SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-400
District Docket No. XIV-2011-0203E

IN THE MATTER OF	:
OWEN CHAMBERS	:
AN ATTORNEY AT LAW	:

Decision

Decided: July 2, 2013

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter or to promptly comply with reasonable requests for information), RPC 1.7(a) (representing a client when the representation is directly adverse to another client), RPC 1.15(a) (failure to identify or safeguard client property or funds), RPC 1.15(b) (failure to promptly deliver funds or property to a client or third person), RPC 5.3(a), (b), (c)(1), and (c)(2) (failure to

supervise a non-lawyer employee), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons expressed below, we determine to impose a prospective six-month suspension.

Respondent was admitted to the New Jersey bar in 2000. At the relevant times, he maintained a law practice in Paterson, New Jersey.

In 2012, respondent was suspended for three months for gross neglect and lack of diligence, failure to communicate with the client, failure to safeguard a client's funds and property, failure to cooperate with ethics authorities, and misrepresentations to disciplinary authorities. In re Chambers, 209 N.J. 417 (2012). Respondent remains suspended.

Service of process was proper in this matter. On August 28, 2012, the OAE sent copies of the complaint, by regular and certified mail to respondent's last known address in Brooklyn, New York. The certified mail was returned as unclaimed. The regular mail was not returned.

On October 4, 2012, the OAE sent a letter to the same address, by regular and certified mail. The letter notified respondent that, if he did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us

for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail was returned as unclaimed. The regular mail was not returned.

As of the date of the certification of the record, November 19, 2012, respondent had not filed an answer to the complaint.

This case involves the breach of an escrow agreement. In 2010, ADG, an Australian-based company, sought to purchase a specific amount and type of tires used on mining and earthmoving machinery. ADG contacted Brad Albertson, the president and co-owner of Western Track and Tire, an Oregon-based company (Oregon-Western) specializing in off-road tires. Oregon-Western arranged to obtain the tires through All-A-Round Connections, a New Mexico-based wholesaler of underground mining equipment (NM-AARC).

On November 30, 2010, Rob Yoder, General Manager of NM-AARC, entered into an agreement to purchase specific tires from NRC, a Canadian-based company (Canada-NRC), whose partners were Stephen Pecevich and John Eckerd.

In December 2010, Canada-NRC retained respondent to act as a "third-party escrow agent" to the agreement. Respondent was to hold in his trust account $648,800, the entire purchase price under the agreement, until Oregon-Western's Albertson authorized the release of the funds to Canada-NRC.

Mia Austin, respondent's per diem paralegal at the time of the transaction, had a personal and business relationship with Max Watkins. Watkins was the owner of Brittany Realty, and had referred Canada-NRC to respondent. Respondent had presented himself to NM-AARC to be a neutral escrow agent.

On January 13, 2011, NM-AARC's Yoder sent an email to Austin, referencing the Canada-NRC to NM-AARC Tire Purchase Agreement. The email stated: "Please be adviced [sic] that Brad Albertson of Western Tracks [Oregan-Western] will be contacting you today to clarify the escrow account and wiring the funds today, please consider Brad's contact information as confidential between me and you." On January 14, 2011, Albertson, who arranged the purchase, sent an email to Austin with the reference "Tire purchase/Escrow account," stating, among other things, that

> we will need from you a document stating that the money that we sent to you for escrow will not be released without our approval by myself "only" Brad Albertson via email and telephone. You will need to have both forms of communication to release these funds. First a phone call from me and then a

[sic] email from me from the email of [Westerntracks].

[Ex.2;C¶11.][1]

On January 14, 2011, NM-AARC wire transferred $150,000 into respondent's TD Bank trust account. According to the complaint, on that same day, Eckerd of Canada-NRC, the seller, sent an email to Austin with the caption "Bank Wire info," instructing respondent to wire $134,960 to Vault Holdings, Inc., a Delaware corporation that he owned.[2]

On January 21, 2011, respondent received an email from NM-AARC's Yoeder, authorizing the release of all of the escrow funds, despite the fact that no tires were given to "All-AARC" [NM-AARC]. Yoder's email stated, in relevant part, "I hereby irrevocably agree to allow the immediate release of the . . . $150,000.00 dollars deposited into your escrow account to Mr. Eckerd's company Vault Holdings for what we believe to be a partial payment of a fee owed to his company by Northern Capital Resources."

Without receiving proper authorization from Albertson, respondent disbursed from his trust account the following sums:

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[1] "C" refers to the formal ethics complaint.

