

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 97-487

---

IN THE MATTER OF  
DANIEL ELLIS  
AN ATTORNEY AT LAW

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Decision

Argued: March 19, 1998  
Decided: November 2, 1998

Brian D. Gillet 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 the Board by way of disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE"), in which respondent admitted that he negligently misappropriated client trust funds, in violation of RPC 1.15(a) and (d) (safekeeping property), and that his attorney records did not comply with R.1:21-6.

Respondent was admitted to the New Jersey bar in 1974. At the relevant times, he maintained a law practice in Princeton and Warren, New Jersey. Respondent has no history of discipline.

An investigation of respondent's attorney records ensued when the OAE learned that respondent had a trust account overdraft. This information came to light by letter dated May 17, 1996 from Newark's Corporation Counsel. Respondent had submitted an attorney trust account check in connection with a real estate closing that he was handling. Following the deposit of the check, it was returned for insufficient funds. Respondent's explanation for the overdraft was inadequate, prompting a demand audit by the OAE. After the initial audit, on August 1, 1996 the OAE informed respondent of numerous "serious" recordkeeping deficiencies and directed him to bring his records into compliance with the rules within forty-five days. Follow-up audits were also conducted to insure that respondent had corrected the deficiencies. As a result of further investigation, including a series of letters and meetings between respondent and the OAE, the following facts were revealed:

Respondent's trust account problems started when, on November 29, 1995, he issued checks in connection with a real estate closing for a client, Kyuang Ja An, that exceeded the funds on deposit for the closing. Respondent attributed the problem to errors he had made on the RESPA statement. He assured the OAE that he would institute better control of his records.

On April 17, 1996 respondent issued two checks drawn on his trust account in behalf of a client, Francis R. Balon. Respondent anticipated that the closing would take place on that day and that, on the same or the following day, he would deposit into his trust account an amount sufficient to cover the disbursements. Respondent, therefore, issued check number 209 for \$1,049.22 to the "City of Newark-Water" and check number 210 for

\$15,688.88 to the "City of Newark-Taxes." Due to a disagreement between the mortgagee and the title company, however, the closing did not take place until a week later. Because the mortgage funds were not deposited when anticipated, checks numbered 209 and 210 were returned for insufficient funds.

On April 17, 1996, when the checks were written, respondent's trust account balance was \$148,215.40. The funds consisted of a deposit made that same date, in the amount of \$146,145.83, and an opening balance of \$2,069.57. The deposited funds belonged to clients David and Karen DiMicco. The opening balance appeared to belong solely to another client, Kyuang Ja An. On April 17, 1996 respondent issued checks totaling \$150,127.73 on behalf of the DiMiccos, despite having only \$146,145.83 on deposit in their behalf. The DiMicco disbursements were in addition to the disbursements made by respondent to the City of Newark on behalf of Balon, for whom respondent had no trust funds on deposit.

Respondent explained that two trust account checks were returned for insufficient funds because he was having serious and continuing problems in properly maintaining his trust account and other books and records. The OAE's subsequent interviews with respondent and respondent's additional submission of records confirmed his failure to maintain his trust and business account records in accordance with R.1:21-6.

Thereafter, respondent retained an accountant and provided the OAE with reconstructed client ledger cards and cash receipt and disbursement books for his trust account. The ledger cards did not contain running balances. Respondent also gave the OAE a reconciliation of his trust account, covering the period from January 1, 1996 to July 31,

1996, inclusive. The reconciliation showed that respondent was continually out of trust from April through July 1996.

As of July 31, 1996 respondent had a net client ledger balance of \$5,938.02. This balance was comprised of a debit balance of \$1,100.65 for client Balon and \$797.33 for clients John Martin and Gail Russo. There was also a credit balance of \$7,836 for clients Raymond and Helen Martineau. Respondent was, therefore, out of trust by \$1,897.98, despite his deposit of \$2,000 in personal funds on May 24, 1996.

During the course of one of the OAE audits, respondent admitted that he had made automated teller machine ("ATM") cash withdrawals from his trust account during the period from January to July 1996. Respondent claimed that the withdrawals were against attorney fees kept in his trust account and from the deposit of other attorneys fees into his trust account. Respondent was able to identify two such deposits to his trust account, totaling \$2,407.90. He represented that the deposits were attorneys fees, against which the ATM withdrawals were made. However, respondent was unable to identify any specific deposits to account for a \$400 ATM withdrawal made earlier, in January 1996. As of January 31, 1997 respondent had a negative balance of \$312.77 in his trust account.

On May 13, 1997 respondent submitted to the OAE his revised and corrected books and records for the period January 1995 through March 31, 1997. The records were prepared through the use of a computerized trust accounting program and presented an accurate accounting of respondent's trust account balances. It was reconciled to respondent's attorney trust account. The trust account had a balance of \$1,935.03 as of March 31, 1997.

Respondent's records showed, however, that he should have had client funds of \$7,069.81 on deposit in his trust account. His records also revealed that he had expended \$5,134.78 from his trust account on behalf of clients for whom he had no funds on deposit.

During a May 1997 interview, respondent acknowledged that his attorney trust account had been out of trust continuously since December 1995. He further acknowledged that his failure to maintain his books and records in accordance with the rules had resulted in a recurring negligent misappropriation of client funds.

In a June 2, 1997 letter to the OAE, respondent represented that he was attempting to correct outstanding problems in his trust account and that he was maintaining a trust receipts and disbursements book, bank statements, canceled checks and deposit tickets for the trust account and operating account and a running cash balance in the trust account check book, as well as maintaining and reconciling client ledger sheets and accounts. Respondent stated that, since the beginning of 1997, he had been depositing funds for professional services into his operating account and had not commingled trust and personal funds.

