SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-115
District Docket No. XIV-2014-0175E

IN THE MATTER OF	:	
MARK EDELSTEIN	:	
AN ATTORNEY AT LAW	:	Decision

Argued: June 18, 2015

Decided: November 2, 2015

Jason Saunders 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 by way of a disciplinary stipulation, dated March 30, 2015, between the Office of Attorney Ethics (OAE) and respondent. Respondent admitted violating RPC 1.15(d) and R. 1:21-6 (record keeping violations), RPC 5.3(a), (b), and (c)(2) (failure to supervise a nonlawyer), RPC 5.5(a)(2) (assisting in the unauthorized practice of law), RPC 7.1(a)(1) (making false or misleading communications about the lawyer's services), RPC 7.5(d) (false or misleading law firm name), and RPC 8.4(c) (conduct involving dishonesty, fraud,

deceit or misrepresentation). The OAE recommended that respondent receive a censure. We determine that a three-month suspension is the appropriate form of discipline in this case.

Respondent was admitted to the New Jersey bar in 2007. He has no history of discipline.

On December 21, 2011, Frederick Todd and respondent established the law firm of Todd, Ferentz and Edelstein LLP (TFE). The firm dissolved on December 17, 2013, about two years later. Todd is a licensed attorney in California, as was Ferentz. Ferentz was deceased prior to the creation of the firm.

At the time of the formation of the firm, respondent was an active duty captain in the United States Air Force and served as a chaplain. From December 2010 through July 2011, he was deployed to Afghanistan and Qatar. After his deployment, respondent was stationed at the Offutt Air Force base in Bellevue, Nebraska. On various occasions, he had also been stationed at Maxwell Air Force base in Montgomery, Alabama. Todd was respondent's religious sponsor to the Department of Defense through an entity known as Pirchei Shosanim, Inc. On January 10, 2013, respondent received an honorable discharge from the Air Force.

Respondent neither intended to practice nor actually practiced law with TFE and never received remuneration for his

partnership. He was aware, however, that TFE had no other partner licensed to practice law in New Jersey. Todd was responsible for managing the firm and preparing its financial records, and had personally opened the attorney trust and attorney business account on behalf of TFE.

From December 2011 to December 2013, numerous real estate and mortgage modification clients retained TFE for legal services. Typically, Todd hired per diem attorneys to work on these matters. Respondent neither worked on any client matters nor supervised any attorneys or staff. Although respondent never personally signed any correspondence or other documents, he permitted TFE to use his signature stamp for documents.

Respondent acknowledged to the OAE that his partnership with TFE was a legal fiction created in order to allow Todd to open and operate a law firm in New Jersey. As stated, he did not intend to be an active partner with TFE, but rather to lend his law license to TFE so that Todd could operate the firm. Respondent was willing to participate in this scheme apparently out of fear that Todd would withdraw his sponsorship with the Air Force, threatening respondent's ability to remain a chaplain. Nonetheless, respondent failed to ensure that the firm complied with the RPCs.

In early 2012, TFE represented grievant, Sebastian Pacholec, in connection with a foreclosure/mortgage modification action involving his property in Lakewood, New Jersey. TFE's retainer agreement led Pacholec to believe that respondent was his attorney. Although respondent had not personally signed the retainer agreement, his signature stamp appears on the document. The investigation into this matter, including Pacholec's identification of Todd from a photograph, produced evidence that Todd held himself out to be respondent, without respondent's knowledge.

On January 26, 2012, a letter with respondent's signature stamp extended a settlement offer of $132,500, on behalf of Pacholec, to Brian J. Schaffer, Esq., of the law firm Brembo and Saldutti, LLP. On February 28, 2012, Pacholec's foreclosure/modification action was settled.

