SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-344
District Docket Nos. XIV-2012-0602E,
XIV-2012-0540E, and XIV-2012-0282E

IN THE MATTER OF	:
DARREN P. LEOTTI	:
AN ATTORNEY AT LAW	:

Decision

Decided: April 11, 2014

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The first count of the complaint charged respondent with violating RPC 1.15(a) (failure to safeguard property of clients or third persons by knowingly misappropriating law firm funds), RPC 8.4(b) (commission of a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as an attorney), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Count two charged

violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), and RPC 8.4(c). We recommend that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1991. He has no history of final discipline. However, on April 16, 2013, he was temporarily suspended for failure to cooperate with the OAE's investigation of this matter and for his admission that he had misappropriated law firm funds and falsified documents. In re Leotti, 213 N.J. 375 (2013). Respondent remains suspended.

Service of process was proper in this matter. On August 6, 2013, the OAE forwarded a copy of the complaint, by certified and regular mail, to respondent's home address. The certified mail receipt was returned, indicating delivery on August 9, 2013. The signature on the receipt is illegible. The regular mail was not returned.

Respondent did not file an answer within the prescribed time.

On September 20, 2013, the OAE sent a letter to respondent, advising him that, unless he filed an answer to the complaint within five days, the allegations of the complaint would be deemed admitted and the record would be certified to us for the

imposition of discipline. The letter also served to amend the complaint to charge respondent with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities). The letter was sent to respondent's home address by regular mail, which was not returned.

As of the date of the OAE's certification of the record, October 2, 2013, respondent had not filed an answer to the complaint.

COUNT ONE

From 1998 until his discharge, on September 11, 2012, respondent was employed as an associate by the law firm of Mauro, Savo, Camerino, Grant & Schalk, P.A. (Mauro Savo).

Kathleen Petrozelli, a legal secretary at Mauro Savo, was respondent's secretary until the termination of his employment. Petrozelli submitted several affidavits to the OAE, during the course of its investigation of this matter. As set forth below, her affidavits recounted respondent's misconduct in several matters, specifically, the Bradford, Cleary, and Nole matters.

The Bradford Matter

According to Petrozelli's October 1, 2012 affidavit, Drew Bradford telephoned her, in May 2012, expressing concern about the way respondent was handling his matters. Bradford told Petrozelli that he had paid $8,300 directly to respondent. The payments were made as follows: (1) $5,000, on February 14, 2009, for consulting fees; (2) $300, on August 21, 2009, for filing fees for an appeal; (3) $2,000, on August 24, 2009, for filing the appeal; and (4) $1,000, on August 24, 2009, for filing a lawsuit against the Summit Police Department. The checks were made payable to respondent. Petrozelli contacted Mauro Savo's finance office and learned that none of these funds had been paid over to Mauro Savo.

The Cleary Matter

According to an affidavit from Petrozelli, dated November 28, 2012, respondent represented Robert and Ellen Cleary in various matters. On May 22, 2009, the Clearys paid respondent $5,750, by transferring the funds from their Bank of America account into a Bank of America account owned by respondent and his wife. On February 14, 2011, the Clearys transferred another

$750 into respondent's Bank of America account.[1] Based on information that the Clearys received from respondent, they thought that their payments had been transferred into a Mauro Savo account. Petrozelli asked Mauro Savo's finance office and learned that no moneys had been paid over to the firm on behalf of the Clearys.

The Nole Matter

Joseph Nole retained Mauro Savo to represent him in connection with the redemption of tax sale certificates. On February 21, 2011, Nole paid a $5,000 retainer directly to respondent, rather than to Mauro Savo, as directed by respondent. On February 22, 2011, respondent deposited Nole's check into his Bank of America account. On February 23, 2011, respondent entered his appearance in Nole's matter, on behalf of Mauro Savo.

In yet another affidavit, dated November 15, 2012, Petrozelli stated that Mauro Savo's finance office had told her that Nole's funds had never been paid over to Mauro Savo.

[1] According to Petrozelli's affidavit, the Clearys told her that they also paid respondent in cash.

The Zazenskowski Matter

Steven Zazenskowski retained Mauro Savo to handle two collection matters. At respondent's direction, Zazenskowski issued a check for $4,000, dated February 3, 2011, and a check for $1,000, dated June 3, 2011, both for legal fees, with the payees' name blank. Respondent told Zazenskowski that the firm's name would be rubber-stamped in the payee space. Respondent, however, wrote his own name on the checks, did not pay them over to Mauro Savo, and spent the money for his own purposes.

The Curcio Matter

Respondent represented Ralph Curcio in the incorporation of a business "and with respect to sales tax issues." Curcio paid a retainer to Mauro Savo by credit card but, later, wrote two additional checks, payable to respondent, at respondent's request. The two checks totaled $4,000. Respondent did not turn these funds over to Mauro Savo but, instead, spent them for his own purposes.

The Frattalone Matter

Respondent represented Dan Frattalone in a legal matter. At respondent's direction, Nicholas Frattalone paid respondent $2,500 for Dan Frattalone's representation, by check dated November 19, 2010. Respondent failed to turn these funds over to Mauro Savo. Instead, he deposited them into his personal Bank of America account and spent them for his own purposes.

All of the client funds set forth in count one belonged to Mauro Savo. Mauro Savo's partners did not know about respondent's receipt and retention of the legal fees and did not authorize them. Respondent utilized all of those client funds for his personal expenses.

The first count of the complaint charged respondent with knowing misappropriation of law firm funds, in violation of RPC 1.15(a) and In re Siegel, 133 N.J. 162 (1993); conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c); and the commission of a criminal act, in violation of RPC 8.4(b), specifically, theft by failure to make required disposition of property received, in violation of

N.J.S.A. 2C:20-9.[2]

COUNT TWO

The Ryland Developers Matter

During the course of his employment with Mauro Savo, respondent represented Ryland Developers LLC (Ryland) against Readington Township, on a zoning issue, captioned Ryland Developers LLC v. Township of Readington, et. al. Respondent failed to answer interrogatories on behalf of Ryland.

On October 5, 2010, Readington's motion to compel answers to interrogatories was granted. Respondent was required to provide Ryland's answers to interrogatories within twenty days. Respondent failed to do so. As a result, on December 17, 2010, the court dismissed the complaint without prejudice.

Respondent failed to inform his client or anyone at Mauro Savo that the case had been dismissed. On February 16, 2011, respondent filed a motion to reinstate the complaint. The defendant then filed a cross-motion for summary judgment, which respondent failed to oppose. On April 15, 2011, the court

[2] On or about July 10, 2013, respondent was charged with theft, by purposely obtaining or retaining property belonging to Mauro Savo, in violation of N.J.S.A. 2C:20-9. The record does not reveal the outcome of that charge.

denied the motion to reinstate, granted the summary judgment motion, and dismissed the complaint with prejudice.

Respondent failed to inform his client or anyone at Mauro Savo that the case had been dismissed with prejudice. Instead, he falsely informed the client and his supervising partner at Mauro Savo that the court had entered an order staying the case involving the zoning litigation, pending the outcome of another case involving the same client.

The Wen-Ying Hsiang Matter

Respondent represented Wen-Ying Hsiang in a personal injury lawsuit stemming from a motor vehicle accident. The defendants filed a motion for summary judgment arguing that Hsiang's claim was controlled by the verbal threshold and that Hsiang had failed to comply with discovery. Respondent failed to file an opposition to the motion.

On July 8, 2011, the court entered an order for summary judgment, dismissing the complaint with prejudice. Respondent failed to inform Hsiang and Mauro Savo that the case had been dismissed. Rather, he misrepresented to Mauro Savo that the case was awaiting trial because of scheduling difficulties.

In 2012, Alan Grant, a partner at Mauro Savo, filed a motion to vacate the summary judgment. Grant's certification in support of the motion asserted that Hsiang's motor vehicle insurance policy did not contain a verbal threshold provision and that Hsiang had responded to discovery requests.[3]

The Ferarro Matter

Respondent represented Linda Ferraro in a personal injury action. On February 14, 2011, respondent filed a complaint on her behalf. Although the defendant did not file an answer to the complaint, respondent did not move for the entry of default. On October 7, 2011, the court administratively dismissed the complaint.

Respondent not only failed to inform Mauro Savo that the case had been dismissed, but he repeatedly told the firm's partners that the case was proceeding according to schedule. Respondent never informed Ferraro that the complaint had been dismissed.

[3] The record does not reveal if Grant's motion was successful.

The Stein Matter

On September 10, 2009, Steven Stein retained Mauro Savo to represent him in litigation against Decker & Strama Builders. Respondent was assigned to handle the matter.

Respondent fabricated documents to make it appear as though he was diligently handling the matter. Documents in Mauro Savo's file included a complaint, dated October 27, 2009, and a cover letter, dated November 10, 2009, bearing a received stamp, indicating that the complaint had been filed in Somerset County Superior Court. However, no complaint was ever filed with the court. Respondent also sent a draft amended complaint to Stein for review, which respondent later told Stein had been filed. No such pleading was filed with the court, however.

The file also contained three documents purportedly signed by Irving Weber, counsel for the defendants. All of the documents had been manufactured by respondent. Specifically, an acknowledgement of service, dated December 29, 2009, does not contain Weber's actual signature. Weber did not accept service on behalf of Decker & Strama Builders. An ACMS record search revealed that the docket number on the documents related to a different case. Also, Weber did not prepare a January 26, 2010 letter, on his letterhead and addressed to respondent,

concerning the defendant's answer and jury demand. Although the signature is Weber's, Weber speculated that respondent copied his signature from previous correspondence to another attorney at Mauro Savo. Finally, Weber did not sign a document titled defendant's initial interrogatories, dated April 13, 2010, and did not prepare the questions in the defendant's initial interrogatories.

The DeRosa Matter

Respondent represented Anthony M. DeRosa, Jr., who was injured playing baseball, when he was fourteen years old. Respondent filed a complaint, on April 10, 2007, and an amended complaint, on May 6, 2008. Defendant Elmora Youth League filed a motion for summary judgment. Respondent requested an adjournment to file an opposition to the motion. Despite securing additional time to file his opposition, respondent never did so.

On September 26, 2008, the court entered an order granting Elmora Youth League's motion for summary judgment and dismissing all claims against it. On October 9, 2008, Anthony was awarded $75,000 in mandatory arbitration, with one hundred percent liability as to defendant City of Elizabeth.

Thereafter, the City of Elizabeth filed a request for a trial de novo. In November 2008, the City of Elizabeth filed a motion for summary judgment. Respondent failed to file an opposition.

On December 19, 2008, the motion for summary judgment was granted and the case was dismissed with prejudice. Subsequently, respondent repeatedly misinformed the partners at Mauro Savo that the case was awaiting trial because of scheduling difficulties.

Respondent never informed Anthony's father that the case had been dismissed. According to the father, respondent led him to believe that his son's case against the City of Elizabeth and Elmora Youth League was coming up for trial.

In October or November 2011, however, Anthony's father discovered that the case had been dismissed, when he visited the courthouse and inquired about the case status. He then called respondent, who told him that the delay was caused by a shortage of judges and a full court calendar. Respondent also told the father that he had a meeting at the courthouse about the case, the following week. When the father confronted respondent with the dismissal of the case, respondent replied that he would get back to him. Respondent never contacted the father, following

that conversation, despite his several phone calls to Mauro Savo, in an attempt to reach respondent. In December 2011, respondent told the father that he had been sick and that he would try to reinstate the case.

