SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-233
District Docket No. XIV-2008-0533E

IN THE MATTER OF	
ANTHONY N. PICILLO	
AN ATTORNEY AT LAW	

Corrected Decision

Argued: September 16, 2010

Decided: November 16, 2010

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Anthony P. Ambrosio appeared on behalf of respondent.

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

This matter was before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). Respondent stipulated that he negligently misappropriated client funds; engaged in recordkeeping violations; entered into a prohibited business transaction with his client; and misrepresented to the OAE the cause of overdrafts in his

attorney trust account, all in violation of RPC 1.15(a) and (d), RPC 1.8(a), RPC 8.1(a), and RPC 8.4(c). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1991. He has no prior final discipline.

On October 23, 2008, the OAE received an overdraft notice from the bank in which respondent had his trust account. Specifically, check no. 3611 for $63,793.62 was returned for insufficient funds. The trust account held only $61,592.42, leaving a shortfall of $2,201.20.

On December 1, 2008, in reply to the OAE's request for information about the overdraft, respondent submitted a written statement with supporting documents. He explained that the check in question had been issued, on July 25, 2008, to Bayview Loan Servicing, LLC, on account of RSP Group, LLC (RSP).

As soon as respondent received the overdraft notice from the bank, he deposited $2,500 into his trust account to cover the shortfall. Respondent told the OAE that, (1) during his investigation of the shortfall, he had discovered an overdisbursement of $10,000 to client Vana, Inc. (Vana); (2) he had deposited $7,500 into his trust account to cover the shortfall; and (3) Vana thereafter had returned the overpayment.

In support of his assertions about the overpayment to Vana, respondent furnished the OAE with ledger cards for RSP and Vana, as well as deposit slips, presumably for the trust account. He included a copy of Vana's November 17, 2008 reimbursement check and Vana's November 17, 2008 cover letter, acknowledging the overpayment and returning the funds.

On January 16, 2009, the OAE conducted an audit of respondent's trust account. Respondent produced all of the documents requested and asked for two weeks to retain counsel. He admitted, on that date, that, when faced with the OAE investigation, he had "panicked," submitting to the OAE a false written statement supported by false documents – Vana's November 17, 2008 check and letter. Respondent confessed that he fabricated the story in order to conceal his ten-month failure to reconcile his trust account. He explained that bookkeeping errors in three client matters, Philip and Adriana Denoia, Lisa Malzone, and Sal's Marina, were the true cause of the overdrafts.

In February 2005, respondent had an accountant reconstruct and reconcile his trust account for the period January 2001 onward, but the last reconciliation was for December 2007.

During the OAE audit, he had the accountant reconcile the trust account for November 1, 2007 through December 31, 2008.

The OAE's review of respondent's records confirmed the accountant's findings. In the Denoia matter, respondent was overpaid $2,414.66, which he reimbursed on November 14, 2008; in the Malzone matter, he overpaid Malzone $6,081.92, which he reimbursed on October 30, 2008; and in the Sal's Marina matter, he overpaid the client $11,416.68, which he returned in two partial payments, dated October 29 and November 14, 2008.

According to the stipulation, the OAE independently confirmed that the overpayments were the result of poor recordkeeping, as opposed to an intentional misuse of client funds.

The OAE audit also revealed the presence of several recordkeeping violations:

> a.) Schedule of clients' ledger accounts not prepared and reconciled monthly to the trust account bank statement;
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> b.) Trust Account Receipts Journal not maintained;
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> c.) Trust Account Disbursements Journal not maintained;
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> d.) Business Account Disbursements Journal not maintained;
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> e.) Business Account Receipts Journal not maintained;
>
> f.) Legal fees not deposited into Business Account;

g.) Client identification not indicated on checks.

[S4.][1]

Finally, respondent engaged in a prohibited business transaction with a client. On July 25, 2008, he represented his cousin, Anthony Marra, and Anthony's wife, Lisa, in the sale of real estate. After the sale, respondent held $55,000 of the proceeds in his trust account for the Marras. The Marras requested that he not disburse those funds until they obtained a construction loan, the purpose of which is not stated in the stipulation.

In August 2008, respondent obtained a no-interest loan of $17,000 from the Marras. Respondent stipulated that the loan ran afoul of the requirements of RPC 1.8(a), as he did not reduce it to writing, did not advise the Marras, in writing, to seek independent counsel, and did not obtain the Marras' informed written consent to his role in the transaction or to its terms.

On August 20, 2008, respondent disbursed $17,000 of the Marras' $55,000 to himself. On September 9, 2008, he disbursed the

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[1] "S" refers to the stipulation.

remainder to the Marras. One week later, he deposited $17,000 into his trust account and then repaid the Marras that amount.

Lisa and Anthony Marra provided the OAE with certifications, stating that they had authorized respondent to use the $55,000, had refused to memorialize the loan or retain other counsel, and had received their entire $55,000 from respondent. Respondent stipulated, however, that his advice that the Marras obtain independent legal advice had not been in writing.

Following a review of the record, we are satisfied that the stipulation fully supports findings of violations of RPC 1.8(a), RPC 1.15(a) and (d), RPC 8.1(a), and RPC 8.4(c).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., 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; the attorney was not disciplined for those irregularities; above 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); 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); and In re Dias, 201 N.J. 2 (2010) (an overdisbursement from the attorney's trust account caused the negligent misappropriation of other clients' funds; the attorney's recordkeeping deficiencies were responsible for the misappropriation; the attorney also failed to promptly comply with the OAE's requests for her attorney records; prior admonition for practicing while ineligible; in mitigation, it was considered that the attorney, a single mother working on a per diem basis with little access to funds, was committed to and had been replenishing the trust account shortfall in installments).

In addition, respondent took a loan from the Marras, a conflict of interest that, ordinarily, would merit only an admonition. See, e.g., In the Matter of Frank J. Shamy, DRB 07-346 (April 15, 2008) (attorney made small, interest-free loans

to three clients without advising them to obtain separate counsel; the attorney also completed an improper jurat; significant mitigation considered); In the Matter of April Katz, DRB 06-190 (October 5, 2006) (attorney solicited and received a loan from a matrimonial client; the attorney did not comply with the mandates of RPC 1.8(a)); and In the Matter of Frank J. Jess, DRB 96-068 (June 3, 1996) (attorney borrowed $30,000 from a client to satisfy a gambling debt; the attorney did not observe the requirements of RPC 1.8(a)).

Far more serious than the negligent misappropriations and the conflict of interest that respondent created was his fabricated story about Vana, concocted to mislead the OAE about the condition of his books and records. In reply to the OAE's request for information, respondent submitted a false statement that he had overdisbursed funds to a corporate client, Vana. When the OAE requested information about the overdraft, respondent allegedly panicked and furnished that office with a bogus letter and check, purportedly signed by someone at Vana, acknowledging the company's receipt of $10,000 from respondent and returning the "excess" funds.

Some lingering questions about the level of respondent's deceit were not fully addressed in the stipulation. For

instance, did respondent have possession of Vana's actual company checks and letterhead for use in his scheme? Did he create the phony check and letterhead for Vana and forge Vana signatures to them? Did respondent alter RSP's and Vana's ledger cards and deposit slips to further his scheme? Although answers to those questions would have been helpful to our review of this case, nevertheless, we rely on the OAE's thorough investigations of attorney conduct and trust that office's judgment in determining which charges to bring.

Other information that might have assisted our review include respondent's December 1, 2008 false statement to the OAE and his January 22, 2009 written retraction. Those documents were not a part of our record. The information that we do have, however, is enough to point out a serious flaw in this respondent's character.

In support of its recommended sanction of either a reprimand or censure, the OAE cited misrepresentation cases, one of which, In re Fusco, 197 N.J. 428 (2009), dealt with misrepresentations to ethics authorities. Fusco signed a letter purported to have been authored by his junior partner and then submitted the letter in an ethics investigation. Fusco did not

have the other attorney's authorization to sign the letter on her behalf.

The remaining reprimand cases cited by the OAE involved misrepresentations to either tribunals, state agencies, or clients: In re Gjurich, 177 N.J. 44 (2003) (attorney collected unemployment benefits from the State of New Jersey while employed as an attorney in a Pennsylvania law firm); In re Kantor, 165 N.J. 572 (2000) (false statement to a municipal judge that an automobile was insured at the time of an accident); and In re Carracino, 143 N.J. 140 (1996) (attorney failed to act diligently in representing two clients and then misrepresented the status of the cases to the client).

The OAE also cited a censure case, In re Goldbronn, 197 N.J. 424 (2009). There, a reciprocal discipline matter from Florida that resulted in a sixty-day suspension in that state, the attorney engaged in a conflict of interest, entered into a prohibited business transaction with a client, and knowingly made a false statement of material fact or law to a Florida securities arbitration panel.

We now address the issue of the appropriate level of discipline in this case.

Attorneys who are found guilty of lying to ethics authorities have received discipline ranging from a reprimand to a long term of suspension, depending on the degree of deception involved, other accompanying violations, and any mitigating factors. See, e.g., In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner, and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Homan, 195 N.J. 185 (2008) (censure for attorney who fabricated a promissory note reflecting a loan to him from a client, forged the signature of the client's attorney-in-fact, and gave the note to the OAE during the investigation of a grievance against him; the attorney told the OAE that the note was genuine and that it had been executed contemporaneously with its creation; ultimately, the attorney admitted his impropriety to the OAE; extremely compelling mitigating factors considered, including the attorney's impeccable forty-year professional record, the legitimacy of the loan transaction listed on the note, and the fact that the attorney's fabrication of the note was prompted by

his panic at being contacted by the OAE and his embarrassment over his failure to prepare the note contemporaneously with the loan); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; he also filed a motion on behalf of another client after his representation had ended and failed to communicate with both clients); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who did not diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three fictitious letters to the ethics committee in an attempt to show that he had worked on the matter); In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who improperly released escrow funds to his cousin, a party to the escrow agreement, and then falsified bank records and trust account reconciliations (a fourth-degree crime) to mislead the ethics investigator that the funds had remained in escrow); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-

borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties); and In re Penn, 172 N.J. 38 (2002) (three-year suspension imposed on attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

Here, like attorney Homan, respondent panicked at the prospect of an OAE investigation into his conduct, thereafter creating a false story as a cover-up. Like attorney Homan, respondent later confessed his impropriety to the OAE. Comparable, but more serious conduct was displayed by Bar-Nadav, who submitted two false letters to the district ethics committee and Rinaldi, who presented three fictitious letters to the

committee. In turn, respondent's conduct was confined to one document.

Bar-Nadav and Rinaldi received a three-month suspension.

Here, we considered it important that respondent swiftly "came clean" to ethics authorities, cooperating fully with the OAE thereafter. In addition, respondent has no prior final discipline in almost twenty years at the bar. Therefore, for the combination of respondent's negligent misappropriation, recordkeeping deficiencies, conflict of interest, and false submissions to the OAE, we believe that a censure is sufficient sanction.

Members Baugh, Stanton, Wissinger, and Zmirich voted for a three-month suspension.

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 Anthony N. Picillo
Docket No. DRB 10-233

Argued: September 16, 2010

Decided: November 16, 2010

Disposition: Censure

Members	Disbar	Censure	Three-month Suspension	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh			X			
Clark		X				
Doremus		x				
Stanton			X			
Wissinger			X			
Yamner		X				
Zmirich			X			
Total:		5	4			

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Chief Counsel