

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-251
District Docket No. XIV-2016-0625E

In The Matter Of
John E. Maziarz
An Attorney At Law

Decision

Argued: October 18, 2018

Decided: January 9, 2019

Steven Zweig 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 was before us by way of a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent admitted violating RPC 1.15(a) (commingling and negligent misappropriation); RPC 1.15(d) and R. 1:21-6 (recordkeeping); RPC 8.1(b) (failure to cooperate with disciplinary

authorities); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons stated below, we determined to impose a reprimand.

Respondent was admitted to the Pennsylvania bar in 1972 and to the New Jersey bar in 1977. He has no history of final discipline.

On July 12, 2018, respondent and the OAE entered into a disciplinary stipulation. The facts, as taken from the stipulation, are as follows.

On February 16, 2016, the OAE conducted a random audit of respondent's books and records, which revealed numerous recordkeeping deficiencies. On February 24, 2016, the OAE sent a letter to respondent notifying him of the deficiencies and requiring him to confirm, within forty-five days, his correction of those deficiencies.¹ On March 30, 2016, respondent informed the OAE that he had corrected the identified deficiencies.

Thereafter, on October 17, 2016, PNC Bank notified the OAE of an overdraft in respondent's attorney trust account (ATA). The overdraft occurred on October 13, 2016, after ATA check number 1008 for \$28,000, payable to McDowell Posternock Apell & Detrick, was presented for payment against

¹ The stipulation erroneously refers to the date of the letter as February 16, 2016.

respondent's ATA, overdrawing it by \$2,185.04. Although the OAE requested a written explanation for the overdraft, respondent did not reply.

On November 17, 2016, the OAE again directed respondent to provide a written explanation for the overdraft. Respondent replied to the OAE four days later, but failed to include an explanation for the overdraft. Therefore, by letter dated December 13, 2016, the OAE scheduled a demand audit for January 4, 2017, and requested respondent to produce all R. 1:21-6 records for the period from February 1, 2016 to June 4, 2017.

Because respondent did not provide all of the documents requested during the January 4, 2017 audit, the OAE sent him a letter, dated July 13, 2017, scheduling a continuation of the audit for July 24, 2017. The audit period for the second meeting was expanded to January 1, 2016 to July 24, 2017. Respondent again failed to produce all of the requested records, including three-way reconciliations for January 1, 2016 to July 24, 2017.

Following the demand audit, the OAE identified the following recordkeeping violations:

- a. No cash receipts or cash disbursements journals, in violation of R. 1:21-6(c)(1)(A);
- b. Client ledger cards missing and some not fully descriptive, in violation of R. 1:21-6(c)(1)(B);

- c. No monthly three-way trust account reconciliations with client ledger cards, in violation of R. 1:21-6(c)(1)(H);
- d. No attorney business account from August 1, 2016 through November 30, 2016, in violation of R. 1:21-6(a)(2);
- e. Designation on the attorney business account was improper, in violation of R. 1:21-6(a)(2); and
- f. Attorney personal funds were commingled in the trust account, in violation of RPC 1.15(a).²

These deficiencies were largely the same as those discovered during the February 16, 2016 random audit. Following that random audit, and contrary to his representation to the OAE, on March 30, 2016, that he had corrected that particular deficiency, respondent still had not prepared monthly three-way reconciliations.

The Schwartz Estate

On December 14 and 16, 2015, respondent deposited \$1,000 and \$9,000, respectively, into his ATA in connection with the Estate of Doris Schwartz (the

² The record contains no information identifying the personal funds respondent allegedly commingled with his trust funds. Attorneys are permitted to deposit limited personal funds in their trust accounts to cover bank fees (generally not to exceed \$300).

Estate). A reconstructed three-way reconciliation of respondent's ATA showed that, as of January 2016, he should have been safeguarding \$10,000 for the Estate. Respondent's ATA, however, held only \$9,227.13 for the Estate, representing a \$772.87 shortage. The deficit was resolved on October 18, 2016, when respondent deposited personal funds to make the ATA whole.³ Respondent's failure to keep up-to-date and accurate ATA records caused his negligent misappropriation of \$772.87 in trust funds belonging to the Estate.

The Joseph Sensi Matter

On June 16 and June 17, 2016, respondent received deposits of \$76,000 and \$1,000, respectively, to be held in escrow in connection with a real estate transaction involving his client, Joseph Sensi. Respondent failed to deposit the latter check until December 16, 2016.⁴ Hence, the balance of the Sensi sub-account was \$76,000 when, on July 6, 2016, respondent disbursed ATA check number 2337 for \$77,000 to Sterling Title Company. The \$77,000 disbursement posted to respondent's ATA on July 7, 2016, thereby invading funds respondent was safeguarding for four other clients.

