

DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

BONNIE C. FROST, ESQ., CHAIR
EDNA Y. BAUGH, ESQ., VICE-CHAIR
BRUCE W. CLARK, ESQ.
HON. MAURICE J. GALLIPOLI
THOMAS J. HOBERMAN
EILEEN RIVERA
ANNE C. SINGER, ESQ.
ROBERT C. ZMIRICH

(609) 292-1011



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962

ELLEN A. BRODSKY
CHIEF COUNSEL

PAULA T. GRANUZZO
DEPUTY CHIEF COUNSEL

MELISSA URBAN
FIRST ASSISTANT COUNSEL

TIMOTHY M. ELLIS
LILLIAN LEWIN

BARRY R. PETERSEN, JR.
COLIN T. TAMS

KATHRYN ANNE WINTERLE
ASSISTANT COUNSEL

September 21, 2015

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Edward R. Bassetti
Docket No. DRB 15-179
District Docket No. XIV-2013-0361E

Dear Mr. Neary:

The Disciplinary Review Board has reviewed the motion for discipline by consent (censure or such lesser discipline as the Board may deem warranted) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a censure is the appropriate discipline for respondent's violations of RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 1.15(b) (failure to promptly disburse funds), and RPC 1.15(d) (recordkeeping).

Specifically, on April 16, 2007, respondent's law firm, Bassetti Law, was the settlement agent in the mortgage refinance of property owned by grievant, Steven Santos, located in Glen Oaks, New York. According to the HUD-1 statement, Santos was to pay off his Discover credit card in the amount of \$11,263.06 and his Chase credit card in the amount of \$13,527.08 with the loan proceeds. The sum of \$24,790.14, therefore, was held in escrow in respondent's TD Bank attorney trust account on behalf of Santos to satisfy those debts. On April 20, 2007, respondent disbursed \$11,263.06 to Discover and \$13,527.08 to Chase, by two separate attorney trust account checks. Respondent's check to Discover never cleared his attorney trust account, a fact that

September 21, 2015

Page 2 of 5

respondent did not learn for several years. In the meantime, Santos was forced to pay his debt to Discover out of his own pocket, resulting in almost \$7,000 in additional interest and fees. Respondent admitted that, at some point after the check was disbursed, he realized that he still held the \$11,263.06 in his account, but was unsure whether Santos or PHM Mortgage (the lender) should receive the funds. Nevertheless, he conducted no further investigation in attempt to resolve that uncertainty.

Five years after the 2007 check to Discover, in July 2012, respondent finally sent a letter to Santos, and enclosed an \$11,263.06 check, payable to Santos, from his PNC attorney trust account. On July 27, 2012, after Santos had deposited the check, his bank informed him that PNC had returned the check due to a missing signature. Santos then attempted to telephone respondent on several occasions, to no avail. Finally, in a December 4, 2012 letter, Santos explained to respondent that his check had been returned due to a missing signature and, therefore, he was charged a \$15 return check fee. Santos asked respondent to issue a replacement check that included the return fee. Santos further explained that he had been the subject of litigation, negative credit scores, interest, and late fees due to the misplacement of the original attorney trust account check payable to Discover.

On receipt of Santos' December 4, 2012 letter, respondent contacted his local PNC branch and was told that the \$11,263.06 check had cleared his account. Therefore, he believed that the funds had been disbursed to Santos. Soon thereafter, on January 16, 2013, Santos sent an e-mail to respondent's office reiterating the contents of his December 4, 2012 letter. By letter dated January 28, 2013, respondent replied that he had signed the PNC check and that the funds had cleared his attorney trust account. He also made clear that he would not issue a new check.

On July 24, 2013, Santos filed a grievance with the OAE. Six months later, on December 30, 2013, respondent issued an attorney trust account check for \$11,263.22 payable to Santos from his TD Bank attorney trust account.¹

¹ Nothing in the record explains why the amount of this check was \$11,263.22 and not \$11,263.06.

September 21, 2015

Page 3 of 5

During the course of the OAE's investigation of the Santos grievance, it became apparent that respondent had failed to prepare monthly three-way reconciliations of his attorney trust accounts. Instead, respondent kept a log of checks and, on a weekly basis, verified that the checks had cleared his attorney trust account. Additionally, he failed to maintain attorney trust account cash receipts and disbursements journals. Ultimately, at the direction of the OAE, respondent was able to reconcile his attorney trust account records and to identify all client funds.

Respondent clearly lacked diligence when he failed promptly to recognize that the trust account check he had sent to Discover on Santos' behalf never cleared his account. His inattention resulted in a prolonged delay in disbursement of the subject funds to Santos and/or in Santos' behalf. Moreover, even when Santos attempted to make respondent aware of PNC's return of the check respondent had finally sent him, respondent continued to ignore his communications for another six months, causing further delay in disbursement. By his failures in this regard, respondent violated RPC 1.3, RPC 1.4(b), and RPC 1.15(b).

The extreme delays in the disbursement of the subject funds could have been reduced significantly had respondent complied with his recordkeeping obligations pursuant to R. 1:21-6. He did not and, thus, violated RPC 1.15(d).

Ordinarily, the failure to promptly deliver funds to clients or third persons, along with recordkeeping violations, will lead to an admonition, even when accompanied by other, non-serious infractions. See, e.g., In the Matter of Samuel M. Manigault, DRB 13-370 (February 28, 2014) (attorney did not keep a running cash balance for his attorney trust account checkbook; failed to prepare or reconcile the client ledger account balance with his monthly trust account bank statements, and maintained an unidentified trust account balance of \$47,040.27, all in violation of RPC 1.15(b) and (d)); In the Matter of Vincent L. Galasso, DRB 13-132 (October 23, 2013) (attorney failed to disburse funds to a medical provider, failed to perform monthly three-way reconciliations, and, in an unrelated matter, negligently misappropriated funds by inadvertently making a misdeposit in his business account, in violation of RPC 1.15(a), (b), and (d)); In the Matter of Pasquale F. Giannetta, DRB 10-138 (July 1, 2010) (attorney failed to promptly disburse funds to medical providers; failed to comply with recordkeeping

September 21, 2015

Page 4 of 5

requirements, including the failure to reconcile his attorney trust account records, and inadvertently transferred funds from his trust account instead of his business account, resulting in a negligent misappropriation of client funds; violations of RPC 1.15(a), (b), and (d) were found); In re Cerza 202 N.J. 337 (2010) (in two real estate matters, attorney delayed disbursing escrow funds to the designated recipients, violations of RPC 1.3 and RPC 1.15(b); failed to comply with the recordkeeping rules, a violation of RPC 1.15(d); and, in one matter, failed to comply with a client's reasonable requests for information, a violation of RPC 1.4(b)); and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for three-and-a-half years, attorney held in his trust account \$4,800 earmarked for the payment of a client's outstanding hospital bill and failed to comply with the recordkeeping rules, in violation of RPC 1.15(b) and (d); the attorney also practiced law while ineligible).

Here, respondent caused significant financial harm to his client, totaling just under \$7,000. Moreover, this is not the first time respondent has caused financial damage to a party to a real estate transaction. In 2004, he prematurely released a \$91,500 deposit to his client, the seller, to mitigate its financial troubles with other properties it owned. Respondent knew he was not authorized to do so and, admittedly, exercised poor judgement. The real estate deal failed and respondent and his malpractice carrier were forced to pay back the deposit to the buyer. In the Matter of Edward Ralph Bassetti, DRB 12-209 (December 11, 2012) (Slip op. at 2-3). Respondent stipulated to those violations and received a reprimand. In re Bassetti, 213 N.J. 41 (2013).

The conduct that led to respondent's reprimand occurred in 2004. An ethics grievance was filed against him in November 2010, and the Court concluded the matter in February 2013. Thus, respondent should have been on notice that his procedures in handling real estate transactions and their associated monies required more care, or, at a minimum, a review to ensure that other problems would not arise. Respondent admits that at some point after the closing of Santos' mortgage refinance, he became aware that he still was in possession of monies related to the Santos transaction that belonged to someone else, but claims he did not know to whom they should be disbursed. He did nothing, however, to determine the answer to this question. A simple phone call to Santos would have resolved the issue quickly.

September 21, 2015

Page 5 of 5

The Board found that, notwithstanding respondent's willingness to cooperate with the OAE by entering into a consent to discipline, his conduct in this matter cannot be mitigated. Respondent delayed disbursing over \$11,000 from his attorney trust account for six years, resulting in significant financial harm to Santos. The Board determined that, when respondent's conduct here is viewed in the context of his past relevant ethics history, he merits a censure.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated April 9, 2015;
2. Stipulation of discipline by consent, dated May 21, 2015;
3. Affidavit of consent, dated May 15, 2015;
4. Ethics history, dated September 21, 2015.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

Enclosures

EAB/lg

c: Bonnie C. Frost, Chair
Disciplinary Review Board (w/o enclosures)
Charles Centinaro, Director
Office of Attorney Ethics (w/o enclosures)
Maureen G. Bauman, Deputy Ethics Counsel
Office of Attorney Ethics (w/o enclosures)
Adam Jeffrey Adrignolo, Esq., Respondent's Counsel