

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-094
District Docket No. XIV-08-262E

IN THE MATTER OF
ELISA AMBROSIO
AN ATTORNEY AT LAW

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Decision

Argued: July 16, 2009

Decided: September 4, 2009

Michael J. Sweeney 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 on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE"). The OAE recommends the imposition of either an admonition or a reprimand for respondent's stipulated violations of RPC 1.15(a)

(failure to safeguard funds), RPC 1.15(d) (recordkeeping violations), and N.J. Advisory Comm. On Prof'l Ethics Opinion 454 (disbursing against uncollected funds). For the reasons stated below, we determine to impose a reprimand on respondent for her misconduct.

Respondent was admitted to the New Jersey bar in 2000. At the relevant times, she maintained an office for the practice of law in Newark. Respondent has no disciplinary history.

On March 20, 2009, respondent and the OAE entered into a disciplinary stipulation. In the stipulation, the parties agreed that respondent had negligently misappropriated trust funds from her Sovereign Bank attorney trust account, resulting in a \$4,239.74 shortage on December 31, 2007. Of this amount, the following transactions resulted in a shortage of \$991.48: \$495.32 "overdisbursement" to the client in the Antonio Dinis matter; \$343.40 "overdisbursement" for a "final oil reading" in the Eduardo Egudio matter; \$102.07 duplicate payment to a realtor in the Gina Halupka matter; and \$50.69 in "bank charges and small errors which went undetected during the audit period."

The \$3,248.26 balance of the \$4,239.74 total shortage is not accounted for in the stipulation. As to this amount, the parties merely agreed that respondent's records reflected a

\$3,248.26 deposit in the Wagner Dos Santos matter, based on her mistaken belief that the client was going to bring these funds to a closing. For whatever reason, however, no such deposit was made into the trust account.

Also, according to the stipulation, respondent negligently misappropriated trust funds from her Penn Federal Bank attorney trust account, resulting in an \$11,070.22 shortage on December 31, 2007. The shortage is supported by the following stipulated facts: \$7,195.33 in "deposits" that were recorded in respondent's records but never actually made; a \$2340 trust account check written to respondent's business account, which bounced because it was written against two client checks that bounced; a \$818.81 negative balance in the Gustavo Rocha matter, as to which respondent was unable to determine the reason; a \$678.08 negative balance in the Paresh Gupta matter caused by duplicate disbursements to the client and to a condominium association; a \$28 negative balance in the Michael Caringi matter, as to which respondent was unable to determine the reason; and a \$10 negative balance in the Amilson DaSilva matter caused by a wire fee charge.

With respect to the recordkeeping violations, the stipulation identifies the following:

- a. A schedule of client ledger account balances was not prepared and reconciled monthly to the attorney trust account bank statement. [R. 1:21-6(c)(1)(H)]. (Penn Federal ATA, Sovereign ATA and old BP ATA);
- b. Attorney trust account imaged processed checks (front and back) exceed two per page limit. [R. 1:21-6(b)]. (Penn Federal ATA);
- c. Client ledger cards were found with debit balances. [R. 1:21-6(d)]. (Penn Federal ATA, Sovereign ATA and old BP ATA);
- d. Old outstanding attorney trust account checks are to be resolved. [R. 1:21-6(d)] (Penn Federal ATA);
- e. Inactive trust ledger balances remained in the attorney trust account for an extended period of time. [R. 1:21-6(d)]. (Penn Federal ATA);
- f. Attorney trust account checks disbursed against uncollected funds. (Opinion No. 454 issued by the Advisory Committee on Professional Ethics). (Penn Federal ATA and Sovereign ATA);
- g. The designation on attorney trust account bank statement is improper. R. 1:21-6(a)(2) requires that bank statements, checks and deposit slips must be entitled an "Attorney Trust Account" or an "IOLTA Attorney Trust Account." (Penn Federal ATA);
- h. The designation on attorney business account bank statement is improper. R. 1:21-6(a)(2) requires that bank statements, checks and deposit slips must

be entitled an "Attorney Business Account," "Attorney Office Account" or "Attorney Professional Account." (Penn Federal ABA and Sovereign ABA);

- i. Attorney business account imaged processed checks (front and back) exceed two per page limit. [R. 1:21-6(b)]. (Penn Federal ABA).

[SSB¶3a-¶3i.]¹

Based on these facts, the parties stipulated that respondent had failed to safeguard funds, committed recordkeeping violations, and made disbursements against uncollected funds.

Following a de novo review of the record, we find that the facts recited in the stipulation clearly and convincingly establish that respondent's conduct was unethical.

The stipulation supports the finding that respondent negligently misappropriated \$4,239.74 from her Sovereign Bank trust account and \$11,070.22 from her Penn Federal Bank trust account.

Respondent violated RPC 1.15(a) with respect to both the Sovereign and Penn Federal attorney trust accounts. Moreover,

¹ "S" refers to the March 20, 2009 disciplinary stipulation.

respondent also violated N.J. Advisory Comm. On Prof'l Ethics Opinion 454, when she drafted the \$2340 trust account check against funds that had not yet been collected and that, ultimately, were not collected.

Finally, the stipulation supports the conclusion that respondent committed several recordkeeping violations: she did not prepare a schedule of client ledger account balances and reconcile them monthly to the attorney trust account; the attorney trust account imaged processed checks for both the Sovereign and Penn Federal accounts exceeded the two-per-page limit; "[o]ld outstanding attorney trust account checks" remained unresolved; "inactive trust ledger balances remained in the attorney trust account for an extended period of time;" and the designation on respondent's trust and business account statements was improper.

In aggravation, the stipulation states that respondent "did not deposit funds to completely cover all of the negative balances until October 24, 2008."

Of particular concern to us in this matter was the reason for respondent's repeated recording of deposits into the trust account that were never made and what steps she has taken to rectify this pattern. Specifically, she recorded one trust

account deposit that totaled more than \$3000 in the Sovereign Bank account, as well as several trust account deposits that totaled more than \$7000 in the Penn Federal account. At oral argument, respondent assured us that, at real estate closings, she now compares the figures on the HUD-1 with the ledger and, if the client does not appear at the closing with the required funds, the closing does not go forward.

In addition, respondent informed us that she now has a bookkeeper who reconciles her bank statements, though not on a monthly basis.

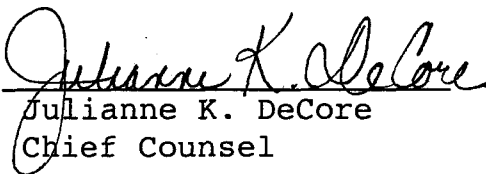
Generally, a reprimand is imposed for negligent misappropriation of client funds and recordkeeping deficiencies. See, e.g., In re Weinberg, 198 N.J. 380 (2009) (motion for discipline by consent granted; attorney negligently misappropriated client funds as a result of an unrecorded wire transfer out of his trust account; because he did not regularly reconcile his trust account records, his mistake went undetected until an overdraft occurred; the attorney had no prior final discipline); In re Philpitt, 193 N.J. 597 (2008) (attorney negligently misappropriated \$103,750.61 of trust funds as a result of his failure to reconcile his trust account; the attorney was also found guilty of recordkeeping violations); In

re Conner, 193 N.J. 25 (2007) (in two matters, the attorney inadvertently deposited client funds into his business account, instead of his trust account, an error that led to his negligent misappropriation of clients' funds; the attorney also failed to promptly disburse funds to which both clients were entitled); In re Winkler, 175 N.J. 438 (2003) (attorney commingled personal and trust funds, negligently invaded clients' funds, and did not comply with the recordkeeping rules; the attorney withdrew from his trust account \$4,100 in legal fees before the deposit of corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account); and In re Blazsek, 154 N.J. 137 (1998) (attorney negligently misappropriated \$31,000 in client funds and failed to comply with recordkeeping requirements). Thus, a reprimand is in order for respondent's violations.

Given respondent's lack of knowledge of her recordkeeping responsibilities, in addition to the reprimand, we impose the following conditions on her: respondent must attend a trust accounting course and a law office management course and must provide monthly reconciliations of her attorney accounts to the OAE on a quarterly basis for a period of two years.

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
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

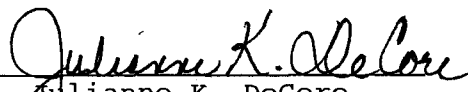
In the Matter of Elisa Ambrosio
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Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			


Julianne K. DeCore
Chief Counsel