 6; T15-12 to 15.][3]

Respondent testified that Morris was able to gain access to his attorney trust and business accounts in the following manner:

> I gave her the authority as a bookkeeper, knowing that she wasn't a bookkeeper, to make deposits, to see and ascertain what the balances were. She had an understanding of exactly what was happening in my firm. I mean, that is information that is not only privileged for a number of sensitive reasons, but it was also information that concerned me.
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> [T16-5 to 12.]

Further, respondent claimed, "there was a relationship with Ms. Morris at Sovereign Bank," and she "was able to do whatever she wanted."

Respondent spent a lot of time in Greece. When he was away, incoming checks would be stamped with a deposit stamp and endorsed with a signature stamp. These stamps and the client ledgers were kept in a credenza of which Morris was the "primary

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[3] "T" refers to the transcript of the May 18, 2011 hearing.

controller." For example, when respondent was away, she was authorized to use a signature stamp to endorse checks.

Respondent acknowledged that there were "telltale signs" that Morris was up to no good. For example, a co-worker had informed him that Morris was "always very, very quick to take any bills that would come in, any calls concerning insurance that hadn't been paid."

In October 2009, respondent learned from his accountant, Jerold Dreskin, CPA, that, when respondent was away in Greece during that summer, the OAE had "issued" a letter. Dreskin also told respondent that Morris was supposed to be providing him with ledger sheets and ledger cards for reconciliations, presumably in response to the OAE's letter, but that she never did and, instead, confessed to Dreskin that she had stolen money from respondent's account.

Respondent's corrective actions consisted of changing accounts from Sovereign to TD Bank; requiring his signature, and no one else's, on the trust account; directing only he and his brother as signatories on the business account; having an accountant review his records on a monthly basis; logging all mail and putting it on his desk for his review; keeping the signature stamp and trust account checks in a safe; creating

ledgers; prohibiting handwritten checks; and putting Excel into place, which performs a reconciliation each time a transaction is entered into the system.

Respondent expressed deep remorse for his actions. He stated:

> I feel beyond humiliation and the shame that I even put myself in that situation, I feel the sense of incompetence in not being able to manage my own affairs when I could have taken some very, very simple measures to assure that nobody would have ever had control of what was the most personal function of my firm. That's the money. The fact that somebody knows the inner workings of somebody's business is the juggernaut, the jugular vein.
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> [T23-1 to 9.]

The special master found that respondent had violated RPC 1.15(a), RPC 1.15(d), and RPC 5.3(b). He recommended the imposition of a "public admonition" for the following reasons: (1) respondent took responsibility for what had happened, (2) he took immediate action to replenish the trust account, using his personal funds, (3) he retained a bookkeeper who now conducts monthly three-way reconciliations under the supervision of respondent's accountant, and (4) he now exercises personal supervision of the trust account. Moreover, the special master noted, respondent had cooperated with the OAE's investigation.

Following a de novo review of the record, we are satisfied that there is clear and convincing evidence that respondent's conduct was unethical.

Respondent stipulated that, between February 2 and July 7, 2009, when client funds were stolen, he was not reconciling his trust and business accounts. R. 1:21-6(c)(1)(H) requires an attorney to complete monthly reconciliations of "the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances." Thus, by failing to reconcile his accounts, respondent violated R. 1:21-6(c)(1)(H) and, therefore, RPC 1.15(d), which requires compliance with R. 1:21-6.

As a result of respondent's failure to comply with R. 1:21-6(c)(1)(H) and, therefore, RPC 1.15(d), Morris was able to misappropriate trust account funds, without respondent's knowledge. Accordingly, respondent violated RPC 1.15(a) by failing to safeguard the trust account funds. Cf. In re Steig, 208 N.J. 343 (2011) (attorney's failure to reconcile his attorney trust account rendered him unaware that nearly $10,000 had been stolen from the account by an outside entity; violation of RPC 1.15(a)) and In re Yadlon, 188 N.J. 275 (2006) (attorney

violated RPC 1.15(a) when a criminal enterprise infiltrated his trust account and stole hundreds of thousands of dollars; the attorney was unaware of the thefts due to his failure to reconcile his trust and business account statements).

RPC 5.3(b) requires a lawyer who has "direct supervisory authority over [a] nonlawyer" to make "reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer." Respondent testified that he employed Morris as a bookkeeper, knowing that she was not a bookkeeper by trade or profession. Further, he described her as the "primary controller" of the credenza where he kept his trust and business account check books and deposit and signature stamps. He permitted her to use the stamps and to write checks and make deposits. Moreover, despite his claim that he had a "sense of trust" regarding Morris, he acknowledged that he had overlooked and ignored "signs" that she may not have been the upstanding person he believed her to be.

In granting Morris carte blanche over his attorney accounts, respondent not only failed to make "reasonable efforts" to ensure that her conduct was compatible with his "professional obligations," he failed to make any effort. He, therefore, violated RPC 5.3(b).

There remains for determination the appropriate measure of discipline to be imposed for respondent's violations of RPC 1.15(a), RPC 1.15(d), and RPC 5.3(b).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., 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 overdisbursed 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 for which the attorney was not disciplined; we found that the foregoing aggravating factor was offset by the attorney's clean disciplinary record of forty years); In re Mac Duffie, 202 N.J. 138 (2010) (negligent misappropriation of client's funds caused by poor recordkeeping practices; some of the recordkeeping problems were the same as those identified in two prior OAE audits; the attorney had received a reprimand for a conflict of interest); and In re Fox, 202 N.J. 136 (2010)

(motion for discipline by consent; attorney ran afoul of the recordkeeping rules, causing the negligent misappropriation of client funds on three occasions; the attorney also commingled personal and trust funds). But see In re Steig, supra, 208 N.J. 343 (admonition imposed on attorney whose failure to reconcile his attorney trust account rendered him unaware that nearly $10,000 had been stolen from the account by an outside entity); In the Matter of Andrew Kevin Murray, DRB 11-145 (July 25, 2011) (as a result of the attorney's failure to reconcile his attorney trust account, a $1,293.55 shortage occurred in a client's sub-account; in imposing only an admonition, we took into consideration the attorney's claim that, based on his history with the bank, he believed that there had been a bank error and that he was not actually out of trust; other mitigation included his replenishment of the account and his unblemished disciplinary history); In re Snyder, 202 N.J. 28 (2010) (the Court rejected our imposition of an admonition for the attorney's violation of RPC 1.15(a), RPC 1.15(d), and RPC 5.3(b) because, in the Court's view, the attorney's actions "constitute[d] minor unethical conduct," warranting diversion; the attorney's secretary stole $50,000 in law firm funds, $11,000 of which was from the trust account; because he had not

been reconciling the trust account, the attorney only learned of the theft after the bank had notified him of an overdraft in that account); and In re Yadlon, supra, 188 N.J. 275 (admonition imposed on attorney who, during a nine-month period, was unaware that an organized crime group had stolen $363,000 from his attorney trust account in the form of forged checks and automatic debits; the attorney's lack of awareness stemmed from his failure to review the monthly bank statements; the attorney replenished the funds and contacted the police immediately, cooperated with the police investigation, and instituted suit against the bank, ultimately settling for $95,000; ten years earlier, the attorney had been cited for recordkeeping violations as a result of his failure to reconcile the trust and business accounts).

Attorneys whose failure to supervise nonlawyer staff results in the loss of clients funds are typically admonished or reprimanded. See, e.g., In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who forged the attorney's signature on trust account checks and stole $272,000 in client funds); In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (attorney admonished for failing to

supervise his paralegal, who also was his client's former wife, which resulted in the paralegal's forgery of a client's name on a retainer agreement and later on a release and a $1000 settlement check in one matter and on a settlement check in another matter; the funds were never returned to the client; mitigating factors included the attorney's clean disciplinary record and the steps he took to prevent a reoccurrence); In the Matter of Lionel A. Kaplan, DRB 02-259 (November 4, 2002) (attorney admonished for failure to supervise his bookkeeper, which resulted in recordkeeping deficiencies and the commingling of personal and trust funds; mitigating factors were the attorney's cooperation with the OAE, including entering into a disciplinary stipulation, his unblemished thirty-year career, the lack of harm to clients, and the immediate corrective action that he took); In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failing to supervise non-attorney employees, which led to unexplained misuse of client trust funds and negligent misappropriation; the attorney also committed recordkeeping violations); In re Bergman, 165 N.J. 560 (2000) and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys reprimanded for failure to supervise secretary/bookkeeper/office manager who embezzled almost

$360,000 from the firm's business and trust accounts and from a guardianship account; the attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement); and In re Hofing, 139 N.J. 444 (1995) (reprimand for failure to supervise bookkeeper, who embezzled almost half a million dollars in client funds; although unaware of the bookkeeper's theft, the attorney was found at fault because he had assigned all bookkeeping functions to one person, had signed blank trust account checks, and had not reviewed any trust account bank statements for years; mitigating factors included his lack of knowledge of the theft, his unblemished disciplinary record, his reputation for honesty among his peers, his cooperation with the OAE and the prosecutor's office, his quick action in identifying the funds stolen, his prompt restitution to the clients, and the financial injury he sustained).

