

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-266
District Docket No. XIV-2011-0644E

IN THE MATTER OF
REUEL E. TOPAS
AN ATTORNEY AT LAW

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Decision

Argued: January 16, 2014

Decided: February 7, 2014

HoeChin Kim 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 came before us pursuant to R. 1:20-6(c)(1).¹
The complaint charged – and respondent admitted – violations of

¹ That rule provides that "[a] hearing shall be held only if the pleadings raise genuine disputes of material fact, if respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in
(footnote cont'd on next page)

RPC 1.3 (lack of diligence), RPC 1.15(b) (failure to promptly deliver to a third person any funds that the person is entitled to receive), and R. 1:21-6 and RPC 1.15(d) (recordkeeping violations). For the reasons expressed below, we determine to dismiss the charges. We find that the violations were de minimis non curat lex and, therefore, not deserving of formal discipline.

Respondent was admitted to the New Jersey bar in 1989. At the relevant times, he maintained an office for the practice of law in Lakewood, Ocean County. He has no disciplinary history.

On July 7, 2010, respondent represented Joseph and Benny Wechsler in the purchase of real estate located in Lakewood, New Jersey, from Karl Hanson. The sum of \$2,600 was to be held in respondent's attorney trust account, pursuant to a four-and-one-half month use-and-occupancy agreement between the parties.

(footnote cont'd)

aggravation. In all other cases the pleadings, together with a statement of procedural history, shall be filed by the trier of fact directly with the Board for its consideration in determining the appropriate sanction to be imposed."

On July 13, 2010, respondent deposited the \$2,600 into his trust account. Although the use-and-occupancy agreement was to have expired in November 2010, the parties negotiated an extension until February 2011, based on an agreement that authorized respondent to release to the Wechslers the amount of the carrying charges for the original four-and-one-half month period. Going forward, Hanson was to pay the Wechslers directly for their carrying charges. Any amount remaining from the initial escrow amount would remain on deposit and be released upon Hanson's departure from the premises.

On December 31, 2010, respondent disbursed \$1,770.62 to Joseph Wechsler (Wechsler) for the carrying charges during the original period, leaving a balance of \$829.38 in his trust account.

Sometime in February 2011, Hanson vacated the premises. On April 28, 2011, Wechsler left a note at respondent's home, directing him to release the balance to Hanson. Respondent did not do so. On July 28, 2011, after Hanson's repeated attempts to obtain the balance from respondent failed, Hanson filed an ethics grievance against him.

By letter dated November 2, 2011, respondent told the ethics investigator that \$829.38 remained in his trust account

and asked whether there was any objection to the release of those funds to Hanson. Rather than reply to that inquiry, the investigator forwarded respondent's letter to Hanson, for his comments.

By letter dated December 22, 2011, after the matter had been transferred to the OAE, that office requested that respondent explain why he had not yet disbursed the remaining balance to Hanson. On December 28, 2011, during a telephone conversation with the OAE, respondent asserted a belief that filing of the grievance precluded him from releasing the funds to Hanson. The OAE advised respondent that, unless he had a legal reason to withhold the funds, he should release them to Hanson. On December 29, 2011, respondent disbursed the \$829.38 to Hanson.

During its investigation of the Hanson matter, the OAE reviewed respondent's books and records for the period of January 2008 to December 2011. Respondent was asked to produce the monthly three-way reconciliation reports of his attorney trust account, but was unable to do so. The OAE audit revealed that respondent's attorney trust accounting software did not generate such reports and that respondent did not perform monthly three-way reconciliations by hand. The audit also

revealed that respondent maintained inactive balances in his trust account.

On June 28, 2013, respondent filed an answer to the formal ethics complaint. He admitted that he had failed to act with reasonable diligence and promptness in representing the Wechslers, in violation of RPC 1.3, failed to promptly disburse the funds to Hanson, in violation of RPC 1.15(b), and failed to comply with the recordkeeping provisions of RPC 1.15(d) and R. 1:21-6(c) and (d), by not conducting and maintaining reports of monthly three-way reconciliations and allowing inactive balances to remain in his trust account.