On February 10, 2012, respondent wrote to the father falsely informing him that the case had been administratively dismissed and that he would be filing a motion to restore it. Respondent never did so. Anthony's father received no further communications from respondent.

The Frattalone Matter

On December 5, 2006, Nicholas and Heike Frattalone retained Mauro Savo to represent them as the plaintiffs in a pending lawsuit. Respondent was assigned to handle the case.

On March 19, 2008, the court entered orders granting summary judgment to the defendants and dismissing the complaint with prejudice.[4] On April 28, 2008, respondent filed a notice of appeal. On October 8, 2008, the appeal was dismissed, after respondent failed to file a brief. Respondent did not notify Frattalone that the appeal had been dismissed. Instead, he

[4] Although not noted in the complaint, it appears that the defendant's motion was opposed.

misrepresented to Frattalone that the appeal was moving forward, but that the defendant's attorney, Richard Cushing, had asked for extensions of time. Frattalone then spoke with Cushing directly and learned that the case had been dismissed.

When Frattalone questioned respondent about the dismissal of the case, respondent told him that Cushing was mistaken. Frattalone then pressed respondent for copies of pleadings and briefs. Respondent provided Frattalone with a brief, dated April 6, 2010, but did not disclose to Frattalone that he had never filed the brief with the Appellate Division.

Respondent also prepared a number of documents that he provided to Frattalone to make it appear that the case was pending. Specifically, respondent gave Frattalone three scheduling orders, each stamped "Filed Appellate Division" and dated May 28, 2009, April 13, 2009, and January 12, 2010. Respondent also gave Frattalone a notice of conference, dated June 29, 2009, and three letters addressed to Joseph H. Orlando, Clerk of the Appellate Division, one of which is stamped filed on April 9, 2010. Respondent fabricated all of these documents.

The second count of the complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to

communicate with the client), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

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)(1).

Unquestionably, respondent knowingly misappropriated Mauro Savo's funds, for which he must be disbarred. In re Siegel, 133 N.J. 162 (1993).

In Siegel, during a three-year period, the attorney converted more than $25,000 in law firm's funds by submitting false disbursement requests to the firm's bookkeeper. The disbursements were drawn against "unapplied retainers" (monies collected and owned by the firm as legal fees, but not yet transferred from the clients' files to the firm's account). Although the disbursement requests listed ostensibly legitimate purposes for the funds to be disbursed, they represented actual expenses incurred by either Siegel personally (landscaping services, tennis club fees, theatre tickets, dental expenses, sports memorabilia, etc.) or by others (his mother-in-law's

mortgage service fee). Although the payees were not fictitious, the stated purpose of the expenses was illegitimate.

The Court concluded that knowing misappropriation from one's partners is just as wrong as knowing misappropriation from one's clients.

See also In re Greenberg, 155 N.J. 138 (1998) (attorney disbarred for misappropriating approximately $34,000 from his law firm; the Court rejected the attorney's defense of depressive disorder and ordered his disbarment); In re Staropoli, 185 N.J. 401 (2005) (on a motion for reciprocal discipline, the Court disbarred an attorney who received a one-year suspension in Pennsylvania for retaining all of a $3,000 legal fee, when two-thirds belonged to his firm); In re Epstein, 181 N.J. 305 (2004) (attorney who knowingly misappropriated funds from his law firm was disbarred); and In re LeBon, 177 N.J. 515 (2003) (disbarment for stealing law firm funds).

Because respondent's knowing misappropriation of his law firm's funds, under Siegel and its progeny, requires the ultimate sanction of disbarment, we need not address the appropriate discipline for the remaining charges against him. We recommend that the Court order respondent's disbarment.

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 C. Frost, Chair

By: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Darren P. Leotti
Docket No. DRB 13-344

Argued: February 20, 2014

Decided: April 11, 2014

Disposition: Disbar

Members	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:	9					

Isabel Frank
Acting Chief Counsel