[2] The email actually stated, "Please forward the One Hundred Fifty Thousand dollars wired into your trust account on behalf of the Buyer to the below instructions."

on January 21, 2011, $2,000 to himself as legal fees; on January 24, 2011, $134,960 to Vault; and on January 25, 2011, $12,985 to Brittany Realty, leaving a balance of only $15 for NM-AARC.

On January 25, 2011, NM-AARC wire transferred $498,800 into respondent's TD Bank trust account. On that same date, Austin received an email from Pecevich (Canada-NRC) with wire instructions, directing respondent to wire $498,800, less fees, to Kevin Kim & Associates, P.C. (Kevin Kim) "an allegedly Canadian based company." Without receiving proper authorization from Albertson, on January 25, 2011, respondent disbursed $498,765 to Kevin Kim. The disbursement left a balance of only $5 for NM-AARC.

On February 2, 2011, TD Bank returned the January 27, 2011 wire that had been sent to Kevin Kim, because that account "had an alias in Bogota, Columbia, that was known by Office of Foreign Assets Control (OFAC) as Specially Designated Narcotics Traffickers." Respondent's trust account was credited $498,710.

On February 2, 2011, the seller (Canada-NRC's Pecevich) sent Austin wiring instructions for respondent to wire $498,695 to Rocky Top Ventures, LLC. On February 3, 2011, without notice to, or authorization from Albertson, respondent followed Pecevich's instructions.

On February 22, 2011, Albertson sent an email to NM-AARC's sales manager Chip Bayless, Yoder, and Austin, requesting the return of the purchase funds because Canada-NRC had not met the delivery timeline for the tires. Canada-NRC had not delivered any tires to NM-AARC, Oregon-Western, or ADG. The purchase funds ($648,800) were not refunded to NM-AARC, Oregon-Western, or ADG. Respondent was not in possession of the tires nor was he holding the purchase funds in his trust account.

On February 24, 2011, Albertson sent an email to respondent, to Austin, and to the other parties to the transaction, complaining about the poor handling of the transaction and the lack of communication from respondent, Austin, Canada-NRC, and its owners, Pecevich and Eckerd. Respondent did not reply to Albertson's email.

On February 25, 2011, NM-AARC's president, Shelly Bayless, emailed respondent and Austin requesting confirmation that respondent was still holding $648,800 in his trust account. Respondent did not reply to Bayless' email. On February 26, 2011, NM-AARC's Yoder sent a text message to Austin, requesting a signed statement confirming that the purchase funds had not left respondent's trust account.

On February 28, 2011, Bayless sent an email to respondent, Austin, Chip Bayless, and Yoder, confirming an earlier telephone

conversation between Yoder and Austin to the effect that respondent would supply NM-AARC with a letter confirming that he had not released the $648,800 from his trust account. Austin's February 28, 2011 reply email to Bayless confirmed that respondent's office would forward a reply by no later than the close of business the following business day.

On March 1, 2011, pursuant to respondent's authorization, Austin sent an email to herself, copying respondent, Yoder, and Chip Bayless. The email falsely represented that respondent was in possession of the $648,800. At that time, the available balance in respondent's trust account was only $32.69. Although respondent knew that the information in Austin's email was false and misleading, he did nothing to correct it.

The complaint charged that respondent permitted a non-lawyer employee to maintain contact with both parties to the transaction without supervision "as to the truth of the statements made;" that, although respondent represented that he was a neutral agent, he took direction from the seller with regard to the disposition of the funds and with regard to the contents of letters to the buyer; and that respondent refused to communicate with the buyer, even after he was aware that he had released the buyer's funds to the seller, that the buyer had

denied giving authorization for the release, and that the tires had not been supplied to the buyer.

An indicated previously, the complaint charged respondent with having violated RPC 1.1(a), RPC 1.4(a), RPC 1.7(a), RPC 1.15(a), RPC 1.15(b), RPC 5.3(a), (b), and (c)(1) and (c)(2), and RPC 8.4(c).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f).

This is a standard breach-of-an-escrow-agreement case, where one party to the escrow agreement authorizes a disbursement and the escrow agent releases the funds without the other party's consent, a violation of RPC 1.15(a). The complaint charged that respondent engaged in a conflict of interest by representing a client with interests directly adverse to another client (RPC 1.7(a)). Rather than creating a conflict of interest situation, however, respondent's improper compliance with one party's directions about the disposition of the escrow funds is part and parcel of his breach of the escrow agreement. Instead of obtaining the relevant parties' consent to the distribution of the escrow funds, respondent followed the instructions of one

of them, thus violating his fiduciary duty to the other(s). We, therefore, dismiss the charged violation of RPC 1.7(a).

