

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 09-246  
District Docket No. XIV-2008-0102E

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IN THE MATTER OF  
MARIA M. DIAS  
AN ATTORNEY AT LAW

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Decision

Argued: October 15, 2009

Decided: NOVEMBER 24, 2009

Christina Blunda Kennedy 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 on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE"). Respondent negligently misappropriated client funds, engaged in numerous recordkeeping violations, and failed to cooperate with

ethics authorities in the investigation of the matter. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1998. In 2008, she received an admonition for practicing law while ineligible to do so for failure to pay the Supreme Court Lawyers' Fund for Client Protection annual assessment for 2006. Although respondent knew that she was ineligible to practice law, significant mitigating financial factors were considered when only an admonition was imposed. In the Matter of Maria M. Dias, DRB 08-138 (July 29, 2008).

The stipulated violations were discovered during a February 1, 2008 demand audit of respondent's attorney books and records. At the audit, respondent told investigators that she had not, since her 1998 bar admission, maintained trust account ledgers and that she was holding over \$11,000 in unidentified funds in her attorney trust account.

Specifically, the audit revealed the following recordkeeping violations:

- a.) no trust receipts journal;
- b.) no trust disbursements journal,
- c.) no individual client ledger cards;
- d.) no monthly trust account reconciliation with client ledgers, journal and checkbook;

- e.) no running balances in the checkbook;
- f.) deposit slips lacked sufficient detail;
- g.) trust funds on deposit exceeded obligations;
- h.) trust account records were not retained for the required seven years.

On March 3, 2008, the OAE sent respondent a letter requiring her to correct the trust account deficiencies and to furnish the OAE with the HUD-1 settlement statements from two real estate transactions; trust account bank statements and cancelled checks for several discrete time periods, between 2004 and 2008; client ledger sheets for clients whose funds were held from late 2004 to January 2008; and a copy of the file in the Vernaza/Restrepo real estate transaction.

On March 24, 2008, respondent gave the OAE her verbal assurance that she would bring her records into compliance. By April 23, 2008 letter to respondent, the OAE confirmed respondent's intention to retain an accountant to reconstruct her records by a June 15, 2008 deadline.

On May 30, 2008, the OAE extended that deadline to July 1, 2008, at respondent's request. Respondent told the OAE that she would furnish all required documentation before departing for

Portugal, at the end of July 2008. She failed to provide the documents in a timely manner.

On October 20, 2008, respondent appeared at the OAE's offices for a demand audit with some, but not all, of the required documents and without the required trust account reconciliations. Therefore, at the audit, the OAE served her with a complaint, charging her with violations of RPC 1.15(d) and R. 1:21-6 (recordkeeping violations) and RPC 8.1(b) (failure to cooperate with an ethics investigation).

Respondent subsequently retained an accountant and remedied the recordkeeping deficiencies. The accountant's reconciliation revealed that respondent's trust account held not an \$11,000 surplus, but a \$4,526 shortfall. The shortfall was caused by an over-disbursement to client Vernaza in the Vernaza/Restrepo real estate transaction (\$4,290), along with \$236 in bank fees not accounted for on respondent's personal ledger card.

Vernaza had claimed that respondent owed her \$6,075 from the real estate transaction, but respondent could not accurately assess that claim, due to the poor condition of her records. On January 19, 2007, respondent sent Vernaza a check for the entire \$6,075. When respondent wrote the check to Vernaza, the trust account held only \$1,785 on behalf of Vernaza. Therefore, the \$6,075 disbursement

invaded and caused the admittedly negligent misappropriation of other clients' funds on deposit in the trust account.

As of the date of the stipulation, the trust account had a \$4,526 short fall. Respondent, a single mother working on a per diem basis with little access to funds, indicated her intention to repay it when she is able to do so. In the weeks leading up to the stipulation, respondent had repaid \$400 of the shortfall amount, at a rate of \$100 per week, leaving a balance of \$4,126. At oral argument before us, she indicated that she had further reduced the balance to less than \$2,000.

Respondent also stipulated that, once she obtains full employment, she will increase her payments to \$200 per week, until the balance is repaid.

Respondent stipulated that her negligent misappropriation of other clients' funds violated RPC 1.15(a), that her recordkeeping deficiencies violated RPC 1.15(d) and R. 1:21-6, and that her failure to cooperate timely with the OAE requests for documents, during the investigation, violated RPC 8.1(b).

Following a review of the record, we are satisfied that the stipulation fully supports findings of violations of RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b).

Generally, a reprimand is imposed for negligent misappropriation of client funds. See, e.g., In re Seradzky, 200 N.J. 230 (2009) (due to poor recordkeeping practices, attorney negligently misappropriated \$50,000 of other clients' funds by twice paying settlement charges in the same real estate matter; prior private reprimand); 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 the attorney 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); and 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).

A reprimand may still result even if the attorney's disciplinary record includes a prior recordkeeping violation or other ethics transgressions. In re Toronto, 185 N.J. 399 (2005) (attorney negligently misappropriated \$59,000 in client funds and violated the recordkeeping rules; prior three-month suspension for conviction of simple assault, arising out of a domestic violence incident, and reprimand for a misrepresentation to ethics authorities about his sexual relationship with a former student; mitigating factors taken into account); In re Regojo, 185 N.J. 395 (2005) (attorney negligently misappropriated \$13,000 in client funds as a result of his failure to properly reconcile his trust account records; the attorney also committed several recordkeeping improprieties, commingled personal and trust funds in his trust account, and failed to timely disburse funds to clients or third parties; the attorney had two prior reprimands, one of which stemmed from negligent misappropriation and recordkeeping deficiencies;

mitigating factors considered); In re Rosenberg, 170 N.J. 402 (2002) (attorney negligently misappropriated client trust funds in amounts ranging from \$400 to \$12,000 during an eighteen-month period; the attorney routinely deposited large retainers in his trust account, and then withdrew his fees from the account as he needed funds, without determining whether he had sufficient fees from a particular client to cover the withdrawals; prior private reprimand for unrelated violations); and In re Marcus, 140 N.J. 518 (1995) (negligent misappropriation of client funds resulting from numerous recordkeeping violations and commingling of personal and clients' funds; prior reprimand). We do not believe that respondent's failure to promptly comply with the OAE's requests for some documents should increase the discipline to a level higher than a reprimand. We are aware that, in aggravation, respondent had an admonition in 2008, but we considered, in mitigation, that respondent is replenishing the trust account deficiency, at great sacrifice to her.

We also require respondent to submit monthly reconciliations of her attorney records to the OAE, on a quarterly basis, and either for a period of two years or until she closes out her attorney accounts.



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  
Julianne K. DeCore  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

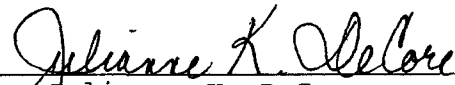
In the Matter of Maria Dias  
Docket No. DRB 09-246

Argued: October 15, 2009

Decided: November 24, 2009

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