The facts of this case most resemble those of In re Snyder, supra, 202 N.J. 28. There, the Court rejected our imposition of an admonition for the attorney's violation of RPC 1.15(a), RPC 1.15(d), and RPC 5.3(b) because, the Court determined, the

attorney's actions "constitute[d] minor unethical conduct," which warranted diversion.

In Snyder, the attorney's secretary stole $50,000 in law firm funds, $11,000 of which was from the trust account. In the Matter of Nathan Snyder, DRB 09-350 (March 16, 2010) (slip op. at 2-3). Snyder only learned of the theft after the bank had notified him of an overdraft in that account. Id. at 2. Prior to the notification, he was unaware of the missing funds because he did not reconcile his trust account. Ibid.

Moreover, both attorneys' infractions took place within ten years of their admission to the bar. Further, Snyder and respondent made their trust accounts whole.

In our view, however, the differences between Snyder and this case are significant enough to remove this case from the realm of diversion. In particular, $11,000 in trust account funds were taken in the Snyder matter, whereas $142,000 was stolen in this case. Further, in Snyder, the funds were stolen by the attorney's secretary, someone he knew and, thus, presumably trusted. In this case, however, the funds were taken by Morris, an individual with no formal training as a bookkeeper and who respondent refused to concede was even an employee.

Moreover, he acknowledged, there were "telltale signs" that Morris was up to no good.

Further, Snyder fired his secretary and filed a police report against her. Id. at 2-3. She was indicted by the Camden County Prosecutor's Office. Id. at 3. Respondent, however, chose to handle the matter privately, by entering into a settlement agreement with Morris. Although respondent's counsel represented to us that respondent also reported the incident to police, he then withdrew the charges. Counsel further informed us that Morris has not complied with the financial provision of the settlement agreement.

After determining that diversion is unwarranted in this matter, we now consider the applicability of the admonition cases, In re Yadlon, supra, 188 N.J. 275, and In re Steig, supra, 208 N.J. 343. In both matters, the Supreme Court rejected our imposition of a reprimand on attorneys who were unaware of the theft of funds from their trust accounts by outside enterprises because they did not reconcile their accounts. The Court admonished the attorneys instead.

In Yadlon, $363,000 was stolen from the attorney's trust account by an outside organized criminal enterprise. He was unaware of the theft because he did not reconcile the account,

he had a high-volume real estate practice, and the account was never overdrawn. In re Yadlon, supra, 188 N.J. 275; In the Matter of William T. Yadlon, DRB 06-074 (August 16, 2006) (slip op. at 4).

Similarly, in In re Steig, supra, 208 N.J. 343, the sum of $9,300.35 was removed from the real estate attorney's trust account by a former administrative assistant at the New Jersey Department of Housing, who had handled closing documents for the sale of affordable housing units and, therefore, had access to respondent's trust account information.

In the absence of an opinion by the Court in either matter, explaining the reason for its divergence from our decisions, we surmise that admonitions were deemed appropriate due to the attorneys' relative innocence, that is, they were the victims of theft from outside enterprises, with whom they had no direct relationship.

In this case, respondent was not the victim of an outside enterprise. He was the victim of an individual to whom he had given unrestricted access to, and free rein over, his attorney accounts. These facts distinguish respondent's case from Yadlon and Steig. Moreover, the additional failure-to-supervise violation in this matter precludes the imposition of an

admonition for the negligent misappropriation and recordkeeping violations. We note also that, in two of the three admonition cases, the thief enjoyed a close relationship with the attorney, either by blood (Mariconda) or through a client (Freeman). Here, the nature of respondent's relationship with Morris was vague. On the one hand, respondent seems to have done work for her company, but it does not appear as though they had a formal attorney-client relationship. On the other hand, it seems as though Morris just "slid" into the bookkeeper position at respondent's firm. We recall respondent's answer to the question asking when Morris was able to gain access to his trust account: "She had been around the office long enough to know how everything worked."

Because respondent was not the innocent victim of an outside entity (Yadlon and Steig) or of an employee in whom he reasonably trusted (Snyder), we determine to reprimand him for his violation of RPC 1.15(a), RPC 1.15(d), and RPC 5.3(b).

Members Doremus and Yamner voted to impose an admonition.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Constantine Bardis
Docket No. DRB 11-370

Argued: January 19, 2012

Decided: March 27, 2012

Disposition: Reprimand

Members	Disbar	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus			X			
Wissinger		X				
Yamner			X			
Zmirich		X				
Total:		6	2			

Julianne K. DeCore
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Chief Counsel