

# DISCIPLINARY REVIEW BOARD

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RICHARD J. HUGHES JUSTICE COMPLEX  
P.O. BOX 962  
TRENTON, NEW JERSEY 08625-0962  
(609) 815-2920

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

April 28, 2017

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

Re: In the Matter of William J. Torre  
Docket No. DRB 17-029  
District Docket No. XIV-2013-0487E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may deem appropriate) 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 reprimand is the appropriate measure of discipline for respondent's misconduct.

Specifically, respondent maintained an attorney trust account with TD Bank. On September 13, 2013, the OAE received a trust overdraft notification from TD Bank, in respect of that account. As a result, the OAE requested from respondent a written, documented explanation of the overdraft. Although respondent complied with that request, he did not respond to subsequent OAE requests for additional information. Therefore, the OAE conducted a demand audit of respondent's records.

After some investigation, the OAE determined that the trust overdraft was the result of bank error. Specifically, on September 6, 2013, TD Bank credited respondent's trust account with

April 28, 2017

Page 2 of 5

only \$100 of a \$103,900.79 deposit relating to a real estate transaction. Respondent made disbursements against that deposit in connection with the real estate transaction. Although respondent cannot be faulted for the erroneous overdraft, the audit revealed other recordkeeping problems.

The OAE reconciled respondent's trust account using documents obtained from TD Bank, and concluded that, as of April 30, 2014, the trust account had a shortage of \$2,663.12.

On June 2, 2014, the OAE notified respondent of its finding in the above regard, and on the same day, respondent's accountant, Michael Zola, replied that he and respondent had corrected many of the shortcomings that the OAE identified, and that the remainder would be addressed and explained in an upcoming May 2014 reconciliation.

On July 1, 2014, Zola provided the OAE with the May 2014 reconciliation, finding a trust account shortage of \$2,498.66, an amount similar to the OAE's calculation for the prior month. On July 24, 2014, the OAE directed respondent to correct that shortage. Respondent later claimed that it had been reduced to \$126.44 as of July 31, 2014.

The OAE's forensic accounting of respondent's trust account for the sixty-nine months from April 2008 through April 2014, revealed negative balances in every month during that time. Respondent stipulated that the shortages ranged from as little as a penny, in November 2008, to \$7,887.32, in December 2013. Respondent also stipulated to having disbursed over \$16,000 against uncollected funds, referred to in the stipulation as "uncleared deposits," between June 1, 2010 and May 3, 2013.

Although the OAE's and respondent's figures for the chronic negative balances in the trust account were somewhat at odds during the audit process, respondent concedes that the shortages occurred for sixty-nine consecutive months. In addition, he was aware of the shortages all along, because Zola performed monthly reconciliations of his trust account during that time, which respondent reviewed each month. Thus, he stipulated that he should have taken immediate corrective action to address the negative balances.

Respondent also stipulated that the trust account shortages were the result of his overpayments to clients and third parties.

April 28, 2017

Page 3 of 5

The stipulation specifically stated that the overpayments were not the result of any knowing misappropriation on respondent's part.

The chronic shortages in the trust account, which occurred over a period of years, and respondent's disbursements against uncollected funds violated RPC 1.15(a) (failure to safeguard funds and negligent misappropriation of client funds) and RPC 1.15(d) and R. 1:21-6 (recordkeeping).

Finally, respondent was admittedly slow to react to the OAE's several demands that he bring his trust account into compliance with the recordkeeping rules. He took a full year, until April 2015, to correct simple, small trust account shortages the OAE had identified during its audit, a violation of RPC 8.1(b).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited into his trust account \$8,000 for the payoff of a second mortgage on a property that his two clients intended to purchase, he disbursed \$3,500, representing legal fees that the clients owed to him for prior matters, leaving in his trust account \$4,500 for the clients, in addition to \$4,406.77 belonging to other clients; when the transaction failed, the attorney, who had forgotten about the \$3,500 disbursement, issued an \$8,000 refund to one of the clients, thereby invading other clients' funds, a violation of RPC 1.15(a); upon learning of the overpayment, the attorney collected \$3,500 from one of the clients and replenished his trust account; a demand audit of the attorney's books and records uncovered "various recordkeeping deficiencies," a violation of RPC 1.15(d)); In re Wecht, 217 N.J. 619 (2014) (attorney's inadequate records caused him to negligently misappropriate trust funds, violations of RPC 1.15(a) and RPC 1.15(d)); In re Arrechea, 208 N.J. 430 (2011) (negligent misappropriation of client funds in a default matter; the attorney also failed to promptly deliver funds that a client was entitled to receive and ran afoul of the recordkeeping rules by writing trust account checks to himself and making cash withdrawals from his trust account, practices prohibited by R. 1:21-6; although the baseline discipline for negligent misappropriation is a reprimand and, in a default matter, the otherwise appropriate level of discipline is enhanced, a reprimand was viewed as adequate because of the attorney's unblemished professional record of thirty-six years and his cardiac and serious cognitive problems); and In re Gleason, 206 N.J. 139 (2011) (attorney negligently

April 28, 2017

Page 4 of 5

misappropriated clients' funds by disbursing more than he had collected in five real estate transactions; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of his client; the attorney also failed to memorialize the basis or rate of his fee).

A reprimand may still result even if the attorney has prior discipline. See, e.g., In re Toronto, 185 N.J. 399 (2005) (attorney negligently misappropriated \$59,000 in client funds and engaged in recordkeeping violations; the attorney had a prior three-month suspension for conviction of simple assault, arising out of a domestic violence incident, and a reprimand for a misrepresentation to ethics authorities about his sexual relationship with a former student; mitigating factors taken into account) and In re Regojo, 185 N.J. 395 (2005) (attorney negligently misappropriated \$13,000 in client funds as a result of his failure to properly reconcile his trust account records; the attorney also committed several recordkeeping improprieties, commingled personal and trust funds in his trust account, and failed to timely disburse funds to clients or third parties; the attorney had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies; mitigating factors considered).

In the instant matter, the Board considered, in aggravation, respondent's one-year suspension in January 2016 for dissimilar misconduct. While that matter wended its way through the disciplinary system (the DEC docketed it in 2011; oral argument before the Board occurred in October 2014), respondent was replying slowly to the OAE's frequent demands for action in this matter. Under those circumstances, respondent should have been more proactive in curing the deficiencies here.

In mitigation, respondent actively participated in the audit process with the aid of an accountant, provided documents to the OAE, including monthly reconciliations performed by his accountant, and ultimately cleared up all outstanding recordkeeping deficiencies, some of which were quite small. He also stipulated to his misconduct and consented to discipline, thereby saving disciplinary resources. Therefore, the Board concluded that a reprimand is appropriate.


April 28, 2017

Page 5 of 5

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated January 25, 2017.
2. Stipulation of discipline by consent, dated January 23, 2017.
3. Affidavit of consent, dated January 16, 2017.
4. Ethics history, dated April 28, 2017.

Very truly yours,

  
Eileen A. Brodsky  
Chief Counsel

EAB/paa

c: w/o enclosures

Bonnie C. Frost, Chair (via e-mail)  
Disciplinary Review Board  
Charles Centinaro, Director (via e-mail)  
Office of Attorney Ethics  
HoeChin Kim, Deputy Ethics Counsel (via e-mail)  
Office of Attorney Ethics  
Gerard E. Hanlon, Respondent's Counsel (via e-mail)