Notwithstanding respondent's new accounting practices, a new trust account overdraft occurred. On July 24, 1997 respondent met with the OAE and explained that he had unknowingly permitted his bank to debit his trust account for ATM withdrawals made against his business account. The OAE directed respondent to instruct the bank to cease the practice. The OAE also informed respondent of specific actions that had to be taken to properly balance his trust account.

Respondent's own trust reconciliations as of August 31, 1997 showed that he should have been holding a total of \$5,478 in credit balances for seven clients and that he had disbursed \$3,479 on behalf of clients for whom he did not hold funds, as well as \$343.60 to himself. As of September 24, 1997 respondent had deposited an additional \$343.60 into his trust account, thereby reducing to zero the amount of funds that he had withdrawn for himself against client trust funds.

Respondent also submitted documentation to the OAE to show that he had notified various clients that he was holding trust funds due to them and would deliver such funds within a reasonable time. The following clients were advised of the amounts due to them: (1) Kyuang Ja An - \$2,102.32; (2) John Martin - \$1,022.67; (3) Scales/Wyatt - \$591.48; (4) Lippay - \$129; and (5) Sterling Mortgage - \$150.

Respondent admitted the above facts and stipulated that his conduct constituted negligent misappropriation of client trust funds. Respondent also admitted the following recordkeeping deficiencies, in violation of R.1:21-6: 1) failure to maintain a trust receipts book; 2) failure to maintain a trust disbursements book; 3) failure to maintain bank statements, canceled checks and deposit tickets for the business and trust accounts; 4) failure to maintain a running cash balance in the trust account check book; 5) failure to maintain clients' trust ledger sheets; 6) failure to prepare and reconcile a schedule of clients' ledger accounts to trust account bank statements; 7) failure to deposit funds received for professional services into the business account; 8) commingling of personal and trust funds; and 9) presence of debit balances in the trust account ledger, indicating advances made on

behalf of clients from respondent's funds held in the trust account.

By way of explanation for his ethics offenses respondent submitted a summary of his employment history, which underscored his lack of experience in dealing with the mechanics of running a law office. Respondent urged the imposition of only a reprimand, coupled with the requirement that he complete the accounting portion of the ICLE Skills and Methods courses.

The OAE did not find any aggravating factors. It noted that respondent has no history of discipline. Based on the fact that respondent had been out of trust since December 1995, at times up to nearly \$5,000, the OAE recommended a three-month suspension. In support of its position, the OAE relied on In re Brandon-Perez, 131 N.J. 454 (1993) (three-month suspension where attorney was grossly negligent in her recordkeeping practices and was out of trust up to approximately \$28,000 due to shoddy recordkeeping practices); In re Gallo, 117 N.J. 365 (1989) (attorney suspended for three months for wholly inadequate accounting procedures that resulted in commingling client funds and personal funds, as well as inadvertent use of client funds; attorney was out of trust for approximately six months); and In re James, 112 N.J. 580 (1988) (attorney suspended for three months for being grossly negligent in his accounting system, which led to a negative balance in his trust account; he was out of trust between approximately \$1,500 and \$7,000 for two years and five months). But see In re Librizzi, 117 N.J. 481 (1990) (six-month suspension where attorney was grossly negligent in maintaining his trust account records and was out of trust by \$25,000 for approximately two years). The OAE also requested that respondent be required to provide

quarterly trust account reconciliations to that office for a two-year period.

\* \* \*

Upon a de novo review of the record, the Board is satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical.

Although respondent's violations were of a continuing nature, spanning a significant time period, the Board has accorded great weight to the fact that respondent lacked experience with the mechanics of running a law practice. The Board has also considered respondent's cooperation with the OAE and the steps he has taken to correct his deficient bookkeeping practices. The Board, therefore, has determined that this matter is more akin to cases where reprimands have been imposed. See In re Fucetola, 147 N.J. 255 (1997) (negligent misappropriation of clients' trust funds due to attorney's failure to maintain proper trust and business accounting records, discovered by a random audit) and In re Goldstein, 147 N.J. 286 (1997) (negligent misappropriation of client's trust funds and failure to maintain proper trust and business account records, discovered as a result of the trust overdraft notification program). Both of these cases are similar to the case at hand in terms of the timing and extent of respondent's misconduct.

The Board, therefore, unanimously determined to impose a reprimand.

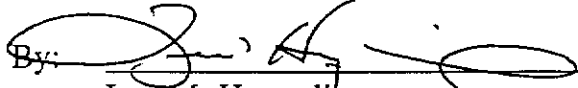
The Board further determined to require respondent to submit quarterly reconciliations to the OAE for a two-year period. Within six months of the Court's order,



respondent is to complete ten hours of ICLE courses, including courses in ethics and in trust accounting. At the expiration of the six-month period, respondent shall present to the OAE proof of completion of such courses. In addition, respondent shall practice under a proctorship for a period of two years. The proctor shall be approved by the OAE.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Date: 11/2/98

By:   
Lee M. Hymerling  
Chair  
Disciplinary Review Board

*SUPREME COURT OF NEW JERSEY*

*DISCIPLINARY REVIEW BOARD  
VOTING RECORD*

**In the Matter of Daniel Ellis**  
**Docket No. 97-487**

**Argued: March 19, 1998**

**Decided: November 2, 1998**

**Disposition: Reprimand**

Members	Disbar	One-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Thompson			x				
<b>Total:</b>			9				

*Robyn M. Hill 12/21/98*  
Robyn M. Hill  
Chief Counsel