Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-016
District Docket No. XIV-2018-0449E

In the Matter of	:
Steven Jeffrey Kwestel	:
An Attorney at Law	:

Decision

Argued: July 16, 2020

Decided: December 9, 2020

Lauren Martinez appeared in 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 on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following respondent's six-month suspension, by consent, in New York. The OAE asserted that respondent was found guilty of violating the equivalents of New Jersey RPC 1.1(a) (gross neglect); RPC 1.15(a) (two instances) (commingling and failure to

safeguard property belonging to a client or third party); RPC 1.15(d) (two instances) (failure to comply with recordkeeping requirements); RPC 5.3(b) and (c)(1) (failure to properly supervise a nonlawyer assistant); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). On July 5, 2018, respondent was reinstated to the practice of law in New York.

For the reasons set forth below, we determine to grant the OAE's motion and impose a reprimand.

Respondent was admitted to the New Jersey bar in 1997 and to the New York bar in 1996. During the relevant timeframe, his firm, Zucker & Kwestel, LLC, maintained law offices in the Bronx, New York, and in Hackensack, New Jersey.

Since November 17, 2014, respondent has been ineligible to practice law in New Jersey for failing to comply with continuing legal education requirements. From August 24, 2015 to July 16, 2020, the date of oral argument before us, he was ineligible for failing to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

In 1998, respondent and Zucker opened their firm, with offices in the Bronx, New York, and Hackensack, New Jersey. Zucker is not licensed in New Jersey. Although respondent and Zucker maintained the Hackensack office, respondent neither practiced law in New Jersey nor maintained an attorney trust

account in this State. The ethics charges in this matter stem from respondent's 2003 hiring of a nonlawyer, Mark Teitelbaum, to manage the firm's bank accounts and financial books and records, from the New Jersey office location.

When respondent initially trained Teitelbaum, he properly supervised Teitelbaum's work. Thereafter, respondent failed to regularly review, audit, and reconcile the firm's attorney trust accounts, or to supervise Teitelbaum. Indeed, as time progressed, respondent delegated more responsibility to Teitelbaum, allowed him to make online bank account transfers, and authorized him to be a signatory on the firm's attorney trust account. Between 2009 and 2013, as a result of respondent's utter abdication of his recordkeeping duties, Teitelbaum misappropriated more than $2.7 million from the firm's accounts, including the attorney trust account, comprising more than $2.1 million in client funds, in more than 200 client matters, and more than $573,000 in law firm funds. Additionally, between 2005 and 2009, respondent improperly deposited more than $15,000 in personal funds in his firm's attorney trust account, out of ignorance of the Rules of Professional Conduct, rather than for an improper purpose.

Teitelbaum's scheme came to light when, in June 2013, TD Bank notified the OAE of a $274.47 overdraft of respondent's New York attorney trust account. Teitelbaum intercepted a letter that the OAE had sent to respondent in

connection with the overdraft and replied to it, without respondent's knowledge. On June 27, 2013, because the TD Bank account was a New York account, the OAE forwarded the notice of overdraft to the Lawyers' Fund for Client Protection of the State of New York.

By letter dated July 30, 2013, the Departmental Disciplinary Committee for the Appellate Division of the Supreme Court, State of New York, First Judicial Department (the Committee) directed respondent and Zucker to produce certain financial records. Respondent maintained that he first learned that the overdraft had resulted from Teitelbaum's theft when, on August 4, 2013, Teitelbaum's criminal attorney contacted him.

Thereafter, respondent and Zucker hired civil counsel, who negotiated full restitution to be paid by Teitelbaum. They also hired a forensic accountant, who reconstructed the firm's accounts and confirmed that Teitelbaum had stolen the more than $2.7 million. By April 2014, Teitelbaum had made full restitution.

Respondent and Zucker also hired counsel for the New York disciplinary matters that had commenced against them. On July 25, 2014, respondent replied to the Committee's July 30, 2013 letter, admitting the facts of Teitelbaum's thefts and several violations of the New York Rules of Professional Conduct.

On October 11, 2016, the Committee filed a notice and statement of charges against respondent, alleging that he had failed to safeguard client and

third-party funds (NY RPC 1.15(a)); failed to supervise, and, thus, intentionally misappropriated and/or converted funds (NY RPC 1.15(a), NY RPC 8.4(c), and NY RPC 5.3(b)); allowed a nonlawyer to execute online transfers from escrow (NY RPC 5.3(b)(1)); permitted a nonlawyer to be signatory of an attorney account (NY RPC 1.15(e)); deposited personal funds into escrow, and thus commingled monies (NY RPC 1.15(b)); and failed to meet professional responsibilities, adversely affecting his fitness as a lawyer (NY RPC 8.4(h)). On November 2, 2016, respondent filed an answer and admitted having violated every charged NY RPC.

On March 30, 2017, the parties filed a joint petition in support of discipline by consent, and respondent stipulated to the imposition of a six-month suspension in New York.

On August 15, 2017, the Supreme Court of New York, Appellate Division, First Judicial Department suspended both respondent and Zucker for six months, in accordance with the joint petition. Respondent served his suspension and, on July 5, 2018, was reinstated to the practice of law in New York.

Thereafter, on August 27, 2018, the OAE notified respondent that he was administratively ineligible to practice law in New Jersey and had violated R. 1:20-14(a)(1) by failing to promptly report his New York discipline to the OAE. By letter dated September 21, 2018, respondent replied to the OAE, claiming

that he was unaware of his reporting obligation, stating that he was in the process of paying all outstanding fees required to cure his ineligibility in New Jersey, and enclosing character references.

The OAE asserted that respondent's New York RPC violations are identical or equivalent to New Jersey RPC 1.1(a); RPC 1.15(a) and (d); RPC 5.3(b) and (c)(1); and RPC 8.4(c).[1] Relying on R. 1:20-14(a)(5), the OAE argued that the stipulated facts set forth in the New York joint petition should be accepted as undisputed facts for purposes of the OAE's motion for reciprocal discipline. The OAE further asserted that, in New Jersey, a reprimand is the typical level of discipline in cases of negligent misappropriation accompanied by recordkeeping deficiencies. Noting that reliance on nonlawyer staff does not excuse neglectful or purposeful misappropriation, the OAE asserted that disciplinary sanctions ranging from admonition to suspension have been imposed for an attorney's failure to supervise nonlawyer staff.

In recommending that a reprimand be imposed on respondent, the OAE primarily relied on In re Hofing, 139 N.J. 444 (1995). In that case, the attorney similarly failed to supervise a bookkeeper, who then embezzled client funds. Hofing was unaware of the bookkeeper's theft due to his failure to review bank trust account statements. In issuing only a reprimand, the Court considered

[1] New Jersey has no equivalent to NY RPC 8.4(h).

mitigating factors, including Hofing's lack of disciplinary record; reputation among his peers; cooperation with the investigation; and prompt restitution.

Here, in mitigation, the OAE noted that respondent facilitated restitution to the clients; promptly hired a forensic accountant to reconcile the firm's accounts; showed remorse and took responsibility for his actions; admitted his wrongdoing and cooperated with the Committee in its investigation; provided character references; and has no prior discipline in more than twenty years at the bar. Also, respondent has been reinstated to the New York bar, after serving his suspension.

In aggravation, the OAE asserted that respondent failed to report his New York discipline, as R. 1:20-14(a)(1) requires; that the violations occurred over a long period of time, due to respondent's failure to properly supervise the firm's bookkeeping; and that respondent admitted comingling personal and escrow funds.

During oral argument before us, respondent requested that we impose an admonition for his misconduct but remarked that he would understand if we determined to impose a reprimand.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this

state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In New York, the standard of proof in attorney disciplinary matters is a fair preponderance of the evidence. In re Capoccia, 453 N.E.2d 497, 498 (N.Y. 1983). We note that, in this matter, respondent stipulated to his misconduct.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter, because the unethical conduct warrants substantially different discipline.

Respondent admitted that he commingled personal funds in his attorney trust account and failed to safeguard client funds, violations of RPC 1.15(a); wholly failed to properly supervise Teitelbaum, in violation of RPC 5.3(b); and allowed Teitelbaum to execute online transfers of funds and to act as a signatory on the escrow account, violations of RPC 1.15(d). A review of the record supports these admissions.

Because, in our view, the facts in the record do not support the OAE's argument that respondent also violated RPC 1.1(a), RPC 5.3(c)(1), and RPC 8.4(c), we dismiss those charges. RPC 1.1(a) applies to client matters, not recordkeeping or supervision of nonlawyer employees. The record contains no evidence, and the OAE does not assert, that respondent mishandled substantive client matters. RPC 5.3(c)(1) holds an attorney responsible for the conduct of a nonlawyer when the attorney orders or ratifies the conduct. The record contains no evidence that respondent either ordered or ratified Teitelbaum's theft. Moreover, the violations of RPC 1.15(a) and RPC 5.3(b) adequately address respondent's liability for Teitelbaum's dishonest and criminal conduct, in that respondent created an environment, through the dereliction of his own,

nondelegable duties, wherein Teitelbaum could execute his criminal scheme. Since we determine that respondent neither ordered nor ratified Teitelbaum's conduct, the OAE's theory of accomplice liability for a violation of RPC 8.4(c) also fails, because respondent's conduct was not intentional.

