

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-237

IN THE MATTER OF :
:
:
GLEN L. SCHEMANSKI :
:
:
AN ATTORNEY AT LAW :
:

Decision

Argued: September 12, 2002

Decided: December 4, 2002

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us based on a stipulation between the Office of Attorney Ethics (“OAE”) and respondent.

Respondent was admitted to the New Jersey bar in 1979. He maintains an office for the practice of law in Cherry Hill, New Jersey. He has no disciplinary history.

This matter resulted from a February 2001 trust overdraft notice from Commerce Bank, where respondent had his trust account. Although the stipulation does not state the nature of the shortage, the exhibits show that respondent's trust account had a balance of \$5,635.85 when a check in the amount of \$5,732 was presented for payment, resulting in a \$96.15 overdraft. The \$5,732 check represented settlement proceeds to John and Maria Rafios, respondent's clients.

After receiving respondent's explanation of the overdraft, the OAE audited his records. The audit revealed that, from December 2000 through May 2001, there were shortages in respondent's trust account in amounts ranging from \$766.11 to \$12,258.32. According to the stipulation, the shortages occurred because respondent (1) withdrew his fees from the trust account needed, without allocating the fees to particular client matters and without making sure that he had sufficient fees in his trust account; (2) advanced case-related costs from his trust account on behalf of his clients; and (3) made payments to family members from his trust account. Respondent told the OAE that "he usually had a good idea of what was in his trust account" and that he periodically called the bank to obtain the trust balance.

The OAE's audit also revealed the following recordkeeping violations:

1. a separate client ledger card was not maintained for each trust client;
2. a running balance was not kept in the trust account checkbook ;
3. a schedule of client ledger accounts was not prepared and reconciled quarterly to the trust account bank statement;

4. there were debit balances on the reconstructed client ledgers;
5. respondent's personal funds and trust funds were commingled;
6. respondent did not maintain business receipts and disbursements books;
7. respondent did not maintain trust receipts and disbursements books;
8. deposit slips lacked sufficient detail to identify each deposit item;
9. attorney fees were not consistently deposited in the business account; and
10. the trust and business accounts' designations were improper.

According to the stipulation, respondent always paid settlement funds to his clients on a timely basis. Furthermore, as of February 2002, respondent's trust account was reconciled and his records were in compliance with R.1:21-6.

* * *

Upon a de novo review of the record, we are satisfied that the stipulation provides clear and convincing evidence that respondent was guilty of unethical conduct.

The stipulation does not expressly state that respondent negligently misappropriated trust funds or violated RPC 1.15, when he created the trust account shortages. It merely states that there were shortages in his trust account between December 2000 and May 2001 and that the "evidence is insufficient to prove that respondent knowingly misappropriated client funds." However, the exhibits that were incorporated into the stipulation show that respondent did not have sufficient funds in his trust account to cover the Rafios' settlement check. Therefore, he must have negligently

invaded those funds, before the check was presented for payment. Furthermore, the exhibits show that respondent should have been holding certain amounts for his clients between December 2000 and May 2001 and that there were insufficient funds in the trust account. Therefore, we found clear and convincing evidence that respondent negligently misappropriated client funds. Furthermore, respondent stipulated – and there is ample evidence – that he commingled personal and trust funds in his trust account and failed to maintain his attorney records in accordance with R. 1:21-6.

The OAE recommended that respondent be reprimanded for his misconduct, citing In re Rosenberg, 170 N.J. 402 (2002), In re Lazzaro, 127 N.J. 390 (1992), In re Lewinson, 126 N.J. 515 (1992) and In re Barker, 115 N.J. 30 (1989). All of the attorneys in the foregoing cases received a reprimand for similar misconduct.

In Rosenberg, the attorney negligently misappropriated client trust funds in amounts ranging from \$400 to \$12,000, during an eighteen-month period. The misappropriations occurred because the attorney routinely deposited large retainers in his trust account, then withdrew his fees from the account as needed, without determining whether he had sufficient fees from a particular client to cover the withdrawals. The OAE audit also revealed numerous recordkeeping deficiencies.

In Lazzaro, the complaint had charged knowing misappropriation. However, we concluded – and the Court agreed – that the evidence did not establish by clear and convincing evidence that Lazzaro knowingly misappropriated client funds for his personal use or for use by his family. Rather, it was found that the negative client

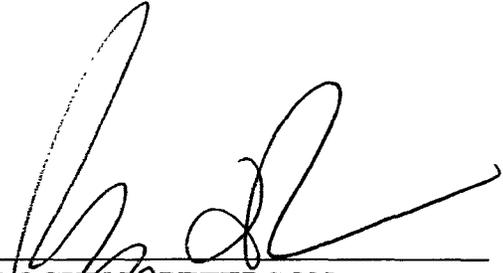
balances and the trust account shortage of more than \$14,000 were the result of Lazzaro's poor recordkeeping. In the Matter of D. Vincent Lazzaro, Docket No. DRB 91-355, DRB Decision at 16 (March 9, 1992).

In Lewinson, the attorney's poor recordkeeping practices resulted in numerous trust account shortages over a twenty-one-month period. The complaint had charged knowing misappropriation. However, we found that, although Lewinson was "inexcusably derelict in her recordkeeping obligations," the shortages were due to "ignorance and inexperience," not knowing misappropriation. In the Matter of Barbara K. Lewinson, Docket No. DRB 91-261, DRB Decision at 10, 13 (December 9, 1991). The Court agreed and publicly reprimanded Lewinson for her "reckless conduct." In re Lewinson, supra, 126 N.J. at 516.

Finally, the attorney in Barker was publicly reprimanded for "grossly negligent" accounting procedures that resulted in the negligent misappropriation of trust funds. In re Barker, supra, 115 N.J. at 35.

Based on the foregoing, we unanimously determined that a reprimand is the appropriate discipline for respondent's negligent misappropriation, commingling of personal and trust funds and recordkeeping violations. We also determined to require him to submit to the OAE quarterly reconciliations of his attorney trust account, the reconciliations to be prepared by a certified public accountant approved by that office.

We further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

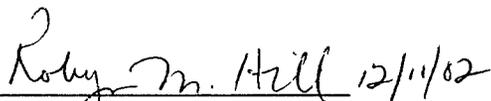
In the Matter of Glen L. Schemanski
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Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>			X				
<i>Maudsley</i>			X				
<i>Boylan</i>			X				
<i>Brody</i>			X				
<i>Lolla</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>			X				
<i>Wissinger</i>			X				
Total:			9				


Robyn M. Hill
Chief Counsel