

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-395
District Docket No. XIV-2009-262E

IN THE MATTER OF
MARTIN ALBERT GLEASON
AN ATTORNEY AT LAW

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Decision

Argued: February 17, 2011

Decided: April 8, 2011

Nitza I. Blasini 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 came before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). The OAE recommends the imposition of a reprimand for respondent's stipulated violations of RPC 1.5(b) (failure to communicate to

client in writing the basis or rate of the fee), RPC 1.15(a) (negligent misappropriation of client funds), and RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6). We accept the OAE's recommendation.

Respondent was admitted to the New Jersey bar in 1992. He maintains an office for the practice of law in Bound Brook. Respondent has no disciplinary history.

According to the stipulation, between 2005 and 2008, respondent represented grievant, Frank Romano, in five real estate transactions, which are detailed below. In some of the transactions, respondent disbursed more funds than he had on deposit for grievant, thereby negligently invading other clients' funds.

The Valerie Drive Transaction

On October 21, 2005, grievant sold a property located at 140 Valerie Drive, in Manville. On that date, respondent deposited the proceeds from the sale, \$275,591.84, into his trust account.

On November 1, 2005, respondent issued trust account check no. 11991, in the amount of \$150,000, in satisfaction of

grievant's mortgage on the Valerie Drive property. On November 9, 2005, respondent issued trust account check no. 12004, in the amount of \$52,500, in satisfaction of another mortgage on the property. On November 17, 2005, respondent disbursed to grievant the \$73,091.84 balance that stood to grievant's benefit.

All of respondent's disbursements for this transaction were proper.

The 281 West Main Street Property

On January 25, 2006, respondent represented grievant in the sale of a property located at 281 West Main Street in Bound Brook. In connection with this transaction, respondent deposited \$189,143.49 into his trust account on February 1, 2006. Between March 15 and November 6, 2006, respondent disbursed \$46,907.34 in expenses, leaving a trust account balance of \$142,236.15 for grievant.

On December 5, 2006, grievant instructed respondent to issue a trust account check to the Somerset County Sheriff, in the amount of \$85,000, so that grievant could purchase a property in Bridgewater. Respondent did not represent grievant

in that transaction. After respondent complied with grievant's request, the trust account balance for grievant was \$57,236.15.

Between December 5, 2006 and January 3, 2006, respondent disbursed an additional \$7,581.59 in connection with the sale of the 281 West Main Street property. Consequently, there remained a balance of \$49,654.56 in respondent's trust account on behalf of grievant.

Again, the disbursements in this transaction were proper. They were backed by grievant's funds.

The 117 Mountain View Road Property

On January 12, 2007, grievant purchased a property located at 117 Mountain View Road in Hillsborough. Respondent acted as the settlement agent in this transaction. On the day before the closing, the lender wired \$282,356 into respondent's trust account.

Between January 2 and May 30, 2007, respondent disbursed \$333,935.86 in connection with this transaction, which was \$51,579.86 more than was provided by the lender. Although respondent applied the \$49,654.56 in funds remaining in the trust account for the sale of the 281 West Main Street property,

there remained a -\$1,925.30 shortfall, which caused a negligent misappropriation of other clients' funds. Additional disbursements totaling \$9080 further increased the shortfall to -\$11,005.30.

On May 17, 2007, respondent deposited a \$100,000 check into his trust account, which he had received from J.L. Properties on behalf of grievant. Between that date and March 18, 2008, he disbursed \$95,874.98 of these funds, leaving a balance of \$4,125.02. This decreased the trust account shortage from -\$11,005.30 to -\$6,880.28.

The 129 Linden Avenue Property

On September 23, 2008, grievant purchased a property located at 129 Linden Avenue in Bound Brook. Respondent deposited \$153,184.83 of grievant's funds for the purchase, plus an additional \$24,000, for a total of \$177,184.83.

Respondent made disbursements totaling \$172,120.10, which left \$5,064.73 in his trust account for the transaction. This decreased the \$6,880.28 shortage for grievant's matters to -\$1,815.55.