³ The stipulation identified neither the nature of the disbursement that caused the invasion nor the payee of the disbursement.

⁴ The stipulation did not state a reason for the six-month delay of the deposit.

On July 21, 2016, PNC Bank charged respondent's ATA \$72.17 for check printing fees. Respondent did not have personal funds in the account sufficient to cover the fee and, once again, the funds of those same four clients were invaded.⁵ Because respondent did not prepare three-way reconciliations, from January 2016 to October 2016, he was unaware that he had negligently misappropriated client funds.

The parties stipulated that, based on the aforementioned facts, respondent violated RPC 1.15(a) by negligently misappropriating client funds and by commingling personal and client funds in his attorney trust account. Further, respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements set forth in Rule 1:21-6. He also violated RPC 8.1(b), by failing to cooperate in the production of financial records required by R. 1:21-6(h) and (i). Finally, respondent violated RPC 8.4(c), when he misrepresented to the OAE that he had corrected the deficiencies identified during the February 2016 random audit.

⁵ The stipulation in this respect appears to be inconsistent with the OAE's charge (and respondent's admission) that respondent commingled personal and trust funds.

The OAE submits that respondent's misconduct warrants a reprimand or such lesser discipline as we deem appropriate. In mitigation, it notes that respondent has no disciplinary history.

The stipulation contains sufficient facts to support the finding that respondent violated RPC 1.15(a), RPC 1.15(d) and R. 1:21-6, RPC 8.1(b), and RPC 8.4(c).

The demand audits of respondent's ATA revealed that, as stipulated he commingled personal and client funds. Although no further detail was given regarding these funds, the misconduct violated RPC 1.15(a).

Further, in connection with the Schwartz Estate, respondent negligently misappropriated \$772.87 in Estate funds caused by his failure to keep accurate ATA records.

Respondent was further guilty of negligent misappropriation in the Sensi matter. Specifically, respondent received from his client two escrow checks, totaling \$77,000, relative to a real estate deposit. Respondent did not deposit one of those checks (\$1,000) into his trust account until six months later. In the interim, he issued his trust account check for \$77,000 to Sterling Title Company in connection with the transaction. Thus, when Sterling Title Company negotiated the \$77,000 check that respondent had issued against the \$76,000 balance on account for Sensi, respondent invaded other clients' funds.

Subsequently, PNC debited respondent's ATA \$72.17 for check printing fees. He did not have personal funds in his ATA sufficient to cover that charge and therefore, that debit, too, invaded client funds. Respondent's misconduct concerning the Schwartz Estate, the Sensi real estate matter, and the check printing fees resulted in negligent misappropriation of client funds, in violation of RPC 1.15(a).

Additionally, the 2017 demand audits revealed the following recordkeeping deficiencies: (1) respondent failed to keep receipts and disbursements journals; (2) client ledger cards were either missing or incomplete; (3) he failed to maintain monthly three-way reconciliations of his ATA; (4) he failed to maintain a separate business account during a four-month period in 2016; and (5) the designation on his business account was improper. Respondent's misconduct in this regard violated RPC 1.15(d) and R. 1:21-6.

The triggering event for the 2017 demand audits was an overdraft notification from PNC Bank. After initiating its investigation into the matter, the OAE requested, on two occasions, that respondent provide a written explanation for the overdraft. He ignored the first request. Although he provided a written response to the second request, it was bereft of any explanation for the overdraft. Moreover, respondent failed to produce the R. 1:21-6 records that the

OAE requested. Thus, respondent is guilty of a failure to cooperate, a violation of RPC 8.1(b).

Finally, the recordkeeping deficiencies identified in the 2017 demand audits were mostly the same as those identified in a 2016 random audit of respondent's books. Following that audit, on March 30, 2016, respondent sent the OAE a letter confirming that he had corrected these issues. Based on the 2017 audits, when respondent sent that letter, he knew or should have known that he had not corrected the deficiencies and therefore, made a misrepresentation to the OAE, a violation of RPC 8.4(c).

The only issue remaining is the appropriate discipline for respondent's violations of RPC 1.15(a) and (d), RPC 8.1(b), and RPC 8.4(c).

Generally, a reprimand is imposed for recordkeeping deficiencies that result in negligent misappropriation of client funds. See, e.g., In re Cameron, 221 N.J. 238 (2015) (after the attorney had deposited \$8,000 into his trust account 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 deal fell through, the attorney, who had forgotten about the \$3,500 disbursement, issued an \$8,000 refund to one of the clients, thereby invading the 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)); and In re Gleason, 206 N.J. 139 (2011) (attorney negligently misappropriated clients' funds by disbursing more than he had collected in five real estate transactions in which he represented a client; the excess disbursements, which were the result of the attorney's poor recordkeeping practices, were solely for the benefit of the client; the attorney also failed to memorialize the basis or rate of his fee).

A reprimand or censure is typically imposed for a misrepresentation to disciplinary authorities, so long as the lie is not compounded by the fabrication of documents to conceal the misconduct. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (attorney reprimanded for misrepresenting to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who lied to the OAE during an ethics investigation (1) of the attorney's fabrication of an arbitration award to mislead

his partner, and (2) of the attorney's failure to consult with a client before permitting two matters to be dismissed); In re Powell, 148 N.J. 393 (1997) (attorney reprimanded for violations of RPC 8.1(b) and RPC 8.4(c), based on his misrepresentation to the district ethics committee, during its investigation of the client's grievance, that his associate had filed a motion to reinstate an appeal when the motion had not yet been filed; the attorney's misrepresentation was based on an assumption, rather than an actual conversation with the associate about the status of the matter; the attorney also was guilty of gross neglect, lack of diligence, and failure to communicate with the client); In re Otlowski, 220 N.J. 217 (2015) (censure imposed on attorney who had misrepresented to an individual lender of his client and to the OAE that funds belonging to the lender and his co-lenders, which had been deposited into the attorney's trust account, were frozen by a court order when, to the contrary, they had been disbursed to various parties, and who also made misrepresentations on an application for professional liability insurance; violations of RPC 8.1(a) and RPC 8.4(c); mitigating factors included the passage of time, the absence of a disciplinary history in the attorney's lengthy career, and his public service and charitable activities); In re Schroll, 213 N.J. 391 (2013) (censure imposed on attorney who misrepresented to a district ethics committee secretary that the personal injury matter in which he was representing the plaintiff was pending, when he knew

that the complaint had been dismissed over a year earlier; for the next three years, the attorney continued to mislead the committee secretary that the case was still active; in addition, the attorney misrepresented to the client's former lawyer that he had obtained a judgment of default against the defendants; the attorney also was guilty of gross neglect, lack of diligence, and failure to reply to the client's numerous attempts to obtain information about her case; no prior discipline); and In re Falzone, 209 N.J. 420 (2012) (attorney censured for lying to the OAE during its investigation; the attorney also failed to comply with the recordkeeping rules and to supervise his wife-secretary, thereby enabling her to steal \$279,000 from his trust account).

Here, respondent's recordkeeping violations and negligent misappropriation of client funds, alone, warrants a reprimand. Although greater discipline might be warranted based on respondent's additional violations of RPC 8.1(b) and RPC 8.4(c), we considered several mitigating factors.

Specifically, respondent has been a member of the bar for forty-one years with no history of discipline. Additionally, respondent has admitted his wrongdoing and entered into a disciplinary stipulation, thereby saving valuable resources. At oral argument before us on October 18, 2018, respondent offered yet more mitigation relating to serious medical issues. Between 2014 and 2016, he suffered two strokes that impacted his ability to practice. He stressed that he

offered this mitigation by way of explanation rather than excuse, confirmed that he takes responsibility for his violations, and agreed that a reprimand is the appropriate quantum of discipline.

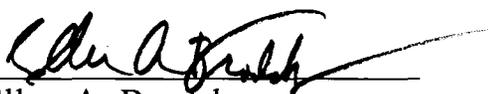
Therefore, considering the totality of respondent's misconduct in the context of the mitigation presented, we determine to impose a reprimand. We also determine to require respondent to provide to the OAE, on a quarterly basis, monthly reconciliations of his books and records for two years.

Members Gallipoli, Rivera, and Zmirich voted to impose a censure.

Member Joseph 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

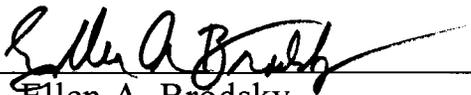
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Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	Recused	Did Not Participate
Frost	X			
Clark	X			
Boyer	X			
Gallipoli		X		
Hoberman	X			
Joseph				X
Rivera		X		
Singer	X			
Zmirich		X		
Total:	5	3	0	1


Ellen A. Brodsky
Chief Counsel