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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-187

IN THE MATTER OF :
: DENNIS M. SALERNO, :
: AN ATTORNEY AT LAW :

Decision

Argued: July 17, 1997

Decided: October 15, 1997

Robert J. Prihoda 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 based on a disciplinary stipulation executed by respondent and the Office of Attorney Ethics ("OAE") arising out of a select compliance audit of respondent's attorney trust and business accounts.

Respondent was admitted to the New Jersey bar in 1971. He maintains an office in Jersey City, Hudson County. Respondent has no history of discipline.

* * *

Pursuant to the stipulation, on March 5, 1996 the OAE performed a select compliance audit of respondent's attorney accounts. The audit was prompted by a notice to the OAE from the Trust

Co. of New Jersey of an overdraft in respondent's trust account. Although respondent supplied an acceptable explanation for the overdraft, he admitted that his trust account records were in very poor condition.

The select compliance audit revealed that respondent's trust account had an unidentified surplus of funds in the amount of \$25,241.30. In addition, the audit showed that respondent had not corrected six of the eleven deficiencies discovered during a previous random audit of his accounts, conducted on April 27, 1988. Following that audit, respondent certified that he had remedied all deficiencies. Specifically, the following deficiencies remained uncorrected since 1988:

1. Clients' ledger cards were found with debit balances.
2. Deposit slips lacked sufficient detail to identify each item.
3. The business account designation was improper.
4. A running balance was not kept in the trust account checkbook.
5. A schedule of clients' ledger accounts was not prepared and reconciled quarterly to the trust account bank statement.
6. A business account disbursement book was not maintained.

The select compliance audit revealed the following additional deficiencies in 1996:

1. A separate ledger sheet was not maintained for each trust client.
2. Receipts journal for the trust account was not fully descriptive.
3. Disbursement journal for the trust account was not fully descriptive.

Respondent admitted his failure to comply with the recordkeeping requirements of R.1:21-6, in violation of RPC 1.15(d).

In recommending a reprimand as the appropriate quantum of discipline, the OAE noted that, although respondent had been previously placed on notice about his recordkeeping deficiencies, after the 1988 random audit, and although he had certified that the deficiencies had been corrected, many of the same deficiencies later reoccurred. In support of its recommendation, the OAE cited In re Zavodnick, 139 N.J. 607 (1995), where an attorney was reprimanded for failure to keep the books and records required by R.1:21-6 and for failure to correct recordkeeping deficiencies found by an audit.

* * *

The select audit report attached to the stipulation, in addition to setting out respondent's recordkeeping deficiencies, referred to questionable transactions between respondent and Bill Harkowsky, one of respondent's clients. The OAE auditor summarized the transactions as follows:

In reviewing accounting records two questionable transactions were noted on the client ledger of Bill Harkowsky. Respondent was holding \$6,635.49 in his trust account for Mr. Harkowsky in 1995. Mr. Harkowsky was accumulating funds for a future deposit on real estate. The following two items appear as disbursements on Mr. Harkowsky's ledger.

6/14/96 - \$3,087.96 - Check #1699

10/18/95 - \$3,000.00 - Check #1802.

Both checks are made payable to DMS & Associates. DMS & Associates was a mortgage corporation owned by respondent. Respondent stated that he and Mr. Hartowsky [sic] have been friends since childhood and Mr. Harkowsky verbally authorized him to borrow the funds on deposit in the trust account. Respondent did not have anything in writing concerning this loan at the time of the audit. He later provided our office with a signed statement from Mr. Harkowsky authorizing the respondent to use his money being held in trust. In addition, respondent included an unsigned, undated note regarding the \$6,087.96 loan from Mr. Harkowsky.

I contacted Mr. Harkowsky on December 9, 1996. He confirmed that he had given the respondent verbal authorization to borrow the funds held in trust and also

confirmed the existence of a note which respondent sent him in mid 1996.¹

There is no further information in the record about the transaction, such as, for example, whether respondent advised Harkowsky to consult with independent counsel before agreeing to the loan. Indeed, there is no reference in the stipulation to the loan transactions. The OAE, however, was satisfied that there was no misconduct in connection with the loan transactions. In addition, during oral argument, the Board questioned the presenter about the loans. The Board was satisfied that this issue need not be pursued further.

* * *

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

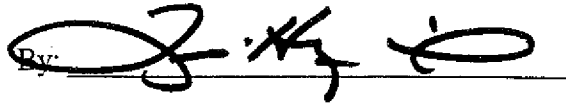
As noted above, the OAE relied on In re Zavodnick, supra, 139 N.J. 607 (1995), in recommending a reprimand. Although Zavodnick's misconduct also involved one instance of negligent misappropriation, the OAE's recommendation is sound. The newly found deficiencies in respondent's records, together with his failure to correct the previously discovered deficiencies after having certified to the OAE that he had done so, warrants a reprimand. See also In re Fucetola, 147 N.J. 255 (1997) (reprimand imposed for recordkeeping violations and negligent misappropriation. The attorney had been previously reprimanded for inadequate recordkeeping).

¹The signed statement and the unsigned note are in the record as attachment 1, exhibit F.

In light of the foregoing, the Board unanimously determined to reprimand respondent.

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

Dated: 10/15/97

A handwritten signature in black ink, appearing to read "L. Hymerling", written over a horizontal line.

Lee M. Hymerling
Chair
Disciplinary Review Board