SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-209
District Docket No. XIV-2010-0579E

IN THE MATTER OF	
EDWARD RALPH BASSETTI	
AN ATTORNEY AT LAW	

Decision

Argued: September 20, 2012

Decided: December 11, 2012

Maureen Grasso Bauman appeared on behalf of the Office of Attorney Ethics.

Adam J. Adrignolo appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter is before us on a recommendation for discipline (admonition) filed by the District XA Ethics Committee (DEC), which we determined to treat as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4). The matter was submitted to the DEC on a stipulation of facts, in lieu of testimony. The matter proceeded to a hearing solely on the issues of mitigation and aggravation. Respondent stipulated that

he failed to safeguard client funds, a violation of RPC 1.15(a). We determined to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1987. He has no prior final discipline.

On January 14, 2008, Ebenezer Adeyinka, Senior Pastor of the Apostolic Church, filed a grievance alleging that respondent had improperly disbursed $91,500 in escrow funds held in his trust account for the church's purchase of real estate, in Newark. Respondent represented CCLLGG, LLC, the seller of the property.

The April 28, 2004 contract of sale reflected a $915,000 purchase price, with a $91,500 refundable deposit, to be held in respondent's trust account, pending completion of the sale.[1] On April 29, 2004, respondent placed the deposit in his trust account.

Although the real estate settlement was not scheduled until May 30, 2004, respondent immediately disbursed the funds, drafting two trust account checks on May 3, 2004. Check #9577 was made payable to PSE&G, in the amount of $50,000, which was due in connection with other property owned by CCLLGG. Check #9578 was made payable to CCLLGG, for $41,500.

[1] The deposit was refundable, "in the event that neither the seller or [sic] buyer is able to close title to the property."

Respondent conceded that the contract of sale required him to hold the escrow funds inviolate in the trust account, pending completion of the sale. Instead, at the request of the principals of CCLLGG, he disbursed them prematurely. According to the stipulation, respondent did so knowing that the principals were in financial trouble and that they needed $91,500 for debts related to another property, an office building that they also owned. The $50,000 payment to PSE&G was for the office building's overdue energy bills. The remaining $41,500 was for other unspecified expenses associated with the office building.

Ultimately, the sale to the church fell through, when the lender backed out of the transaction. The church thereafter requested the return of its deposit. Respondent was unable to do so, having already released the entire sum to CCLLGG and PSE&G, on behalf of his client.

The church was compelled to sue respondent for the return of the funds. Respondent and his malpractice carrier settled for a total of $142,500: $110,000 from the insurance carrier and $32,500 from respondent.

The ethics investigation concluded that respondent "benefited neither directly nor indirectly from either his improper release or CCLLGG's use of the escrow funds."

Respondent admitted that he exercised poor judgment under the circumstances, in succumbing to his client's demands that he prematurely release the funds. In fact, at the DEC hearing, respondent testified that he released the funds believing that the sale was "a done deal," only to be surprised when the church was unable to obtain a mortgage. He had also been influenced by CCLLGG, whose principals were "like a family" to him.

At the DEC hearing, the panel chair asked respondent what had prompted him to prematurely release the funds:

> [PANEL CHAIR]. What was your understanding of whose authorization needed to be obtained before the funds were released?
>
> [RESPONDENT]. Well, the funds should have been released only at closing or upon mutual agreement of the parties, or in court. And I know that.
>
> [T15.][2]

The parties cited several mitigating factors: respondent's full cooperation with the OAE; the fact that the church received more than its entire deposit ($110,000, instead of $91,500); respondent's contrition; the absence of self-gain; and respondent's lack of prior discipline, in twenty-three years at the bar.

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[2] "T" refers to the transcript of the November 7, 2011 DEC hearing.

The parties agreed that an admonition was the appropriate sanction, citing the following case law:

> Respondent understands that the OAE recommends that the appropriate discipline for his violation of *RPC 1.15(a)* is an admonition, based upon *In re Spizz, 140 N.J. 038 (1995) (DRB 94-277) and in the Matter of Fenske, Unreported DRB 98-211 (5/25/1999).*
>
> The OAE understands that respondent is free to argue that either a lesser sanction or no discipline is appropriate under the circumstances.
>
> The respondent submits that a reprimand has been typically reserved for situations where there are aggravating factors beyond the release of funds to a client, which are not present here. In *In re Flayer, 130 N.J. 21 (1992) (DRB 91-340),* the attorney was reprimanded for releasing escrow funds to *himself* after a builder failed to complete work as previously agreed. Similarly, in *Matter of Margolis, 161 N.J. 139 (1999) (DRB 98-346),* the Board also imposed a reprimand where a portion of the escrow funds improperly released by the attorney was disbursed for payment of the attorney's legal fees.
>
> [S¶18-S¶19.][3]

The DEC recommended an admonition for respondent's stipulated improper release of the $91,500 escrow funds, a violation of RPC 1.15(a). The DEC based its recommendation on the cases cited in the stipulation, as well as the mitigation presented.

