

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-359

IN THE MATTER OF :
JOSEPH S. TYSOWSKI, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 23, 1993
November 17, 1993

Decided: April 9, 1994

Walton W. Kingsbery, III, appeared on behalf of the Office of Attorney Ethics.

Joseph J. Triarsi appeared on behalf of respondent.

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

This matter was before the Board based on a stipulation reached between the Office of Attorney Ethics ("OAE") and respondent. At the June 23, 1993 hearing, the Board remanded this matter to the district ethics committee ("DEC") for a hearing in order to clarify certain essential aspects of the record. Subsequently, the OAE requested that the Board reconsider its decision to remand the matter and supplemented the stipulation with additional information and documentation that resolved the Board's concerns.

Respondent was admitted to the New Jersey bar in 1968. On October 11, 1991, he was temporarily suspended by the New Jersey Supreme Court, following the OAE's investigation of a trust overdraft that led to the discovery of significant trust account irregularities. That suspension continues to date.

Prior to his suspension, respondent was twice privately reprimanded: once in September 1988, for engaging in a conflict of interest and, again, in February 1991, for practicing law while on the ineligible list.

The stipulation, as supplemented by the OAE in its request for reconsideration, reveals the following pertinent facts:

1. Trust Violations

An investigation commenced by the OAE following a trust overdraft notification, revealed that, between August 1989 and June 1990, seven trust account checks and three bank debit memos were improperly issued against respondent's attorney trust account, as follows:

<u>Date</u>	<u>Check</u>	<u>Amount</u>	<u>Notation</u>
8/7/89	Debit	\$1,630.00	Transfer to business account
2/7/90	1100	900.00	None
3/24/90	1092	744.36	Law Office Books
3/27/90	1091	450.00	Business Taxes
5/16/90	1102	2,677.14	Office Building Meeting
5/17/90	Debit	3,500.00	Transfer to Business Account

6/19/90	Debit	1,300.00	Transfer to Business Account
6/20/90	1104	375.00	Telephone
6/21/90	1105	2,000.00	Deposit Business Account
6/29/90	1106	1,800.00	Office Building Meeting

As indicated by the "Notation" column, all funds were either used directly to cover business expenses or transferred to respondent's business account.

Of the seven checks in question, three — Numbers 1091, 1092 and 1100 — were signed in blank by respondent, while the remaining four checks — Numbers 1102, 1104, 1105 and 1106 — were "signed" by means of a signature stamp.

Following the above mentioned notification of the trust overdraft, respondent discovered additional problems, including unrecorded real estate documents and unissued trust account checks in various client files. Respondent also discovered quantities of unopened mail hidden in various cabinets and desk drawers.

The OAE's investigation revealed that respondent's secretary, Paula Heineman, drew all seven checks at issue, which resulted in the invasion of trust funds. Ms. Heineman admitted that she issued these seven checks without respondent's participation, knowledge or consent and that she transferred funds from respondent's trust account to his business account to pay office-related bills and expenses.

Respondent explained that "he was preoccupied with construction of a new home, was frequently absent from the office

for extended periods of time, entrusted his secretary with responsibilities which were his and relied on his secretary to run his law office." Stipulation, paragraph 14. Nothing in the record elaborates on these excuses or provides any rational basis for respondent's nearly total reliance on his secretary.

In addition to these admitted failures, respondent failed to maintain trust and business account receipts and disbursements journals and similarly failed to reconcile his trust account on a quarterly basis. Respondent's own audit of his trust account, in October 1990, showed that he was out of trust by \$23,816.10. The OAE's review, several months later, showed that respondent was out of trust by \$16,812.65 as of August 31, 1990. Violations of RPC 1.1 (apparently 1.1(a)), RPC 1.3 (lack of diligence), RPC 1.15 (negligent misappropriation and failure to maintain records) and RPC 5.3 (responsibilities regarding non-lawyer assistants) were admitted.

2. Chiavatti

Pasquale Chiavatti had difficulty with respondent's follow-up of two real estate closings in which respondent represented him. Despite a number of attempts, he was unable to obtain closing documents. Respondent also ignored the requests of Chiavatti's new counsel, who was hired in June 1990. The deed and mortgage had been recorded in only one of the two transactions. Chiavatti's new counsel ultimately resolved the problem and respondent reimbursed

Chiavatti, in September 1991, for the \$780 charged by his new counsel.

Respondent's actions violated RPC 1.1, RPC 1.3 and RPC 1.4.

3. Badaracco

In November 1990, respondent was retained to transfer title of real estate to Kim and Kenneth Badaracco from their deceased mother's estate. Despite grievant's numerous calls to respondent's office, the deed was not recorded until July 16, 1991, when the ethics grievance was filed. Interestingly, this failure by respondent occurred long after his discovery of his secretary's failures.

Respondent's actions violated RPC 1.1, RPC 1.3 and RPC 1.4.

4. Kurylo

Respondent was retained in late 1988 to handle the estate of Mary Kurylo by the estate's co-executors. By July 30, 1991, when this grievance was filed, respondent had performed only "minimal legal service." Again, respondent's conduct in this matter extended well beyond the time of his discovery of his secretary's actions.

Respondent's actions violated RPC 1.1 and RPC 1.3.