On October 8, 2008, respondent deposited a \$2300 check from Century 21, which represented a refund of a deposit on another property that grievant had purchased. The deposit of these funds cured the shortage, leaving \$484.45 for grievant's benefit.

The 14-16 Talmage Avenue Property

On November 12, 2008, grievant purchased a property located at 14-16 Talmage Avenue in Bound Brook. As settlement agent, respondent received \$212,900 for the purchase. He disbursed \$213,981.38. This was \$1,081.38 more than he had in the trust account for this matter. Because respondent was already holding \$484.45 in the trust account on grievant's behalf, the actual shortage in grievant's funds, was -\$596.93.

According to the stipulation, the shortages in the trust account were caused by respondent's "over-disbursing funds in connection with grievant's real estate transactions." The excess disbursements were the result of respondent's failure to maintain receipts and disbursements journals, to perform monthly reconciliations of his trust account, and to maintain a running balance on his trust account check stubs. The OAE's

investigation revealed that the only fees that respondent disbursed to himself were legal fees that were due to him. The parties stipulated that "[t]he over disbursements were in grievant's favor."

Based on these facts, the parties stipulated that respondent violated RPC 1.15(a) (negligent misappropriation) and RPC 1.15(d) (recordkeeping violations).

In addition to the financial details of the real estate transactions, the parties stipulated that respondent, who had never represented grievant prior to the first transaction, failed to communicate in writing to him the basis or rate of the fee, either before or within a reasonable time after commencing the representation, a violation of RPC 1.5(b) (failure to communicate to client in writing the basis or rate of the fee).

In mitigation, the stipulation cites respondent's unblemished disciplinary history and his cooperation with the OAE's investigation.

Following a de novo review of the record, we find that the facts recited in the stipulation clearly and convincingly establish that respondent's conduct was unethical. The

stipulation supports the finding that respondent violated RPC 1.5(b), RPC 1.15(a), and RPC 1.15(d).

RPC 1.5(b) provides:

When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.

In this case, respondent had not represented grievant prior to the first real estate transaction. Thus, respondent was required to memorialize the rate or the basis of his fee. His failure to do so was a violation of RPC 1.5(b).

RPC 1.15(d) imposes a duty on lawyers to comply with R. 1:21-6, which requires them, among other things, to maintain receipts and disbursement journals, to perform monthly reconciliations of their trust accounts, and to maintain a running balance on their trust account check stubs. Inasmuch as respondent failed to comply with these requirements, the stipulation supports a finding that he violated RPC 1.15(d).

RPC 1.15(a) requires a lawyer to safeguard his or her client's funds. The stipulation supports a finding that respondent negligently misappropriated clients' funds by disbursing more than he had collected for grievant in the five

real estate transactions. The excess disbursements were the result of respondent's poor recordkeeping practices. He did not take for himself anything more than what he was owed in fees for his work on the transactions. All of the overdisbursements were for grievant's benefit.

There remains for determination the quantum of discipline to be imposed for respondent's stipulated violations of RPC 1.5(b), RPC 1.15(a), and RPC 1.15(d).

Conduct involving a violation of RPC 1.5(b), even when accompanied by other, non-serious ethics offenses, results in an admonition. See, e.g., In the Matter of Joel C. Seltzer, DRB 09-009 (June 11, 2009) (attorney failed to memorialize the rate or basis of his fee and, in another client matter, failed to promptly deliver funds to a third party); In the Matter of Alfred V. Gellene, DRB 09-068 (June 9, 2009) (in a criminal appeal, the attorney failed to furnish the client with a writing that set forth the basis or rate of his fee; the attorney also lacked diligence in the matter); In the Matter of David W. Boyer, DRB 07-032 (March 28, 2007) (in an estate matter, the attorney failed to provide client with a writing setting forth the basis or rate of his fee); In the Matter of Carl C.

Belgrave, DRB 05-258 (November 9, 2005) (attorney was retained to represent the buyer in a real estate transaction, and failed to state in writing the basis of his fee, resulting in confusion about whether a \$400 fee was for the real estate closing, or for a prior matrimonial matter for which the attorney had provided services without payment; recordkeeping violations also found); In the Matter of William J. Brennan, DRB 03-101 (May 23, 2003) (attorney did not memorialize the rate or basis of his fee in a criminal matter); and In the Matter of Louis W. Childress, Jr., DRB 02-395 (January 6, 2003) (attorney did not reduce to writing the rate or basis of his fee in real estate matters).

