SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-344
District Docket No. XIV-05-585E

IN THE MATTER OF	
JAMES WHITE a/k/a JAMES E. WHITE	
AN ATTORNEY AT LAW	

Corrected
Decision

Argued: May 10, 2007

Decided: June 21, 2007

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 came before us on motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE),

following respondent's disbarment in New York on the basis that his "ignorance and/or disregard of the rules regarding the proper maintenance of an escrow account render him a danger to the public." Asserting that "it is not clear that the record supports a finding of knowing misappropriation," the OAE seeks a six-month suspension for respondent's recordkeeping violations and misuse of client funds. Respondent claims that his misappropriation of client funds was the result of his poor recordkeeping practices and "ignorance of escrow management." He urges us to impose no more than a three-to-six-month suspension. For the reasons stated below, we determine to impose a six-month suspension.

Respondent was admitted to the New Jersey and New York bars in 1996 and 1997, respectively. He does not maintain an office for the practice of law in New Jersey.

Respondent has no disciplinary history in New Jersey, although, from September 15, 1997 through September 12, 2005, and from September 25 through December 4, 2006, he was on the Supreme Court's list of ineligible attorneys for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

In a six-count petition dated May 13, 2003, the grievance committee for the second and eleventh judicial districts of the Supreme Court of the State of New York, Appellate Division, charged respondent with failing to adequately safeguard client funds, converting client funds, commingling client funds, making cash withdrawals from his attorney trust account, and failing to maintain required trust account records.

According to charge one, respondent failed to adequately safeguard escrow funds and converted them in the following manner. On January 12, 2001, respondent's Citibank attorney trust account had a negative balance of -$4.26. Five days later, respondent deposited $1667 in his trust account, representing settlement funds on behalf of his client, Malick Sylla.[1] After the $1667 deposit, the balance in the account was was $1,662.74.

Charge two also alleged that respondent converted escrow funds. Specifically, on January 22, 2001, five days after

[1] The petition's reference to a $1677 deposit is incorrect, as are other figures in charge one. Thoughout this decision, we use the correct figures, which are taken from the bank statements provided by the OAE.

respondent had deposited the Sylla funds, he deposited an additional $5100 into his trust account, which represented the down payment in a real estate matter involving "the Garretts." Respondent was to hold these funds in escrow until the closing, which was scheduled for May 23, 2001.

Despite the infusion of $6767 into respondent's trust account (Sylla's and the Garretts' funds), the balance in the account dropped to $5,054.24 on January 30, 2001. By April 25, 2001, the balance had fallen to $4,901.24, below the amount that respondent should have been holding in trust.

In charge three, the petition alleged that respondent improperly commingled funds when, between May 3 and 23, 2001, he deposited $350 of his personal funds into his trust account.

Charge four, too, alleged that respondent converted escrow funds. Specifically, from July 5 until at least November 1, 2001, respondent was required to hold in his trust account $2,752.98 of the Garretts' closing funds: a $2550 real estate commission due Century 21 Metro Team (Century 21), and $202.98 due Kelly Burgos, one of the parties to the real estate transaction. Yet, by September 28, 2001, the balance in respondent's attorney trust account had dropped to $2,739.72; on

October 19, 2001, it had fallen to $2,554.72; and by October 31, 2001, it had been reduced to $55.72.

As a result of the conduct alleged in charges one through four, in each count, the petition charged respondent with having violated New York Disciplinary Rule 9-102(A) (declaring an attorney in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, to be a fiduciary and prohibiting commingling and the misappropriation of client funds or property) (New Jersey equivalent: RPC 1.15(a)), and New York Disciplinary Rule 1-102(A)(7) (prohibiting an attorney from engaging in any other conduct that adversely reflects on the lawyer's fitness as a lawyer) (no equivalent RPC in New Jersey; RPC 8.4(b) is limited to criminal conduct that adversely reflects on the lawyer's fitness).

Charge five alleged that, between January 22 and October 19, 2001, respondent made approximately twenty-seven cash withdrawals from his trust account. He was charged with having violated New York Disciplinary Rule 9-102(E) (requiring all special account withdrawals to be made only to a named payee and not to cash and such withdrawals to be made via check or, with the prior written approval of the party entitled to the

proceeds, by bank transfer) (New Jersey equivalent: RPC 1.15(d), based on a violation of R. 1:21-6(c)(1)(I)(2)).