Following a de novo review of the record, we find that the record clearly and convincingly supports a finding that respondent violated RPC 1.15(b) and RPC 1.15(d), but not RPC 1.3, notwithstanding respondent's admission. Indeed, nothing in the record supports the conclusion that respondent did not act diligently in representing the Wechslers. What he did not do was to promptly disburse the \$829.38 to Hanson and to properly comply with the recordkeeping rules.

Typically, attorneys who fail to promptly disburse funds to a client or third party receive an admonition, even if that violation is accompanied by other non-serious infractions. See,

See, e.g., In the Matter of David J. Percely, DRB 08-008 (June 9, 2008) (for three years attorney did not remit to client the balance of settlement funds to which the client was entitled; the attorney also lacked diligence in the client's representation, failed to cooperate with the investigation of the grievance, and wrote a trust account check to "cash;" significant mitigation presented, including the attorney's unblemished twenty years at the bar); In the Matter of Anthony Giampapa, DRB 07-178 (November 15, 2007) (attorney did not promptly disburse to a client the balance of a loan that was refinanced; in addition, the attorney did not adequately communicate with the client and did not promptly return the client's file); In the Matter of Walter A. Laufenberg, DRB 07-042 (March 26, 2007) (following a real estate closing, attorney did not promptly make the required payments to the mortgage broker and the title insurance company; only after the mortgage broker sued the attorney and his client did the attorney compensate everyone involved); In the Matter of Gordon Allen Washington, DRB 05-307 (January 26, 2006) (for a seven-month period attorney did not disburse the balance of escrow funds to which a party to a real estate transaction was entitled; the attorney also lacked diligence in addressing the problem once it

was brought to his attention); In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney admonished for failure to promptly deliver balance of settlement proceeds to client after her medical bills were paid); and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for three-and-one-half years, attorney held in his trust account \$4,800 earmarked for the payment of a client's outstanding hospital bill; the attorney also practiced law while ineligible and violated the recordkeeping rules).

In this matter, respondent has offered significant factors, in mitigation of his conduct. Specifically, he discontinued his sole practice of law and accepted a job as an attorney for a title company, in March 2010. He claimed that Wechsler's authorization to release the funds must have been misplaced, as he was receiving both business and personal mail at his home address. Additionally, in November 2009, respondent's wife was notified that she was suffering from end-stage kidney disease, putting considerable burden on respondent personally, financially, and professionally, over the course of the last several years. We are persuaded, thus, that respondent's failure to quickly forward the \$829.38 to Hanson and to strictly abide by the recordkeeping rules were not the result of intent,

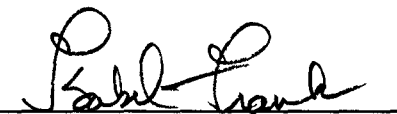
or indifference, or other reprehensible reason, but the product of temporary circumstances that were affecting him in all facets of his life.

Based on the foregoing, we determine to dismiss the charges of the complaint. We find that respondent's infractions were de minimis non curat lex and not deserving of formal discipline. In reaching this conclusion, we also took into consideration respondent's unblemished history in over twenty-four years at the bar, his cooperation with the disciplinary process by readily admitting his conduct, and his presentation before us at oral argument, which personalized the mitigating factors and further showed respondent's willingness to take professional responsibility for his actions, despite difficult circumstances that were mostly out of his control and that beset him in and around the time of his transgressions.

Member Doremus did not participate.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: _____


Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

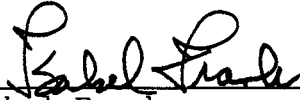
In the Matter of Reuel E. Topas
Docket No. DRB 13-266

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Decided: February 7, 2014

Disposition: Dismiss

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost				X		
Baugh				X		
Clark				X		
Doremus						X
Gallipoli				X		
Hoberman				X		
Singer				X		
Yamner				X		
Zmirich				X		
Total:				8		1



Isabel Frank
Acting Chief Counsel