In sum, we find that respondent violated the equivalent of New Jersey RPC 1.15(a) (two instances), RPC 5.3(b), and RPC 1.15(d) (two instances). We determine to dismiss the RPC 1.1(a), RPC 5.3(c)(1), and RPC 8.4(c) charges. The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Although respondent consented to a six-month suspension from practicing law in New York, the OAE recommended a reprimand for his violations of the New Jersey Rules of Professional Conduct. New Jersey disciplinary precedent supports that position.

The core of respondent's misconduct is his failure to supervise his nonlawyer bookkeeper. Attorneys who fail to supervise their nonlawyer staff typically receive discipline ranging from an admonition to a reprimand, depending on the presence of other ethics infractions, prior discipline, or aggravating and mitigating factors. See, e.g., In the Matter of Vincent S. Verdiramo, DRB 19-55 (January 21, 2020) (admonition; as a result of the attorney's abrogation of his recordkeeping obligations, his nonlawyer assistant

was able to steal more than $149,000 from his trust account; mitigating factors were the attorney's prompt actions to report the theft to affected clients, law enforcement, and disciplinary authorities; his deposit of $55,000 in personal funds to replenish the account; his extensive remedial actions; his acceptance of responsibility for his misconduct; and his unblemished, thirty-three year career); In re Bardis, 210 N.J. 253 (2012) (admonition; as a result of the attorney's failure to review and reconcile his attorney records, his bookkeeper was able to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account; numerous other corrective actions; his acceptance of responsibility for his misconduct; his deep remorse and humiliation for not having personally handled his own financial affairs; and his lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition; the attorney delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and stole $272,000 in client funds); In re Deitch, 209 N.J. 423 (2012) (reprimand; as a result of the attorney's failure to supervise his paralegal-wife and his poor recordkeeping practices, $14,000 in client or third-party funds were invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks issued to her by forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340

(2005) (attorney reprimanded for failure to supervise nonlawyer employees, which led to the unexplained misuse of client trust funds and to negligent misappropriation; the attorney also committed recordkeeping violations); and In re Bergman, 165 N.J. 560 (2000) and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys reprimanded for failure to supervise bookkeeper/office manager, who embezzled almost $360,000 from the firm's business and trust accounts and from a guardianship account; the attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement).

Here, respondent also commingled personal and escrow funds in his attorney trust account. Ordinarily, such misconduct will be met with an admonition. See, e.g., In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (commingling of personal loan proceeds in the attorney trust account, in violation of RPC 1.15(a); recordkeeping violations also found; the commingling did not impact client funds in the trust account); In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney had a trust account shortage of $1,801.67; because the attorney maintained more than $10,000 of earned legal fees in his trust account, no client or escrow funds were invaded; the attorney was guilty of commingling personal and trust funds and

failing to comply with recordkeeping requirements); and In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (an OAE audit revealed that, during a two-year period, the attorney had commingled personal and client funds in his trust account, in violation of RPC 1.15(a), by routinely using the account for business and personal transactions; recordkeeping deficiencies also found, violations of RPC 1.15(d) and R. 1:21-6).

As the above New Jersey disciplinary precedent demonstrates, a reprimand is the baseline level of discipline for respondent's misconduct. However, to craft the appropriate discipline in this case, we also consider both mitigating and aggravating factors. In mitigation, respondent has no prior discipline in more than twenty years at the bar, and promptly took responsibility for his misconduct, in the New York disciplinary proceedings, upon learning of Teitelbaum's crimes. In aggravation, respondent failed to notify the OAE of his New York discipline, and his complete abdication of his recordkeeping obligations allowed Teitelbaum to steal almost $3 million over a prolonged period of time.

On balance, we determine that a reprimand is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

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
Bruce W. Clark, Chair

By: **/s/ Ellen A. Brodsky**
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Steven Jeffrey Kwestel
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Disposition: Reprimand

Members	Reprimand	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph	X		
Petrou	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9	0	0

/s/ Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel