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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
DOCKET NO. DRB 99-188

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IN THE MATTER OF :  
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VINAYA SAIJWANI, :  
 :  
AN ATTORNEY AT LAW :  
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Decision

Argued: October 14, 1999

Decided: April 12, 2000

Brian D. Gillet 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 us based on a disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE), in which respondent admitted numerous recordkeeping infractions, in violation of R. 1:21-6 and RPC 1.15(d). Respondent also admitted that she was guilty of a violation of RPC 1.3 (lack of diligence) in the Williams matter.

Respondent was admitted to the New Jersey bar in 1990. During the time relevant to the within matters, she maintained an office for the practice of law in Lawrenceville, Mercer County. Respondent has no history of discipline.

Two matters are covered by this stipulation. The first arose from a letter dated June 27, 1997 from the Honorable Thomas H. Dilts, J.S.C., in which he advised the OAE of respondent's receipt of legal fees from a client's family in India for her representation in the Sahni matrimonial matter. The second matter arose from respondent's representation of Tyrone Williams (the grievant herein) and Diane Gilmore, in connection with a real estate transaction. By letter dated August 25, 1997, the OAE assumed the investigation and prosecution of the Williams grievance, which had originally been investigated by a member of the District VII Ethics Committee. Respondent stipulated her misconduct in these two matters as follows:

The Dilts Grievance/Recordkeeping Violations (Docket No. XIV-97-254E)

Following Judge Dilts' letter, a select audit of respondent's attorney books and records was scheduled for August 20, 1997 to determine her compliance with the recordkeeping requirements of R.1:21-6 and RPC 1.15. Follow-up meetings took place on August 20, 1997 and September 24 and October 28, 1998.

Respondent's attorney records had been the subject of a previous random compliance audit conducted on January 29, 1996. The audit period covered calendar years 1994 and 1995. By letter dated February 13, 1996 respondent was advised of deficiencies found in her recordkeeping practices. Respondent was required to submit a written reply to the OAE within forty-five days of the date of the OAE's letter, certifying that corrective action had

been taken for each deficiency. In addition, respondent was required to certify the client balances in her trust account and submit supporting documentation. Respondent's initial reply was received on June 1, 1996 and was supplemented on August 22, 1996. In those submissions, respondent advised the OAE that she had corrected the existing recordkeeping deficiencies.

The August 20, 1997 OAE select audit covered the period from January 1, 1996 through July 31, 1997. The objective of the audit was to verify respondent's compliance with the requirements of R.1:21-6, including the proper recording of fees, and to review her handling of the above mentioned Williams/Gilmore closing. The 1997 audit report noted the following:

- A. Respondent's trust receipts and disbursements books are maintained on the computer using Microsoft Money. The transactions are entered to the computer from the returned bank statements therefore, if the transaction has not yet cleared the bank, the entry would not be included on the journals. Because of this posting procedure, the running cash balance is inaccurate.
- B. Client ledger sheets are maintained manually but not all trust transactions are recorded on ledger sheets. The ledger sheets that are maintained were found to be incomplete and/or inaccurate.
- C. Neither bank reconciliations nor client balance reconciliations are performed. Random Auditor Karen Hagerman prepared a bank reconciliation as of July 31, 1997. After the journal balance was adjusted for missing transactions, a difference of \$357.79 was noted between the running journal balance and the adjusted statement balance. Because of the lack and/or inaccuracy of respondent's client ledgers, the client balances could not be reconciled to the cash balance. Based on review of the transaction journals, the money in the account as of July 31, 1997, which totaled almost \$12,000.00, appeared to be retainers.

- D. Several trust account checks were made payable to 'cash.' These checks represented the transfers of earned retainers to the business account.
- E. The business account designation was improper. The journals were not fully descriptive as to dates, sources of funds deposited, check numbers and payee information.

The audit also showed that attorney fees were generally deposited to the attorney business account. The exception was the above-noted fee in the Sahni matter, which was paid directly to respondent's parents, who live in India, by her client's parents, who also reside in India. Respondent revealed that she had utilized a similar payment arrangement in a matrimonial matter in 1994 or 1995, involving a fee of approximately \$4,000. Respondent had no other matters in which fees earned from her practice of law in New Jersey had not been deposited to her attorney business account. Thus, these two matters appear to be isolated instances.

As set forth in the stipulation, the following deficiencies, which respondent acknowledged existed in 1996, had not been corrected at the time of the 1997 audit:

- A. A separate ledger sheet is not maintained for each trust client.
- B. A schedule of clients' ledger accounts is not prepared and reconciled quarterly to the trust account bank statement.
- C. Business bank account designation is improper.
- D. Receipts journal for the business account is not fully descriptive.

In addition, the 1997 audit revealed the following new deficiencies:

- A. Although a disbursement journal was being maintained for the trust account and business accounts, they were found to lack required descriptiveness.
- B. Separate ledger sheets were being maintained for some trust clients but these ledgers were found to lack required descriptiveness.

- C. Trust account checks are made payable to cash.
- D. Funds received for professional services are not deposited into the business account.

By letter dated August 4, 1998, respondent was advised by the OAE of the deficiencies noted during the select audit. On September 14, 1998, respondent assured the OAE that she had taken action to correct the deficiencies. In addition, on November 6, 1998 respondent submitted a trust account reconciliation as of September 30, 1998, including a schedule of client balances. As of that date respondent's account appeared to be in trust.

Respondent hired a bookkeeper to perform monthly reconciliations of her trust account and to supply other related services.

Respondent admitted that her failure to correct all of the deficiencies noted in the 1996 audit, together with the additional deficiencies found during the 1997 audit, constituted a violation of R.1:21-6 and RPC 1.15(d).

The Williams Matter (Docket No. XIV-97- 303E, formerly District Docket No. VII-97-010E)

On April 16, 1996 a closing was held for the purchase of a residence by Tyrone Williams and Diane Gilmore ("the buyers") from K. Hovnanian at Hopewell III, Inc. ("the seller"). Respondent represented the buyers and served as the settlement agent.

On December 28, 1996 Williams filed a grievance with the DEC. According to Williams, in March 1997, nearly one year after the closing, he received "catch-up" bills for water and sewer charges from the date of closing, apparently caused by respondent's seven-

month delay in recording the deed with the county clerk and her failure to plot the deed with the township. According to Williams, respondent's inaction forced him to plot the deed himself and to pay a \$25 filing fee to the township to avoid a \$500 fine. Williams was also required to pay nearly one year's worth of sewer and water charges in a lump sum, rather than in smaller periodic payments, due to respondent's neglect. In addition, Williams questioned respondent's handling of \$8,000 he had brought to the closing.<sup>1</sup>

The transactions through respondent's trust account for this matter were set forth in the stipulation as follows:

<u>DATE</u>	<u>TRANSACTION</u>	<u>AMOUNT</u>	<u>PAYEE</u>	<u>EXHIBITS</u>
4/17/96	Deposit	\$181,836.08		
4/16/96	ATA Ck #272	<179,148.86>	K. Hovnanian at Hopewell III	14C
4/16/96	ATA Ck #266	<69.92>	BFPOA Inc.	14B <sup>2</sup>
4/16/96	ATA Ck #267	<83.79>	Brandon Farms POA Inc.	14A
11/13/96	ATA Ck #275	<530.00>	Recording Costs	14F
4/21/97	ATA Ck #139	<979.75>	Eastern Title Agency	14G
7/23/97	ATA Ck #149	<450.00>	K. Hovnanian (survey)	14D

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<sup>1</sup>Williams' grievance also indicates that he had difficulty communicating with respondent. There was no discussion of this issue in the stipulation.

<sup>2</sup>Although the transactions are summarized in this fashion in the stipulation, a review of the exhibits reveals that exhibit 14A, which is check number 267, is payable to BFPOA Inc., in the amount of \$69.92. Exhibit 14B, which is check number 266, is payable to Brandon Farms POA Inc., in the amount of \$83.79.

7/23/97	ATA Ck #150	<68.76>	Tyrone Williams	14E
			/ D. Gilmore	
	Balance Remaining	<u>\$505.00</u>		

According to the stipulation, respondent estimated the amount of the balance required by the buyers for the purchase price and closing costs and advised the buyers to bring to closing an \$8,000 check payable to the seller. In accordance with line 603 of the HUD-1, the seller was to receive \$187,148.86. At closing, the buyers' check, in the form of an \$8,000 bank check payable to the seller for \$8,000, and respondent's trust account check for \$179,148.86 were paid over to the seller as the net proceeds of the sale. The funds were deposited in the seller's account.

According to the OAE's calculations, the \$505 remaining balance consisted of the following:

Attorney's fee and costs	\$485.00
Amount due Buyer	\$ 12.00
Notice of settlement	<u>\$ 8.00</u>
Balance remaining	\$505.00

It appears that respondent made several errors in connection with the Williams/Gilmore closing. First, respondent included, as a closing cost for the buyers, \$20 for a release. This charge was improper because there did not appear to be an outstanding mortgage on the subject property. In addition, respondent initially forwarded the buyers' deed to the county clerk for recording without the required New Jersey realty transfer fee. The deed was returned to respondent unrecorded for this reason. In respondent's letter to the

DEC dated April 18, 1997, she explained that she sent the deed to the clerk without the fee because she believed from a conversation with the sales agent that the seller would pay the fee. It was not until November 13, 1996 that respondent forwarded the deed with the appropriate fee for recording. Thus, the deed was not recorded until November 14, 1996, nearly seven months after the closing date. Respondent had, in fact, collected from the buyers the funds to pay the transfer fee. Respondent neither contacted the seller to resolve this issue nor refunded the money collected to pay the transfer fee.

Respondent failed to realize, until more than a year after the closing, that the seller had not been paid \$450 due for a survey, although the sum had been collected from the buyers and included as a closing cost on the settlement statement. The \$450 was ultimately paid to the seller on July 23, 1997.

As to Williams' complaint about the deed and water and sewer bills, pursuant to a township ordinance adopted on July 1, 1996, all deeds must be plotted on township maps. The original deed must be sent to the local municipality after the deed is recorded by the county clerk, so that the township has notification of a change in the property's ownership. A note to this effect is attached to all township deeds by the county clerk. Upon receipt of the original recorded deed and a \$25 fee, the township adjusts its tax, water and sewer records, stamps the deed and returns the deed to the buyer or the buyer's attorney. Respondent failed to forward the deed to the township clerk after it had been recorded by the county clerk. Respondent further failed to collect the \$25 fee from the buyers as a closing



cost. When the deed was recorded and returned to respondent, she failed to read the above mentioned reminder about the plotting requirement stapled to the front of the deed and forwarded the deed to the buyers without advising them that the plotting had not been performed. Respondent's failure to plot the deed or to advise the buyers to do so potentially subjected the buyers to a \$500 fine and forced the buyers to pay the water and sewer bills in lump sum payments.

Also, respondent failed to pay the owners' title insurance policy on the property until April 21, 1997, although the amount was collected from the buyers and included as a closing cost on the settlement statement. However, because respondent failed to supply an affidavit of title from buyer, the title company did not issue a title policy.

In a July 23, 1997 letter to the DEC investigator originally assigned to this matter, respondent included a check for \$68.76, payable to the buyers as an additional reimbursement. Respondent stated that this amount represented a \$46.76 refund due the buyers from the \$8,000 brought to closing and an additional \$22 representing the unnecessary fee for the mortgage release mentioned above.

With regard to Williams' contention that respondent failed to adequately explain the allocation of the closing funds, the stipulation states

Respondent's inability to satisfactorily explain to the grievant and Ms. Gilmore the status of the \$8,000.00 check that was delivered to the seller at closing led in part to the problems here as respondent was unable to explain clearly to the grievant the payment of expenses related to the home purchase.

Respondent's unfamiliarity with the Seller's form of settlement sheet which was provided both before and at closing showing the purchase price,

credits and closing costs in a different fashion than that required by the HUD-1 may have also led to further confusion and frustration on the part of the grievant. If respondent herself understood the HUD-1, she may have been able to explain it more thoroughly to the grievant and might have recognized the errors that were made both on the Settlement statement and subsequently in her attorney trust account regarding payment of the closing costs and refunding of the balance due to grievant.

[Stipulation at 10]

Respondent stipulated that she was guilty of a lack of diligence, in violation of RPC

1.3.

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Upon a de novo review of the record, we are satisfied that the stipulated facts provide sufficient basis to a finding of unethical conduct.

Recently, the Court imposed a reprimand where the attorney was guilty of recordkeeping violations and misconduct in connection with an estate matter. In re Cheek, 162 N.J. 98 (1999). There, the attorney was the subject of a 1994 random audit that had disclosed several recordkeeping deficiencies. After being notified of the violations, the attorney certified to the OAE that they had been corrected. A subsequent 1995 demand audit revealed that several of the deficiencies had not been remedied. As a result, the attorney received an admonition in 1996. A 1997 demand audit conducted during the course of the investigation of the estate matter revealed that the attorney was still not in compliance with recordkeeping requirements. The attorney stipulated that he was guilty of a violation of RPC1.15(d) and R.1:21-6 for his failure to comply with the recordkeeping requirements and RPC 1.1(a) (gross neglect) and RPC 1.4(a) (failure to communicate) in the estate matter.

In Cheek, we imposed a reprimand based in part on the attorney's prior admonition. Here, although respondent has not been previously disciplined, a reprimand is still the appropriate form of discipline. Respondent was warned to correct her recordkeeping practices and, despite advising the OAE to the contrary, failed to do so. A subsequent audit revealed additional recordkeeping infractions. In addition, her mishandling of the Williams/Gilmore closing was serious. Respondent made several errors in completing the closing, which are not well explained. Respondent apparently did not comprehend the need for timely and careful action in completing the closing and the potential for harm to her clients as a result of her inaction.

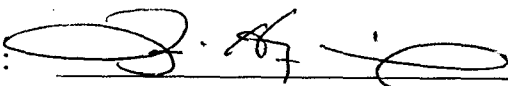
In recommending the imposition of a reprimand, the OAE relied on In re Salerno, 152 N.J. 431 (1998) (reprimand for an attorney who certified to the OAE that recordkeeping deficiencies found in 1988 had been corrected; 1996 audit revealed otherwise); In re Zavodnick, 139 N.J. 607 (1995) (reprimand for failure to remedy noted accounting improprieties); In re Fucetola, 147 N.J. 255 (1997) (reprimand for recordkeeping violations and negligent misappropriation; attorney had been previously reprimanded for inadequate recordkeeping).

During her argument before us, respondent sought to distinguish the above cases because the attorneys in those matters had been practicing for a substantially longer time than she had at the time of their infractions. Recordkeeping responsibilities are so central to an attorney's role, however, that even new practitioners must be held accountable when they

disregard those responsibilities. In addition, respondent had already had her "one bite at the apple" when these deficiencies were discovered. Accordingly, we are of the unanimous opinion that respondent's recordkeeping transgressions, coupled with her mishandling of the Williams/Gilmore closing, warrants a reprimand. In addition, respondent is required to submit to the OAE, for a period of one year, semi-annual reconciliations of her attorney books and records, certified by an accountant approved by the OAE. Two members did not participate.

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

Dated: 4/12/00

By: 

LEE M. HYMERLING  
Chair  
Disciplinary Review Board

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**SUPREME COURT OF NEW JERSEY**  
**DISCIPLINARY REVIEW BOARD**  
**VOTING RECORD**

**In the Matter of Vinaya Saijwani**  
**Docket No. DRB 99-188**

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**Argued: October 14, 1999**

**Decided: April 12, 2000**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Cole			X				
Boylan							X
Brody			X				
Lolla			X				
Maudsley							X
Peterson			X				
Schwartz			X				
Wissinger			X				
<b>Total:</b>			7				2

*Robyn M. Hill* 4/28/00  
Robyn M Hill  
Chief Counsel