RPC 1.1(a) (gross neglect) is also inapplicable. Respondent did not neglect the matter. He improperly released escrow funds, an RPC 1.15(a) violation.

In this case, escrow funds were released, despite Albertson's unequivocal instructions to respondent not to disburse the funds without his explicit authorization, by telephone and email.

Prior to releasing escrow funds, an escrow holder must obtain the permission of both parties to the escrow agreement. "[I]t is a matter of elementary law that when two parties to a transaction select the attorney of one of them to act as the depository of funds relevant to the transaction, the attorney receives the deposit as the agent or trustee for both parties [citations omitted]." In re Hollendonner, 102 N.J. 21, 28 (1985). Here, respondent disbursed the escrow funds without the required authorization from Albertson.

Respondent also failed to communicate with the parties to the escrow agreement (RPC 1.4(b)), failed to promptly deliver funds to a third party (RPC 1.15(b)), authorized his paralegal to make false statements (RPC 8.4(c)) and failed to properly supervise a non-lawyer assistant (RPC 5.3(a), (b), and (c)).

Ordinarily, the improper release of escrow funds results in discipline ranging from an admonition to a reprimand. See, e.g., In the Matter of Joseph Jerome Fell, DRB 10-328 (January 25, 2011) (admonition for attorney who released $325,000 in escrow funds to his client, the seller of a one-third interest in a business, without determining that all contracts and operating agreements had been signed by all parties and approved by the buyers' attorney, as instructed; the attorney mistakenly believed that the contract had been properly executed; the attorney's acceptance of responsibility for his conduct, remorse, lack of self-interest, and spotless disciplinary record were viewed as mitigating factors; that the buyers never received the one-third interest in the business was considered an aggravating factor); In the Matter of Michael D. Landis, DRB 09-395 (March 19, 2010) (admonition for attorney who disbursed an $85,500 real estate deposit to his client, the buyer, in the face of a contractual dispute and despite a contract clause providing for the deposit of the funds with the court, in the event of a disagreement between the parties; mitigating factors were the attorney's belief that he had properly voided the contract of sale, the lack of a disciplinary history, and his inexperience in real estate matters); In re Spizz, 140 N.J. 38 (1995) (admonition for attorney who, against a court order,

released to the client funds escrowed for a former attorney's fees and misrepresented to the court and to the former attorney that the funds remained in escrow; the attorney relied on the theory that the former attorney had either waived or forfeited her claim for the fee); In re De Clement, ____ N.J. ____ (2013) (motion for discipline by consent; reprimand for attorney who failed to safeguard funds in which a client or third party had an interest by releasing a portion of the escrow funds to a party to an escrow agreement without first obtaining the other party's consent; mitigation included the attorney's cooperation with the OAE, his acknowledgement of wrongdoing, the absence of personal gain, and his unblemished ethics history since his 1994 admission to the bar); 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, she took the fee, in violation of a court order); and In re Milstead, 162 N.J. 96 (1999) (attorney reprimanded for disbursing escrow funds to his client, in violation of a consent order).

More serious circumstances have led to the imposition of discipline greater than a reprimand. See, e.g., In re Hasbrouck, 186 N.J. 72 (2006) (three-month suspension for attorney who released $600,000 to his matrimonial client, in violation of a court order that required him to keep the funds in escrow until

the divorce matter was concluded; the attorney did not disclose to either the court or his adversary that he had disbursed the funds to his client (violations of RPC 1.15(a), RPC 3.3(a)(5), RPC 3.4(c), RPC 8.4(c), and RPC 8.4(d) found); the attorney was also guilty of recordkeeping deficiencies; mitigating factors included the attorney's lack of a disciplinary history; his civic and community activities; and several letters attesting to his good character, both personal and professional; aggravating factors were the attorney's experience in matrimonial matters at the time of his misconduct; the harmful consequences of his conduct, such as the unnecessary taxing of the judicial resources and the client's spouse's non-receipt of her share of the equitable distribution, at least as of the date of the ethics hearing; and the attorney's steadfast refusal to acknowledge any wrongdoing); In re Moore, 175 N.J. 100 (2003) (one-year suspension for attorney who prematurely released escrow funds to his client, albeit with a reasonable belief that he could do so; the attorney also made numerous misrepresentations about the status of the escrow in pleadings to a court and in correspondence to two attorneys, a surety, and the OAE; the attorney also failed to cooperate with the OAE by not producing records for an audit and did not comply with Court's order for the production of the documents; thereafter,

the attorney failed to appear on the return date of the Court's order to show cause; the attorney also practiced law while ineligible); and In re Susser, 152 N.J. 37 (1997) (three-year suspension for attorney who improperly released escrow funds to a business in which the attorney held a minor interest and misrepresentation to the attorney for one of the parties that the funds were still in escrow).