In an additional matter, TFE represented Pacholec as a seller in connection with the sale of another property, also in Lakewood. Pacholec entered into a contract for the sale of that property, in April 2013, with Yitzchok Weinfeld and Shifra Edelman. The contract called for a $10,000 deposit to be paid to the seller within three days of its execution. TFE never created a ledger card for this transaction and no attorney oversaw the receipt of the $10,000 deposit from the buyers. Pacholec

communicated exclusively with paralegal Martha Aguilar concerning this transaction. Unbeknownst to respondent, Aguilar misappropriated the $10,000 deposit.

On January 30, 2013, without authority to do so, Aguilar opened a TFE attorney trust account and an attorney business account at a bank different from the bank where the firm maintained its accounts. She had the sole signatory authority on the new accounts. Aguilar deposited the $10,000 real estate deposit into the new attorney business account. Through various checks issued to herself, she proceeded to deplete the account. On April 10, 2014, at the closing of the real estate transaction, Aguilar knew the deposit was not being held in trust. She had closed that account in June 2013.

During the closing, Aguilar notarized a letter dated April 10, 2014, from Kurt Kowalski, Esq., to Pacholec, which stated that the law office of Kowalski "is actively seeking transfer of the initial deposit funds in the amount of $10,000 which were provided to and held by [TFE]." Aguilar knew, at the time that she notarized this letter, that the funds were not held in trust by TFE, but instead, that she had deposited them into a separate bank account and later withdrew them.

Respondent is currently employed as a civilian contractor with the Department of Defense in Texas. He has no plans to

practice law in New Jersey, but would like to maintain his license.

Following a de novo review of the record, we are satisfied that respondent's conduct was unethical. The record contains clear and convincing evidence that he violated RPC 1.15(d), RPC 5.3(a), RPC 7.1(a)(1), RPC 7.5(d), and RPC 8.4(c).

Respondent allowed Todd to use his name and his law license in the unauthorized practice of law. This conduct is a serious violation of RPC 5.5(a)(2). Respondent is also guilty of violating several other rules as a direct consequence of the aforementioned violation.

TFE failed to keep appropriate financial records and controls, in violation of RPC 1.15(d). It did not have adequate procedures in place to monitor the intake of funds required to be held in trust as the deposit for a transaction in which the firm represented the seller of real estate.

Further, the name of the firm violated RPC 7.1(a)(1) and RPC 7.5(d) because it contained respondent's name, despite the fact that he had no role in any of the firm's business.[1]

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[1] Although RPC 7.5(c) prohibits law firm names from containing the name of an attorney not actively associated with the firm (except former attorneys of the firm who died or retired), the stipulation did not address that RPC.

Respondent has admitted that his association with the firm was a legal fiction.

Respondent also violated RPC 8.4(c) by allowing TFE to use his signature stamp on correspondence with clients and opposing counsel, thereby intentionally misrepresenting his affiliation with the firm.

Additionally, RPC 5.3(a) requires a law firm to make reasonable efforts to ensure that the conduct of nonlawyer staff employed by the organization comports with the professional obligations of the lawyer. As the sole licensed attorney at TFE, respondent was responsible for the firm's failure to supervise Aguilar, resulting in the misappropriation of client funds. Respondent, thus, violated RPC 5.3(a).

As to RPC 5.3(b) and (c)(2), however, we find that the stipulated facts do not clearly and convincingly demonstrate a violation of these rules, which apply to attorneys who directly supervise the employees of the firm. It is true that respondent was improperly affiliated with the firm, but the stipulated facts do not support a finding that he was the employees' direct supervisor and, therefore, responsible for ensuring that their conduct was compatible with his obligations as a lawyer. We, thus, do not find a violation of RPC 5.3(b) or RPC 5.3(c)(2).

In summary, respondent violated RPC 1.15(d), RPC 5.3(a), RPC 7.1(a)(1), RPC 7.5(d), and RPC 8.4(c).