Finally, in charge six, the petition alleged that respondent had violated Disciplinary Rule 9-102(D) (failure to keep required bookkeeping records) by failing to maintain a contemporaneous ledger book or similar record for his attorney trust account that reflected the following: the source of all funds deposited into the trust account, the names of all persons for whom funds were held in trust, the amount of the funds, the charges or withdrawals from the account, and the names of all persons to whom the funds were disbursed (New Jersey equivalent: RPC 1.15(d), based on a violation of R. 1:21-6(c)(1)(A)(B)).

At the August 2003 preliminary conference, which was conducted by the special referee prior to the disciplinary hearing, respondent, through counsel, admitted the facts set forth in the petition, but claimed that he did not act intentionally; rather, he stated, his "mistakes" were due to carelessness. Respondent was granted the opportunity to present evidence in mitigation, at a hearing to be held on September 8, 2003. There, respondent re-affirmed his admission of the facts and charges in the petition and his intention to present only evidence in mitigation.

Respondent testified that the investigation into his conduct was precipitated by a $202.98 check that bounced in approximately January 2002. He explained:

> Well, I had a closing in May of 2001, and I issued checks at this closing. And the person who I issued the check for, which was the purchaser of the property, for $202.98, obviously didn't cash her check until eight months later.
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> . . . .
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> And I had undergone a lot of personal and financial difficulties, and I closed my practice down and I just assumed that everything was out of my account, mistakingly [sic].
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> [T4-9 to 18.][2]

After respondent learned of the $202.98 dishonored check, he eventually paid over the monies to the payee, Kelly Burgos.

In mitigation, respondent testified that he started his practice in 1997. Two years later, he began to suffer a series of personal problems that continued until December 2001, when he closed the office "as a result of a burglary and financial things that occurred."

[2] "T" refers to the September 8, 2003 transcript of the New York disciplinary hearing before the special referee.

Specifically, in 1999, respondent purchased a Harlem brownstone under the "203-K program." However, due to fraud on the part of someone involved in the transaction, respondent's rehabilitation of the property was "underfunded." In 2002, respondent lost the property in foreclosure.

At some unidentified time, respondent lost his New Jersey home for the following reasons: "I wasn't making any money; couldn't pay the mortgage there; couldn't pay my rent up here; my tenant moved out; I couldn't get another tenant because he trashed the place; I couldn't get it fixed; so I couldn't get a mortgage." Consequently, respondent deeded the New Jersey property to the bank.

Another difficulty in respondent's life concerned the birth of his child in 2001. In 2000, respondent married a Senegalese national, at a ceremony that took place in Senegal. That year, his wife obtained a visa and visited him in the U.S., where they were "legally married" and conceived a child. However, his wife's visa apparently expired, requiring her to return to Senegal.

In Senegal, respondent's wife developed complications during the pregnancy. He was unsuccessful in his attempts to bring her back to the U.S. because she did not yet have a "green

card." Thus, respondent traveled to Africa, where he witnessed the birth of his child on July 4, 2001. (Respondent paid for all health care costs related to the child's birth.) In August 2001, he, his wife, and their child returned to the U.S.

Finally, respondent testified that, after the September 11th attacks, he had no clients. As stated previously, respondent closed his practice after a burglary in December 2001.

With respect to his bank accounts, respondent stated that he opened a trust account for his practice in 1997, and that he also maintained business and personal accounts. He received monthly trust account bank statements and kept copies of deposit slips in a file cabinet in his desk drawer. Although respondent's testimony was not clear, it appears that he tracked his financial records via a Quicken program that he implemented sometime in 2001, and was operational in May of that year.

Respondent testified that, during the December 2001 office burglary, everything was thrown about, and his files sustained "a lot of water damage" (presumably due to a toppled plant that had been on his desk). When he discovered that his office had been burglarized, he grabbed everything and packed it up. He did not close the trust account because he believed that the account had a zero balance.