5. AGGRAVATING FACTORS - EIGHT ADDITIONAL CASES

As noted in the stipulation, respondent continued to neglect his law practice for at least nine months following his discovery

of the problems caused by his negligence. In addition, the attorney-trustee appointed to take control of his practice on October 24, 1991 found eight matters in which respondent had failed to act. As with Kurylo, supra, these representations began as early as 1988. The stipulation cites further violations of RPC 1.1, RPC 1.3 and RPC 1.4.

The OAE contended that

*** all the evidence, including not only the handling of funds in question, but the three other contemporaneous grievances and the fact of respondent's almost total dissociation from his law practice for protected periods of time, indicated that respondent was grossly negligent in that he had all but abandoned his law practice during this period of time.

[OAE's letter of October 7, 1993]

The OAE recommended a two-year suspension in this matter. Respondent did not file a brief with the Board and did not advance any "additional mitigating evidence," as permitted by the terms of the stipulation.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the facts, as stipulated, clearly and convincingly support the conclusion that respondent was guilty of unethical conduct.

This case involved serious recordkeeping improprieties, compounded by gross neglect and pattern of neglect in a total of eleven separate client matters. The situation was further

aggravated by respondent's disciplinary history of two fairly recent private reprimands.

The trust account violations, standing alone, merit a lengthy suspension. This case is analogous to In re Stransky, 130 N.J. 38, 1992. In Stransky, the attorney was suspended for one year following the discovery of his irresponsible behavior in delegating the management of his attorney trust account to his secretary/bookkeeper, who was also his wife. Unbeknownst to Stransky, his wife/secretary misappropriated more than \$32,000 for her own use. The Court found that Stransky "totally abdicated his fiduciary responsibilities to his clients for at least one year." Id. at 44. As in the case at hand, Stransky was found guilty of failure to exercise supervision and control over his attorney accounts (RPC 1.15(d)), failure to maintain receipts and disbursements journals and to reconcile his accounts (RPC 1.15(d) and R 1:21-6), failure to supervise a non-lawyer employee (RPC 5.3) and negligent misappropriation of client funds (RPC 1.15(a)).

Respondent's misconduct is more extensive than Stransky's, however. Stransky was not charged with neglect of client files, whereas this respondent admittedly neglected eleven matters. Moreover, respondent essentially abandoned his practice by relying on his secretary. As stated by this Board in Stransky,

As an individual, it might be reasonable, albeit perhaps unwise, to delegate all personal financial matters to one's spouse. As an attorney, such conduct cannot be tolerated. The attorney's fiduciary responsibility for client funds is a non-delegable duty.

[Id. at 44.]

See also In re Ewing, 132 N.J. 206 (1993) (where the attorney was suspended for one year for his reckless disregard of his clients' rights by delegating his law practice and recordkeeping obligations to his secretary and his bookkeeper, resulting in the negligent misappropriation of client funds).

In addition to respondent's significant trust account improprieties, neglecting eleven client matters, alone, merits severe discipline.

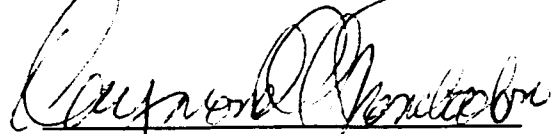
Discipline imposed for serial cases of negligence has ranged from a one-year suspension to disbarment, particularly where abandonment of clients is found. See In re Ashley, 122 N.J. 52 (1990) (attorney suspended for two years for gross neglect in ten matters, misrepresentations to clients, refusal to return files, refusal to return retainer fees, failure to cooperate with the ethics system and forgery of clients' signatures on bankruptcy petitions without their knowledge); In re Rosenthal, 118 N.J. 454 (1990) (one-year suspension for pattern of neglect in four matters, misrepresentations to clients, and failure to cooperate with disciplinary authorities; prior public reprimand); In re Grabler, 114 N.J. 1 (1989) (where the attorney, who had no prior record of discipline, was suspended for a period of one year, after a finding of gross neglect in four matters, failure to communicate in two matters, and misrepresentation of the status of cases to two clients, as well as recordkeeping violations); In re George, N.J. (1989) (one year-suspension for gross neglect in four matters, pattern of neglect, improper taking of an acknowledgement, failure

to maintain proper trust and business account records; failure to cooperate with disciplinary authorities considered in aggravation); and In re Getchius, 88 N.J. 269 (1982) (attorney suspended for two years for gross neglect, failure to communicate, failure to act competently, misrepresentation of the status of cases and failure to carry out contracts of employment in six matters). But see In re Martin, 118 N.J. 239 (1990) (where the Court imposed a six-month suspension on an attorney who exhibited a pattern of neglect in seven matters by failing to complete discovery or answer interrogatories, failing to keep clients informed of the status of their cases and, in two matters, entering into settlement agreements without authorization from his clients).

After a consideration of the relevant circumstances, the Board unanimously recommends that a two year suspension, retroactive to respondent's suspension in October 1991, be deemed sufficient discipline for his misconduct. The Board also recommends that, upon reinstatement, respondent be required to practice law under the supervision of a proctor for a period of two years. The Board further recommends that respondent be required to make full restitution to the New Jersey Lawyers' Fund for Client Protection, prior to reinstatement. Three members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 4/9/1994

By: 
Raymond R. Trombadore
Chair
Disciplinary Review Board