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Macchiaverna, 203 N.J. 584 (2010) (minor negligent misappropriation of \$43.55 occurred in attorney trust account, as the result of a bank charge for trust account replacement checks; the attorney was also guilty of recordkeeping irregularities); In re Clemens, 202 N.J. 139 (2010) (as a result of poor recordkeeping practices, attorney overdisbursed trust funds in three instances, causing a \$17,000 shortage in his trust account; an audit conducted seventeen

years earlier had revealed virtually the same recordkeeping deficiencies; the attorney was not disciplined for those irregularities; the above aggravating factor was offset by the attorney's clean disciplinary record of forty years); In re Mac Duffie, 202 N.J. 138 (2010) (negligent misappropriation of client's funds caused by poor recordkeeping practices; some of the recordkeeping problems were the same as those identified in two prior OAE audits; the attorney had received a reprimand for a conflict of interest); In re Fox, 202 N.J. 136 (2010) (motion for discipline by consent; attorney ran afoul of the recordkeeping rules, causing the negligent misappropriation of client funds on three occasions; the attorney also commingled personal and trust funds); In re Dias, 201 N.J. 2 (2010) (an overdisbursement from the attorney's trust account caused the negligent misappropriation of other clients' funds; the attorney's recordkeeping deficiencies were responsible for the misappropriation; the attorney also failed to promptly comply with the OAE's requests for her attorney records; prior admonition for practicing while ineligible; in mitigation, we considered that the attorney, a single mother working on a per diem basis with little access to funds, was committed to and had

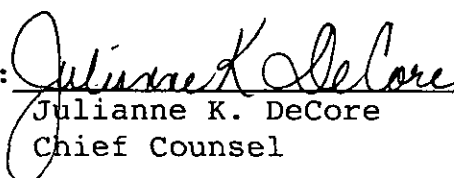
been replenishing the trust account shortfall in installments); In re Seradzky, 200 N.J. 230 (2009) (due to poor recordkeeping practices, attorney negligently misappropriated \$50,000 of other clients' funds by twice paying settlement charges in the same real estate matter; prior private reprimand); In re Weinberg, 198 N.J. 380 (2009) (motion for discipline by consent granted; attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account; because he did not regularly reconcile his trust account records, his mistake went undetected until an overdraft occurred; the attorney had no prior final discipline); and In re Philpitt, 193 N.J. 597 (2008) (attorney negligently misappropriated \$103,750.61 of trust funds as a result of his failure to reconcile his trust account; the attorney was also found guilty of recordkeeping violations).

For the totality of respondent's conduct, we determine to impose the reprimand that his negligent misappropriation of client funds and recordkeeping violations require. In our view, his violation of RPC 1.5(b) does not warrant an increase in the measure of discipline. We note that respondent had an

unblemished disciplinary history of thirteen years when the first real estate transaction took place.

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
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

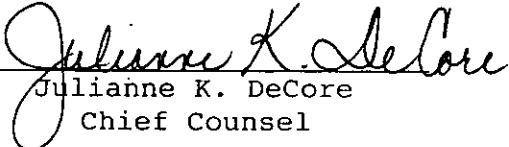
In the Matter of Martin Albert Gleason
Docket No. DRB 10-395

Argued: February 17, 2011

Decided: April 8, 2011

Disposition: Reprimand

| Members | Disbar | Suspension | Reprimand | Dismiss | Disqualified | Did not participate |
|-----------|--------|------------|-----------|---------|--------------|---------------------|
| Pashman | | | X | | | |
| Frost | | | X | | | |
| Baugh | | | X | | | |
| Clark | | | X | | | |
| Doremus | | | X | | | |
| Stanton | | | X | | | |
| Wissinger | | | X | | | |
| Yamner | | | X | | | |
| Zmirich | | | X | | | |
| Total: | | | 9 | | | |


Julianne K. DeCore
Chief Counsel