Respondent testified that he never used his attorney trust account for any purpose other than his law practice. He placed client funds in the account, paid himself out of the funds, and "*correct*[ed] any deficiencies in any balances in it." He "never did any other businesses out of [the trust] account." He insisted that he "never stole anyone's money," and that he had "no motive to steal anyone's money or misuse money."

Respondent was issued an ATM card for his trust account, which he used to make cash withdrawals, allegedly unaware of the prohibition against doing so. Although respondent could not specifically recall the purpose of the ATM withdrawals, he speculated that they "had to have been for purposes of a case or paying [him]self."

On cross-examination, respondent was asked many questions about his trust account activity, particularly with respect to the $202.98 check to Burgos and a $2550 check to Century 21. With respect to the former, respondent admitted that, although the $202.98 check had been presented for payment and bounced in January 2002, it had been written in May 2001, many months before the December 2001 burglary and the destruction of his financial and computer records.

Respondent stated that, in 2001, he used his trust account for only two client matters. In fact, he claimed that he "almost never used" the account; thus, he "wasn't in the habit of really keeping a good watch on [it]."

Respondent explained to us his lack of use of the trust account:

> Most of my work was as an independent contractor for landlord tenant attorneys and real estate attorneys, thus I charged those attorneys a flat fee per appearance thus I almost never used my escrow account and as a result I was not well versed in escrow accounting. In my entire career I probably did only four closings in my entire career and used my escrow account no more than two or three times a year.
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> [RA¶17.][3]

During the continued cross-examination of respondent at the New York hearing, he conceded that, following the Garretts' May 2001 closing, his trust account had a balance of approximately $3000: the uncashed $202.98 Burgos trust account check, and the $2550 trust account check to Century 21, which also was not

[3] "RA" refers to the affirmation of respondent, which was submitted to Office of Board Counsel in response to its request that the parties brief the issue of why this is not a case of knowing misappropriation.

cashed. In terms of whether, prior to the burglary, the reconciliation of his records had shown that the Burgos check had not been cashed, respondent stated that he always maintained a $200-$300 balance and, that he, therefore, believed "that that small amount of money in the account belonged to me."

With respect to the $2550 broker's commission check, respondent testified that, between May and October 2001, he called Century 21 "five times" and asked why the check had not been cashed. Respondent never received an answer to his question. Respondent informed us that his final call to Century 21 took place sometime in October 2001, at which time he learned that Century 21 "still w[as] not aware of any lost commission check and did not appear to be interested in investigating it any further." Respondent testified that he had stopped payment on the check, and that, on November 1, had sent Century 21 "more than one money order" in the total amount of $2550, which he had purchased with "personal funds."

According to respondent's October 2001 trust account bank statement, the $25 stop-payment fee was debited on October 19, 2001, leaving a $2,554.72 balance in the account. Before respondent sent the money orders to Century 21, he made fourteen ATM withdrawals, totaling $1574, between October 22 and October

31, 2001. In addition, he cashed a $925 check to himself on October 29. As of October 31, 2001, the balance in the trust account was $55.72.

Respondent was questioned at length about his use of personal funds to purchase the money orders when there should have been sufficient trust account funds with which to do so. His testimony and the proofs were equivocal. On the one hand, respondent testified that he used personal funds to purchase the money orders because he had depleted the trust account. On the other hand, respondent testified that he had taken $2550 from the trust account to replace the personal funds that he had used to purchase the money orders. The record contained no documents that established when the money orders were purchased.

With respect to respondent's use of the trust account's ATM card, he admitted that, between January 22 and October 19, 2001, he made twenty-seven withdrawals. He claimed, however, that he did not know the rules governing trust accounts. Respondent explained: "I mean, I know you don't bounce a check. But I didn't know I couldn't use my ATM card. Because in my mind, why would they send me a card for the [trust] account if it was prohibited to use the ATM card."

Finally, respondent admitted that he had never reviewed the disciplinary rules governing escrow accounts, but claimed to be "familiar with them." Thus, respondent conceded, when he re-registered with the New York Office of Court Administration every two years, his affirmations that he had read DR 9-102 (recordkeeping requirements) of the lawyers' code of professional responsibility were untrue. Even after the New York ethics investigation had begun, respondent did not read the rules.

Upon the conclusion of the hearing, the special referee issued a report concluding that respondent had violated all rules charged, and pointing out that he had admitted the facts in each charge. The special referee noted, however, respondent's claim that his violations resulted from "an error of judgment." The special referee also made note of respondent's evidence, in mitigation, limiting it to the stress he suffered while trying to return his wife to the United States and his financial problems.

The referee observed that respondent was "remorseful, [and] claim[ed] everything done was not venal and attribute[d] his problems to his relative inexperience." Respondent also had "an

unblemished record, cooperated with the investigation, and submitted letters of recommendation from several clients."

In a decision dated June 14, 2004, the Supreme Court of New York, Appellate Division, Second Department, disbarred respondent. In the Matter of James E. White, 779 N.Y.S. 2d 92, 95 (N.Y. App. Div. 2004). The Court agreed with the special referee's finding that respondent was guilty of all six charges of professional misconduct:

> In determining an appropriate measure of discipline to impose, the respondent testified at the hearing about the problems caused by a burglary of his office, his wife's health problems, and his acute financial difficulties . . . . The respondent offered no explanation as to the whereabouts of the money he should have been holding in a fiduciary capacity. It appears that the conversions, commingling, and cash withdrawals occurred well before the burglary of the respondent's office.
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> Notwithstanding the absence of actual harm to any clients, the respondent's lack of venal intent, and his relative inexperience, he is guilty of serious and pervasive abuses with respect to his fiduciary obligations. The respondent's ignorance and/or disregard of the rules regarding the proper maintenance of an escrow account render him a danger to the public. Under the totality of the circumstances, his disbarment is warranted.
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> [Id. at 94-95.]

Respondent did not notify the OAE of his disbarment.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the New York Court's opinion shows that, although respondent never explained what had happened to the missing trust account funds, he was disbarred because his "ignorance and/or disregard of the rules regarding the proper maintenance of an escrow account render[ed] him a danger to the

public." Accordingly, subsection (E) of R. 1:20-14(a)(4) applies in this case because recordkeeping violations such as respondent's do not warrant what would amount to at least a seven-year suspension in New Jersey.[4]

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). "The sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Although the New York Court expressly stated that respondent had converted trust funds and imposed the severest of sanctions, the record establishes that the disbarment was imposed solely for the recordkeeping violations and not the result of a finding of knowing misappropriation. First, the language used in the New York opinion - respondent's "lack of

[4] Disbarment in New Jersey is permanent. In New York, however, a disbarred attorney may seek reinstatement after seven years. 22 N.Y.C.R.R. 603.14.

venal intent," "his relative inexperience," and "respondent's ignorance and/or disregard" of the recordkeeping rules - seems inconsistent with a finding of knowing misappropriation. Moreover, if the New York Court had found knowing misappropriation, it stands to reason that it would have used those very words. Yet, they are conspicuously absent from the opinion.

It is true that the New York Court's finding that respondent "converted" trust funds strongly suggests a finding of knowing misappropriation. However, in New York, conversion and knowing misappropriation appear to be two different things. See, e.g., In re Duke, 184 N.J. 371 (2002) (attorney disbarred in New York for "converting" trust funds, commingling trust and personal funds, improperly drawing an escrow check to cash, failing to maintain required bookkeeping records, and failing to timely cooperate with the grievance committee; on motion for reciprocal discipline, however, the attorney received a reprimand in New Jersey; "numerous mitigating factors" included the attorney's immediate admission to his mistakes, expression of remorse, and steps taken to insure that his conduct would not re-occur).

Moreover, when New York disciplinary authorities charge an attorney with knowing misappropriation of client or escrow funds, the petition generally alleges, and the Court finds, failure to safeguard funds (DR 9-102(A)) and conduct involving dishonesty, fraud, deceit, or misrepresentation (DR 1-102(A)(4)). See, e.g., In re Stevens, 741 N.Y.S.2d 536, 539 (N.Y. App. Div. 2002), and In re Lubell, 599 N.Y.S.2d 557, 558 (N.Y. App. Div. 1993) (both decisions observing that intentional conversion of client funds violates DR 1-102(A)(4)); and In re Rogers, 463 N.Y.S.2d 458, 459 (N.Y. App. Div. 1983) (attorney who "maintained inadequate records and as a result, permitted the balance of the trust account to drop below the amount held in trust on behalf of his clients," converted the funds, "albeit inadvertently"). Yet, New York disciplinary authorities did not charge or find dishonesty, fraud, deceit or misrepresentation.

That respondent received the disbarment penalty in New York does not necessarily mean that the New York Court must have found him guilty of knowing misappropriation. In fact, disbarment is not always imposed in New York when attorneys knowingly misappropriate trust funds, as the presence of "extraordinary mitigation" may save those attorneys from disbarment. See, e.g., In re Stevens, supra, 741 N.Y.S.2d at

541 (finding no "extraordinary mitigation" that would warrant departure from court policy of disbarring attorneys who intentionally misappropriate or convert client funds).

We recognize that the record was poorly developed in New York, and that there is a specter of knowing misappropriation involving the $202.98 owed Burgos and the $2550 owed Century 21. Yet, this issue was not "nailed down" in the New York proceeding, and failed to grab the attention of the New York Court. We must accept the facts, as determined by the New York Court, to be conclusively established, R. 1:20-14(a)(5), and are satisfied that the New York Court did not find knowing misappropriation on the part of respondent.

We now turn to the determination of the appropriate measure of discipline to be imposed for respondent's commingling of $350 in personal funds with the trust account funds, the twenty-seven ATM withdrawals, and the negligent misappropriation of at least $2,752.98 in trust account funds during a nine-month period in the year 2001, violations of New Jersey RPC 1.15(a), R. 1:21-6(c)(1)(I)(2), and RPC 1.15(d).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Winkler, 175 N.J. 438 (2003) (reprimand for

attorney who commingled personal and trust funds, negligently invaded clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew from his trust account $4,100 in legal fees before the deposit of corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account); In re Blazsek, 154 N.J. 137 (1998) (attorney reprimanded for the negligent misappropriation of $31,000 in client funds and failure to comply with recordkeeping requirements); In re Goldstein, 147 N.J. 286 (1997) (reprimand for negligent misappropriation of clients' funds and failure to maintain proper trust and business account records); In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand for attorney who negligently misappropriated approximately $5,000 in client funds after commingling personal and client funds; the attorney left $20,000 of her own funds in the account, against which she drew funds for her personal obligations; the attorney was also guilty of poor recordkeeping practices); In re Gilbert, 144 N.J. 581 (1996) (reprimand imposed on attorney who negligently misappropriated in excess of $10,000 in client funds and violated the recordkeeping rules, including commingling personal and trust funds and depositing earned fees into the trust

account; the attorney also failed to properly supervise his firm's employees with regard to the maintenance of the business and trust accounts); In re Imperiale, 140 N.J. 75 (1995) (attorney reprimanded for deficient recordkeeping and negligent misappropriation of $9,600 in client funds); and In re Lazzaro, 127 N.J. 390 (1992) (reprimand imposed after poor recordkeeping resulted in negative client balances and a trust account shortage of more than $14,000).

In this case, however, the New York Court found that respondent was "guilty of serious and pervasive abuses with respect to his fiduciary obligations." In fact, these abuses were so "serious and pervasive" that the Court deemed him a "danger to the public" and disbarred him. In light of these findings and respondent's cavalier attitude about his obligation to even read the recordkeeping rules, a reprimand would not be sufficient discipline for his misdeeds.

Three cases involving egregious accounting practices and misappropriation of client funds suggest that, at a minimum, respondent is subject to a three-month suspension: In re James, 112 N.J. 580 (1988); In re Gallo, 117 N.J. 365 (1989); and In re Librizzi, 117 N.J. 481 (1990). In In re James, supra, 112 N.J. at 581, a random audit uncovered that respondent was out-of-

trust in three client matters in amounts ranging from $1400 to $5600. He also had a $7000 deficiency in his payroll trust account. Id. at 83. In addition, the attorney failed to maintain separate ledger cards for each trust client; he failed to maintain receipt and disbursement journals; and he failed to reconcile his trust account statements with the ledger. Ibid.

The attorney acknowledged responsibility for the deficiencies and irregularities in his trust account. Id. at 584. He explained, however, that he had "inherited" the accounting system from his former senior partners and had been utilizing the system for twenty-four years. Ibid.

The attorney used the trust account as a second business account. Ibid. His secretary was in charge of the accounting system, and, while she rarely kept the attorney informed about the status of the books, he never inquired. Ibid. When the attorney became aware of deficiencies, he did not seek to determine their cause. Ibid. Rather, he simply infused funds into the trust account. Ibid. In addition, he paid obligations without first determining whether the account had sufficient funds to cover the checks in the first place. Ibid. In short, the attorney had "an utter lack of comprehension of what

constitute[d] the proper operation of an attorney's accounts." Id. at 588.

In our decision, which the Court opinion adopted verbatim, we found that the attorney was "seriously and inexcusably inattentive to the accounting and bookkeeping details of his practice." Id. at 587. Moreover, he "totally abdicated responsibility for the accounting and bookkeeping in his office by relegating those functions to his secretary." Ibid. The Court noted, however, that the attorney's perpetuation of the inadequate system that led to the negative balances was "in good faith." Id. at 591. Thus, the attorney's misappropriation of the client funds was the result of "gross negligence," not knowing misappropriation. Ibid.

Although the Court could not "ignore the length of time spanned by [the attorney]'s misconduct or the degree of his negligence," the attorney was suspended for three months due to the following mitigating factors: the absence of injury to the clients, who continued to have confidence in the attorney, and his unblemished disciplinary history, excellent reputation, and good character. Ibid.

The following year, another attorney was suspended for three months for commingling, failure to safeguard and

misappropriation of client funds, and recordkeeping deficiencies. In re Gallo, supra, 117 N.J. at 375. In Gallo, id. at 367, the attorney utilized an accounting system that he had learned from an attorney for whom he had worked as an independent contractor during his first two years of practice. After the first two years, Gallo took over the practice of another attorney who had retired and had abruptly left the country and his abominable businesses practices in Gallo's hands. Id. at 368. The files were in disarray, and there was no filing system. Ibid.

Gallo did not hire an accountant but, rather, utilized the accounting system he had learned earlier. Ibid. He used his trust account to pay business expenses, and his business account to pay personal expenses. Ibid. He left his fees in the trust account. Ibid. He never kept a running balance of the trust account, did not use client ledger cards, and never knew how much money was in the account or to whom it belonged. Ibid. In addition, Gallo occasionally deposited personal funds into the trust account if he believed that the balance was insufficient to cover operating expenses. Ibid.

A random audit established that, in addition to Gallo's failure to maintain required records, during the year 1984, he

was out of trust in five client matters, in amounts ranging from $18 to several thousand dollars. Id. at 369-370. He also commingled client investment funds and his personal investment funds. Id. at 370.

Gallo was not found guilty of knowing misappropriation. Id. at 372. In fact, he did not design his accounting system but, instead, followed that of his previous employer. Id. at 373. Moreover, he was unfamiliar with basic principles governing the administration of an attorney trust account, as he was with the daily balance in the two accounts he maintained. Ibid. Nevertheless, his "serious misconduct" in the utilization of "entirely inadequate" accounting procedures warranted discipline. Ibid. Because Gallo did not intentionally design his accounting system for the purpose of preventing him from knowing if client funds were being invaded, no client suffered financial injury, and he took corrective measures to prevent future violations, the Court imposed a three-month suspension. Id. at 374.

Yet, when an attorney's violation of the recordkeeping rules is so severe, such as the New York Court found here, a six-month suspension may be imposed. In In re Librizzi, supra, 117 N.J. 481, the attorney received a six-month suspension for

his recordkeeping violations and failure to safeguard client funds. There, a random audit uncovered that the attorney's trust account had a shortfall of approximately $25,000. Id. at 484. The record established that, *during* his twelve-year practice, the attorney kept no records of any kind and that he had consistently failed to reconcile the account or even open bank statements. Ibid. Nevertheless, an accountant hired to review the attorney's records "found no evidence of any 'systematic invasion of clients' funds.'" Id. at 489. Moreover, no client suffered financial injury as a result of the shortages in his trust account, and no client ever complained of him to disciplinary authorities. Id. at 485.

Although the attorney did not knowingly misappropriate client funds, the Court considered his misconduct "extremely serious," describing his recordkeeping as "totally inadequate." Id. at 492. With respect to the trust account, the Court found that there was no recordkeeping at all. Ibid. The Court suspended him for six months, noting the following mitigating factors: unblemished disciplinary history of more than twenty years, no financial injury to clients, and prompt remedial action. Id. at 493.

In this case, respondent asserted that (1) he learned nothing about law office accounting practices in law school; (2) the only advice he had ever been given about trust accounting practices was "never bounce a check and . . . always keep extra money in your count [sic] to assure that you never bounce a check;" (3) most of his work was performed for other attorneys on a contract basis, for which he charged a flat fee; therefore, he was "not well versed in escrow accounting;" (4) he maintained his financial records on Quicken and, when the office was burglarized, the records "were gone;" (5) months sometimes passed without his opening his trust account statements; and (6) he "never used it a lot."

These factors do not absolve respondent of his serious misdeeds. In fact, they demonstrate that he did nothing to learn and understand what was required of him in establishing, maintaining, and using a trust account. Any mitigation in respondent's favor is negated by two glaring facts. First, respondent has never read the recordkeeping rules: he did not read them before he started practicing law; he did not read them while he practiced law; and he did not even read the rules after he was charged with violating them. Indeed, it appears that

respondent refused to inform himself of the recordkeeping requirements of the State of New York.

Second, and related to the first, respondent made no attempt at adequate trust account recordkeeping. At best, he appears to have done nothing more than "ask around" about it. Although respondent claimed that he utilized Quicken in the management of his financial records, there is nothing about the Quicken system that informs one of the recordkeeping requirements specific to the trust accounts of attorneys in the State of New York.

Moreover, the facts belie respondent's assertion that he managed his financial records at all. During the nine-month period at issue, respondent's office had not been burglarized and, therefore, the Quicken system was, according to his representations, fully functional and operating. Yet, respondent admitted that months sometimes passed without his even opening the trust account statements. If respondent had managed his financial records, it is unlikely that he would have repeatedly invaded trust account funds that had been dedicated to the uncashed checks to Burgos and Century 21.

In assessing the appropriate measure of discipline, thus, we consider respondent's failure to review the recordkeeping

rules throughout his practice in New York – even after disciplinary proceedings were instituted against him for violations of those very rules. Unlike the attorneys in James and Gallo, respondent did not "inherit" and perpetuate a deficient recordkeeping system out of ignorance. Rather, he created it, with no reference to, or reliance upon, or even any interest in, the requirements imposed on attorneys. It was his refusal to review, learn, and implement the recordkeeping requirements – or to undertake any effort to set up and maintain a proper trust account system – that caused him to misuse escrow funds and to make improper ATM withdrawals from the trust account. As with the attorney in Librizzi, and as recognized by the New York Court, respondent's misconduct was "extremely serious," and his recordkeeping was not merely "totally inadequate," but virtually nonexistent.

Finally, we note respondent's failure to report his New York disbarment to New Jersey disciplinary authorities, as required by R. 1:20-14(a).

We are sympathetic to the difficulties that respondent experienced in 2001. Nevertheless, his proven inability to recognize the necessity of knowing and adhering to the requirements imposed upon attorneys in those states where he is

licensed to practice, including this State, does indeed render him a danger to the public. Accordingly, we determine to impose a prospective six-month suspension. We also determine to require respondent, prior to reinstatement, to complete twelve hours of courses in Professional Responsibility and Trust Accounting for Attorneys and, upon reinstatement, to submit to the OAE, for a period of two years, quarterly reconciliations of his trust account, certified by an accountant approved by the OAE.

Member Baugh 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
William J. O'Shaughnessy
Chair

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

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD

VOTING RECORD

In the Matter of James White a/k/a James E. White
Docket No. DRB 06-344

Argued: May 10, 2007

Decided: June 21, 2007

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh						X
Boylan		X				
Frost		X				
Lolla		X				
Neuwirth		X				
Stanton		X				
Wissinger		X				
Total:		8				1

Julianne K. DeCore
Chief Counsel