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[3] "S" refers to the August 22, 2011 stipulation of facts.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

As attorney for the seller/escrow agent, respondent was required to hold a $91,500 real estate deposit in escrow, pending settlement. Yet, within a few days of his receipt of the funds, he disbursed them his client, CCLLGG, and to PSE&G, in order to satisfy certain obligations of CCLLGG's principals.

Respondent knew, at the time that he released the funds, that he was required to keep them inviolate in the trust account until closing. He testified that he knew that he could release them only in court, with the authorization of both parties, or at the closing, none of which occurred. His conduct, thus, violated RPC 1.15(a).

Improper release of escrow funds, without more, has generally resulted in an admonition or a reprimand. Where the attorneys have had a reasonable belief that the release was proper, admonitions have been imposed. See, e.g., In the Matter of Edward G. Johnson, DRB 09-049 (August 4, 2009) (admonition for attorney who represented two individuals, Williams and Diaz, in the sale of a house that they owned together; the attorney failed to safeguard Diaz' portion of the closing proceeds by allowing Williams to invest all of the closing proceeds,

including Diaz' share, without Diaz' knowledge or consent; in mitigation, we considered the attorney's mistaken belief that Diaz had given Williams the authority to use her funds and that, upon learning of the problem, the attorney reimbursed Diaz out of his own funds; no prior discipline in twenty years at the bar); In the Matter of Karl A. Fenske, supra, DRB 98-211 (May 25, 1999) (admonition for attorney who, although obligated to hold a real estate deposit in escrow, released it to his client, the buyer, when a dispute arose between the parties; in mitigation, we considered that there was some confusion as to the proper escrow holder and contractual dates); and In the Matter of Joel Albert, DRB 97-092 (February 23, 1998) (admonition for attorney who released a portion of escrow funds to pay college tuition costs of a daughter of a party to the escrow agreement, without first obtaining the consent of the other party; the attorney had a reasonable belief that consent had been given).

Reprimands have been imposed where the attorney's alleged belief as to the appropriateness of the release of escrow funds was found to be unreasonable, the attorney knew that the release was improper, or other aggravating factors were present. See, e.g., In re Holland, 164 N.J. 246 (2000) (reprimand for attorney who was required to hold in trust a fee in which she and another

attorney had an interest; instead, the attorney took an earned fee; the attorney's explanation that she was confused by conflicting orders of two judges was found not believable); In re Milstead, 162 N.J. 96 (1999) (attorney reprimanded for disbursing escrow funds to his client; the attorney claimed to have mistakenly done so, unintentionally violating a consent order; in aggravation, we considered that the attorney was unable to explain the mistake and that he had been found guilty of contempt of court); In re Margolis, supra, 161 N.J. 139 (reprimand for attorney who breached an escrow agreement requiring him to hold settlement funds in escrow until the completion of the settlement documents; with the consent of his client, but without the consent of the other party to the settlement, the attorney used part of the funds for his fees); and In re Flayer, supra, 130 N.J. 21 (reprimand for attorney who released funds placed in escrow for repairs on his own property; he did so after unsuccessful attempts to prod his builder to action and after sending a letter to the builder and builder's counsel stating his intention to complete the work at the builder's expense; in aggravation, the attorney did not maintain proper records of the expenses and of the time spent making repairs and initially failed to cooperate with the ethics investigator).

Here, respondent had no belief, let alone a reasonable one, that he was entitled to release the escrow funds at issue. He stipulated having known all along that he was prohibited from doing so, pending completion of the sale, and he testified to that effect at the DEC hearing.

Rather, respondent released the funds to his client allegedly because he thought that the sale was "a done deal" – that nothing would go wrong. That belief is confounding to us, for the church had not yet obtained financing. Respondent also claimed to have been motivated by a desire to help CCLLGG, because its principals were "like a family" to him.

Precedent requires the imposition of a reprimand in instances where, as here, the attorney prematurely releases escrow funds without a reasonable belief that he is authorized to do so. We determine that respondent should be reprimanded.

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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Edward Ralph Bassetti
Docket No. DRB 12-209

Argued: September 20, 2012

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Disposition: Reprimand

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

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel