

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-293
District Docket No. XIV-2010-0237E,
XIV-2010-0448E, and XIV-2010-0557E

IN THE MATTER OF
MARC ADAM DEITCH
AN ATTORNEY AT LAW

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Decision

Argued: November 17, 2011

Decided: December 21, 2011

Melissa Czartoryski 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 based on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). Respondent stipulated that he negligently misappropriated client and third party trust funds (RPC 1.15(a)), failed to supervise non-attorney staff (RPC 5.3 (a) and (b)), and violated

the recordkeeping rules (RPC 1.15(d) and R. 1:21-6)). The OAE recommended a censure. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1991. He has no prior discipline.

This matter arose out of a series of dishonored checks drawn on respondent's trust account at TD Bank (TD).

Respondent and the OAE entered into an August 16, 2011 disciplinary stipulation.

On May 6, 2010, TD notified the OAE that trust account check #7468 (\$2,000), payable to Stacey Deitch, respondent's wife, and check #7467 (\$868), payable to the Mercer County Clerk, were returned for insufficient funds.

Later, on May 13 and 20, 2010, TD notified the OAE that, on May 11, 2010, trust account check #7465 (\$3,167), payable to the Mercer County Clerk, and check #7464 (\$1,000), payable to Jane and Kenneth Uhaze, were also returned for insufficient funds.

Finally, on May 14, 2010, TD dishonored respondent's trust account check #1239 to Mercury Insurance Group (\$7,121), issued on April 5, 2010.

An OAE audit of respondent's books and records ensued, covering the period from January 1, 2008 to July 31, 2010. The audit revealed several recordkeeping violations. Specifically,

respondent failed to maintain trust receipts and disbursements journals; deposit slips lacked sufficient detail; trust account checks were improperly made payable to cash; client ledger cards were not fully descriptive; respondent failed to maintain ledger cards identifying funds attributable to bank charges;¹ respondent failed to reconcile client ledgers against monthly trust account bank statements; respondent maintained inactive balances in the trust account for extended periods of time; outstanding checks were left unresolved; and respondent's signature stamp had been used impermissibly on trust account checks.

The above-mentioned overdrafts in the trust account were the result of \$14,400 taken from the trust account by respondent's wife, Stacey Deitch (Deitch), as well as a "double debit bank error," in September 2009. Specifically, trust account check #7327 (\$75,598.37) was posted to the account twice, first on September 28, 2009 and then again on September

¹ R. 1:21-6(d) permits, but does not require, attorneys to deposit personal funds in the trust account to cover ordinary bank fees. If, however, an attorney decides to make such deposits, he or she must keep track of them on a ledger card.

29, 2009. These occurrences went undetected because respondent did not perform monthly reconciliations of his trust account.

Deitch acted as respondent's paralegal from 2005 until September 26, 2009, when the couple separated. Respondent's practice was primarily devoted to real estate transactions. While at respondent's firm, Deitch prepared all of the RESPA statements, closing documents, and all of the checks disbursed at closing for the real estate transactions that took place in the office. She also oversaw the trust and business accounts' activities for the real estate matters.

Respondent was totally reliant on Deitch's documentation of the real estate transactions. He neither exercised any oversight of her work, nor checked the accuracy of the RESPAs that she prepared for his signature. When he attended real estate closings, he executed the closing documents exactly as Deitch had prepared them.

Respondent admittedly failed to supervise Deitch's handling of trust and business account matters. The OAE audit revealed that, between January and May 2010, Deitch drafted and

negotiated thirty-eight checks made out to herself, without respondent's knowledge. She either used his signature stamp or forged his name to the checks.²

Deitch's theft of \$14,400 invaded funds that respondent was required to hold inviolate in the trust account for other clients. According to the stipulation, her thefts went undetected because respondent had "delegated his responsibility over the firm's accounts to [her], failed to supervise her and did not independently review the trust account bank statements or the firm's books and records."

During its investigation, the OAE also learned that Deitch's practice was to prepare RESPAs for real estate closings with an artificially low attorney fee, lower than the amount actually paid at closing. To compensate for the artificially low fee, Deitch then inflated fees for recording mortgages and deeds, presumably by the same amount, so that the RESPA would zero out. Because respondent relied so heavily on his wife's

² The stipulation does not explain how Deitch was able to access respondent's trust account checkbook and signature stamp in May 2010, months after the couple's separation and Deitch's termination of employment at the law firm.

figures on the closing documents and failed to supervise her work, he was unaware of that practice.

The OAE required respondent to scour his 2004 through 2009 real estate files and to compare the amount of the recording fees charged in those matters to recording fees paid, in order to determine the extent to which Deitch had overcharged the parties in those matters. Respondent discovered 725 transactions in which, when he acted as attorney for the buyer, the average overcharge was \$171.05 per file. He estimated that the law firm may have received as much as \$124,011.25 in additional income for the period 2004 through 2009, due to Deitch's overcharges.

On May 18, 2011, respondent wrote to Deitch, demanding the immediate reimbursement of the \$14,400 taken from the trust account. When she did so on June 10, 2011, respondent used the funds to replenish the trust account.

Respondent and the OAE agreed that respondent would analyze his real estate files and determine which of his clients had been overcharged through the years and then reimburse the clients. As of the date of the stipulation, respondent was in the midst of completing that task. At oral argument before us, OAE counsel voiced that office's satisfaction with respondent's efforts in that regard.

The OAE cited, in mitigation, respondent's lack of a disciplinary record, his full cooperation with ethics investigators, and his swift action in demanding that Deitch return the trust account funds.

Respondent stipulated that his failure to supervise his wife, a non-lawyer employee, caused the misappropriation of trust funds.

The OAE recommended a censure, citing In re Andril, 188 N.J. 385 (2006), where the attorney received a censure for "fail[ing] to supervise secretaries who overcharged clients for title costs in real estate transactions."

Following a review of the stipulation, we find that the facts recited therein fully support that respondent's conduct was unethical. Respondent failed to supervise his wife/paralegal's preparation of closing documents and RESPA settlement statements for all of the real estate transactions that she handled during her 2004 to 2009 tenure as his paralegal. Respondent also improperly gave Deitch access to the trust and business accounts, including the trust account checks and his signature stamp.

In May 2010, respondent's wife/paralegal stole \$14,400 in client and third party funds held in respondent's trust account.

Although respondent did not use the funds, he nevertheless failed to prevent his wife/paralegal from drafting trust account checks made out to herself, signing them with his signature stamp or forging his signature to the checks, and then converting the funds to her own use. By failing to ensure that trust funds were safeguarded, respondent violated RPC 1.15(a).³

Respondent's failure to supervise Deitch enabled her to systematically overcharge clients in hundreds of real estate transactions over her five-year tenure. In this regard, respondent violated RPC 5.3(a) and (b).

Finally, respondent violated the recordkeeping rules, RPC 1.15(d) and R. 1:21-6. Specifically, he failed to maintain trust and disbursements journals; deposit slips lacked sufficient detail; trust account checks were made payable to cash; client ledger cards were not fully descriptive; ledger cards identifying fees for bank charges were not maintained; client ledgers were not reconciled against monthly trust account bank

³ Respondent's conduct did not, technically, amount to negligent misappropriation. More properly, he failed to ensure that client's funds were safeguarded, by not supervising an employee who then stole the funds.

statements; inactive balances in the trust account were maintained for long periods of time, with checks left outstanding; and his signature stamp was left unsecured, where it was impermissibly used on trust account checks.

Attorneys who fail to supervise their non-attorney staff are typically admonished or reprimanded. See, e.g., In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who forged the attorney's signature on trust account checks and stole \$272,000 in client funds); In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (attorney admonished for failure to supervise his paralegal, who was also his client's former wife, which resulted in the paralegal's forgery of a client's name on a retainer agreement and later on a release and a \$1,000 settlement check in one matter and on a settlement check in another matter; the funds were never returned to the client; mitigating factors included the attorney's clean disciplinary record and the steps he took to prevent a reoccurrence); In the Matter of Lionel A. Kaplan, DRB 02-259 (November 18, 2002) (attorney admonished for failure to supervise his bookkeeper, which resulted in recordkeeping deficiencies and the commingling of personal and trust funds;

mitigating factors included the attorney's cooperation with the OAE, his unblemished thirty-year career, the lack of harm to clients, and the immediate corrective action that he took); In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failing to supervise non-attorney employees, which led to unexplained misuse of client trust funds and negligent misappropriation; the attorney also committed recordkeeping violations); In re Riedl, 172 N.J. 646 (2002) (attorney reprimanded for failing to supervise his paralegal, allowing the paralegal to sign trust account checks, and displaying gross neglect in a real estate matter by failing to secure a discharge of mortgage for eighteen months after it was satisfied); 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 secretary/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); and In re Hofing, 139 N.J. 444 (1995) (reprimand for failure to supervise bookkeeper, who embezzled almost half a million

dollars in client funds; although unaware of the bookkeeper's theft, the attorney was found at fault because he had assigned all bookkeeping functions to one person, had signed blank trust account checks, and had not reviewed any trust account bank statements for years; mitigating factors included his lack of knowledge of the theft, his unblemished disciplinary record, his reputation for honesty among his peers, his cooperation with the OAE and the prosecutor's office, his quick action in identifying the funds stolen, his prompt restitution to the clients, and the financial injury he sustained).

Recordkeeping irregularities ordinarily are met with an admonition, so long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Thomas F. Flynn, III, DRB 08-359 (February 20, 2009) (for extended periods of time, attorney left in his trust account unidentified funds, failed to satisfy liens, allowed checks to remain uncashed, and failed to perform one of the steps of the reconciliation process; no prior discipline); In the Matter of Jeff E. Thakker, DRB 04-258 (October 7, 2004) (attorney failed to maintain a trust account in a New Jersey banking institution); In the Matter of Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002) (numerous recordkeeping deficiencies); In

the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards); In the Matter of Christopher J. O'Rourke, DRB 00-069 (December 7, 2000) (attorney did not keep receipts and disbursements journals, as well as a separate ledger book for all trust account transactions); and In the Matter of Arthur N. Field, DRB 99-142 (July 19, 1999) (attorney did not maintain an attorney trust account in a New Jersey banking institution).

The OAE sought the imposition of a censure, citing In re Andril, supra, 188 N.J. 385, where the attorney received a censure for failing to supervise non-attorney staff. The OAE noted that the attorney had "failed to supervise secretaries who overcharged clients for title costs in real estate transactions." A significant violation, however, rendered a censure appropriate in that case, namely, Andril's lie to the OAE auditor, when confronted with apparent overcharges to clients in two real estate matters. Andril falsely told the OAE auditor that he had permission from the title company to charge additional sums, in order to recoup certain expenses. In addition, Andril did not come clean about it for some time thereafter.


Here, respondent's wife overcharged the parties in hundreds of real estate closings, over a five-year period, and totaling about \$124,000. These circumstances place this case more in line with the reprimand cases, Berman, Barrett, and Hofing. In Berman and Barrett, the overcharges took place over a three-year period and totaled \$360,000. Recordkeeping violations were also present. In Hofing, thefts totaling \$500,000 took place over a four-year period.

In mitigation, respondent has an unblemished disciplinary record of twenty years. In addition, as soon as he learned of Deitch's misdeeds, he demanded the return of the missing funds, replenished the account, and set about determining the extent to which other clients had been overcharged, so that he could reimburse them. We, therefore, determine that a reprimand sufficiently addresses the totality of respondent's misconduct.

Member Wissinger 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
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

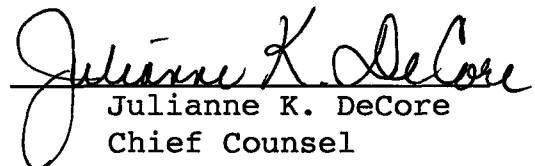
In the Matter of Marc A. Deitch
Docket No. DRB 11-293

Argued: November 17, 2011

Decided: December 21, 2011

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Disqualified	Did not participate
Pashman			X		
Frost			X		
Baugh			X		
Clark			X		
Doremus			X		
Wissinger					X
Yamner			X		
Zmirich			X		
Total:			7		1


Julianne K. DeCore
Chief Counsel