When an attorney assists another lawyer in the unauthorized practice of law and commits other RPC violations, the discipline ranges from a reprimand to a lengthy suspension. See, e.g., In re Bevacqua, 174 N.J. 296 (2002) (reprimand for attorney who assigned an unlicensed lawyer to prepare a client for a deposition and to appear on the client's behalf; attorney committed other violations, including gross neglect, pattern of neglect, and lack of diligence; mitigating factors included the attorney's lack of disciplinary history, his inexperience as a lawyer, and his lack of venality); In re Ezor, 172 N.J. 235 (2002) (reprimand for attorney who knowingly assisted his father, a disbarred New Jersey attorney, in presenting himself as an attorney in a New Jersey litigation); In re Hancock, 221 N.J. 259 (2015) (motion for reciprocal discipline; six-month suspension for attorney who, in addition to assisting a disbarred attorney in the unauthorized practice of law, made multiple misrepresentations to judges and failed to prepare a written fee agreement in a civil family action, as required by R. 5:3-5(a) and RPC 1.5(b); this matter was a companion case to the Kronegold matter, infra); In re Kronegold, 197 N.J. 22 (2008) (motion for reciprocal discipline; six-month suspension for

attorney who assisted a disbarred attorney in the unauthorized practice of law; the client had "hired" the disbarred attorney, who paid Kronegold for legal services; Kronegold signed a notice of appeal for the client, at the disbarred attorney's request; the disbarred attorney then prepared and filed a brief with the appellate court, using Kronegold's name and purported signature; prior reprimand); and In re Cermack, 174 N.J. 560 (2003) (on motion for discipline by consent, attorney received a six-month suspension for entering into an agreement with a suspended lawyer that allowed him to continue to represent clients, although the attorney appeared as the attorney of record and handled court appearances; in some cases, the attorney took over the suspended lawyer's cases with the clients' consent and with the understanding that the cases would be returned to the suspended lawyer upon his reinstatement).

In aggravation, Pacholec suffered significant harm. The record does not reveal whether restitution was made to Pacholec for the money stolen by Aguilar. Further, in our view, respondent's willing participation in an agreement to allow a non-New Jersey licensed attorney to practice law in New Jersey is an egregious violation of the rules and undermines the public's trust in the profession as a whole. Hence, a reprimand is insufficient discipline in this matter. Respondent's conduct

is akin to that of Kronegold and Hancock, who each received a six-month suspension.

Kronegold, like Hancock, his co-respondent in the New York disciplinary matter, received a six-month suspension in New Jersey, for assisting a disbarred attorney and not preparing the requisite fee agreement. Kronegold had a disciplinary history - a reprimand and a separate six-month suspension for unrelated conduct. Although Hancock had no disciplinary history, he received identical discipline, based on his misrepresentations to a judge in two matters. Those additional infractions were counterbalanced by Kronegold's disciplinary history. Much like respondent, Kronegold allowed his signature to be used by others in the unauthorized practice of law.

In mitigation, respondent has been a member of the bar since 2007. For a significant amount of this time, he served on active duty with the military. He was deployed to Afghanistan for seven months ending in July 2011. Five months after his return home, TFE was established. Therefore, at the time these violations occurred, he was a relatively young and inexperienced attorney who was likely easily controlled by Todd, his religious sponsor in the military. Further, respondent willingly admitted his wrongdoing by entering into a stipulation with the OAE.

Respondent did not make misrepresentations to a judge, as did the attorney in Hancock, and lacks the history of discipline found in Kronegold. Therefore, in consideration of these distinctions plus the additional mitigation noted above, we find that the appropriate sanction in this case is a three-month suspension.

Member Singer voted to impose a censure. Members Gallipoli and Zmirich voted to impose a one-year 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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Mark Edelstein
Docket No. DRB 15-115

Argued: June 18, 2015

Decided: November 2, 2015

Disposition: Three-month suspension

Members	One-year Suspension	Three-month Suspension	Censure	Disqualified	Did not participate
Frost		X			
Baugh		X			
Clark		X			
Gallipoli	X				
Hoberman		X			
Rivera					X
Singer			X		
Zmirich	X				
Total:	2	4	1		1

Ellen A. Brodsky
Chief Counsel