As seen from the above-cited cases, the attorneys who received admonitions held reasonable but mistaken beliefs that the release of the escrow funds was appropriate. In the absence of this mitigating factor and without other serious improprieties, a reprimand was found to be the proper discipline for the premature disbursement of funds. More serious situations were met with a term of suspension.

Here, neither an admonition nor a reprimand is appropriate. Not only did this respondent improperly release escrow funds knowing that he did not have the other party's consent, but he also failed to communicate with a party to the escrow agreement, failed to supervise a non-lawyer employee, and made a misrepresentation to Yoder and Chip Bayless.

Attorneys who fail to supervise their non-lawyer staff are typically admonished or reprimanded. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition where, as a result of the

attorney's failure to reconcile and review his attorney records, an individual who helped him with office matters was able to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and the lack of a disciplinary record); In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (attorney admonished for failing to supervise his paralegal, who also was his client's former wife; the paralegal forged a client's name on a retainer agreement, a release, and two settlement checks; 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 4, 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 by entering into a disciplinary stipulation, his unblemished thirty-year career, the lack of harm to clients, and the immediate corrective action that he took); In the Matter of

William H. Oliver, Jr., DRB 98-475 (February 22, 1999) (admonition for failure to supervise a non-lawyer employee; specifically, whenever emergent circumstances would arise, the attorney would allow an office subordinate to execute certain portions of bankruptcy petitions if the attorney had already obtained preliminary information from the respective client and the client had signed the second page of the petition attesting to the accuracy and truthfulness of the entire petition); In re Deitch, 209 N.J. 423 (2012) (reprimand where, as a result of the attorney's failure to supervise his paralegal-wife and also poor recordkeeping practices, $14,000 in client or third-party funds were invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks made out to herself by either forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failure to supervise non-attorney employees, which led to the unexplained misuse of client trust funds and to 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 Moras, 151 N.J. 500 (1997) (attorney reprimanded for failure to adequately supervise his secretary, who stole $650 in client funds; the attorney also failed to maintain required records; the attorney made restitution); and In re Hofing, 139 N.J. 444 (1995) (reprimand for failure to supervise a 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 the attorney's 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 that he sustained). But see In re Stransky, 130 N.J. 38 (1992) (one-year suspension for attorney who completely delegated the management of his attorney accounts to his wife/secretary/bookkeeper and improperly authorized her to sign trust account checks; over the course of one year, the attorney's wife embezzled $32,000 in client funds; the Court found that the attorney was "completely irresponsible in the management of his attorney accounts and totally abdicated

his fiduciary responsibilities to his clients;" no mitigating factors noted).

Compare the present case to Hasbrouck (three-month suspension for attorney who released $600,000 to his matrimonial client, in violation of a court order). Here, respondent did not violate a court order, but he improperly disbursed more than $648,000, then authorized his paralegal to lie about it. There is no mitigation present in this case, as was present in Hasbrouk (lack of a disciplinary history, civic and community activities, and several letters attesting to his good character, both personal and professional). Aggravating factors exist in both cases: in Hasbrouck, judicial resources were taxed and the client's spouse did not receive her share of the equitable distribution, at least as of the date of the ethics hearing. Here, respondent has a prior discipline -- a three-month suspension for failing to safeguard a client's property, failing to cooperate with ethics authorities, and lying under oath at the ethics hearing. This aggravating factor, coupled with the default nature of these proceedings, a circumstance that requires enhanced discipline (In re Kivler, 193 N.J. 332, 342 (2008) and In re Nemshick, 180 N.J. 304 (2004)), as well as respondent's propensity to violate the Rules of Professional Conduct (in respondent's prior matter, the grievance was filed

in February 2009 and docketed in January 2010; he, therefore, should have been on notice to be more circumspect in his representation of clients) mandate the imposition of a six-month prospective suspension.

Members Gallipoli and Zmirich voted for a one-year suspension.

Member Doremus did not participate.

We also determine that respondent should not be reinstated until any pending disciplinary matters against him are concluded.

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
Bonnie Frost, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Owen Chambers
Docket No. DRB 12-400

Decided: July 2, 2013

Disposition: Six-month prospective suspension

Members	Disbar	Six-month prospective Suspension	One-year Suspension	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Doremus						X
Gallipoli			X			
Yamner		X				
Zmirich			X			
Total:		4	2			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel