SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-354
District Docket No. XIV-08-226E

IN THE MATTER OF	
JEFFREY S. FEINERMAN	
AN ATTORNEY AT LAW	

Decision

Argued: January 21, 2010

Decided: March 16, 2010

Melissa Czartoryski appeared on behalf of the Office of Attorney Ethics.

Elliott Abrutyn appeared on behalf of respondent.

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

This matter was before us on a stipulation between respondent and the Office of Attorney Ethics ("OAE"). Respondent admitted that he violated RPC 1.3 (lack of diligence), RPC 1.15(a) (failure to safeguard client funds and negligent misappropriation), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 5.5(a)(1) (practicing law while

ineligible), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The OAE recommended the imposition of a reprimand. We agree that a reprimand is the appropriate quantum of discipline.

Respondent was admitted to the New York and the New Jersey bars in 1994 and 1995, respectively. He has no history of discipline.

In September 2003, respondent acted as settlement agent and attorney for Aames Funding Corporation in connection with the purchase of a residence by Bianca Mora from Mitchell and Susan Baker. In connection with the closing, respondent prepared a HUD-1 form that misrepresented the actual disbursement of the proceeds from the sale. Specifically, the HUD-1 form listed respondent's fee as $900, when, in fact, he received $2,000. In addition, it did not list three disbursements from the settlement proceeds, totaling $46,375.74.

Respondent also prepared the deed and affidavit of title in connection with the Mora transaction. The affidavit is deficient because the Bakers' forwarding address is missing, the marital history section is incomplete, and the county is incorrectly listed as Bergen, rather than Middlesex. The deed lacks an address for Mora.

From July 1, 2003 to January 31, 2004, respondent handled approximately five to ten real estate settlements per month. Respondent utilized two ordinary business checking accounts, rather than an attorney trust account. The funds for the transactions were wired into JP Morgan Chase business account #XXXXXXXX2165. All disbursements were paid from this account, with the exception of the mortgage pay-off, title insurance fees, recording fees, and respondent's fee, which he electronically transferred to, and disbursed from, JP Morgan Chase business account #XXXXXXXX5265.[1]

At no time from July 1, 2003 though January 31, 2004, did respondent maintain an attorney trust account, a violation of R. 1:21-6(a)(1). As a result, he also failed to maintain trust receipts and disbursements journals and failed to perform

[1] The checks in evidence show that the accounts were respectively designated "closing" and "escrow" account. Presumably, despite this designation, the accounts were in the nature of business accounts because respondent stipulated that he did not have a trust account and conducted business through his business accounts.

monthly trust account reconciliations, in violation of R. 1:21-6(c)(1)(A) and R. 1:21-6(c)(1)(H).[2]

In connection with the Baker to Mora transaction, $324,572.62 was wired into respondent's account #XXXXXXXX2165. Respondent transferred $220,946.33 to account #XXXXXXXX5265, which he used to satisfy the existing mortgage. In addition, he paid $2,087 to Varsity Title Insurance Agency and $200 to the Middlesex County Clerk for recording fees from the same account, even though there were no additional transfers into the account to cover these payments. Respondent, therefore, negligently misappropriated other clients' funds.

Respondent was ineligible to practice law, from September 27, 2004 until December 6, 2005, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.[3] Respondent practiced in both New York and New Jersey, mainly handling real estate closings. During that time,

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[2] The stipulation states that respondent had never been the subject of an OAE audit and had never previously been cited for recordkeeping deficiencies. Presumably, this information was offered as a mitigating factor.

[3] Respondent was also ineligible from September 15, 2003 to December 22, 2003. Whether he practiced law during that period of ineligibility is not addressed in the stipulation.

he conducted between twenty-five and thirty closings in New Jersey. The stipulation states that, during the period of respondent's ineligibility, "he should have known" that he had failed to pay the assessment. In his brief, respondent's counsel asserted that respondent did not know that he was ineligible.

Respondent stipulated that he violated RPC 1.3, RPC 1.15(a), RPC 1.15(d) and R. 1:21-6, RPC 5.5(a)(1), and RPC 8.4(c).

Upon a de novo review of the record, we are satisfied that the stipulated facts support a finding that respondent's conduct was unethical. Respondent admitted that he violated RPC 1.3, RPC 1.15(a), RPC 1.15(d) and R. 1:21-6, RPC 5.5(a)(1), and RPC 8.4(c). The facts set forth in the stipulation support a finding of a violation of each of those rules, with the exception of RPC 1.3. There is no evidence that respondent lacked diligence in his handling of the Baker to Mora closing. Although respondent admitted a violation of RPC 1.3, we do not find that he violated that rule.[4]

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[4] We are aware that certain information is missing from the deed and affidavit of title, such as addresses and marital history,

(footnote cont'd on next page)

As to the other violations, respondent's misconduct breaks down into three categories: recordkeeping violations and negligent misappropriation, misrepresentations on closing documents, and practicing law while ineligible.

A reprimand is usually imposed for recordkeeping deficiencies and 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 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

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(footnote cont'd)

and that the county listed is incorrect. Such deficiencies may constitute simple negligence, an impropriety that does not rise to the level of unethical conduct.

result of his failure to reconcile his trust account; the attorney was also found guilty of recordkeeping violations); In re Blazsek, 154 N.J. 137 (1998) (attorney negligently misappropriated $31,000 in client funds and failed to comply with recordkeeping requirements); and In re Liotta-Neff, 147 N.J. 283 (1997) (attorney negligently misappropriated close to $5,000 in client funds after commingling personal and client funds; the attorney left $20,000 of her own funds in the account, against which she drew funds for her personal obligations; the attorney was also guilty of poor recordkeeping practices). A reprimand may still result, even if the attorney committed other ethics transgressions. See, e.g., 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) and In re Marcus, 140 N.J. 518 (1995) (attorney negligently misappropriated client funds as a result of numerous

recordkeeping violations; the attorney also commingled personal and clients' funds; the attorney had received a prior reprimand).

Reprimands, too, are usually imposed for misrepresentations on closing documents, when the misrepresentations are unaccompanied by additional instances of misconduct. See, e.g., In re Spector, 157 N.J. 530 (1999) (attorney concealed secondary financing to the lender through the use of dual RESPA statements, "Fannie Mae" affidavits, and certifications); In re Sarsano, 153 N.J. 364 (1998) (attorney concealed secondary financing from the primary lender and prepared two different RESPA statements); and In re Blanch, 140 N.J. 519 (1995) (attorney failed to disclose secondary financing to a mortgage company, contrary to its written instructions).

At times, a reprimand may still result even when the misrepresentation on a closing document is combined with other unethical acts. See, e.g., In re Agrait, 171 N.J. 1 (2002) (despite being obligated to escrow a $16,000 deposit shown on a RESPA, attorney failed to verify it and collect it; in granting the mortgage, the lender relied on the attorney's representation about the deposit; the attorney also failed to disclose the existence of a second mortgage prohibited by the lender; the

attorney's misconduct included misrepresentation, gross neglect, and failure to communicate to the client, in writing, the basis or rate of his fee).

Here, we note that respondent's misrepresentations on the closing documents seem more a series of omissions than intentional acts, such as hiding secondary financing. Although supplying incorrect information about the disbursements should not be tolerated, respondent's work appears more sloppy than dishonest. Thus, in our view, it does not require greater discipline than a reprimand.

As to practicing law while ineligible, this impropriety, without more, is generally met with an admonition if the attorney is unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney practiced law while unaware that he was ineligible; he immediately cured his ineligibility when he learned of his status); In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligible status); and In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (attorney practiced law during a nineteen-month period of ineligibility; the attorney did not know

he was ineligible). Nothing in the record establishes that respondent was aware of his ineligibility.

An admonition may still result for practicing law while ineligible, even where other violations are present. See, e.g., In the Matter of Frank D. DeVito, DRB 06-116 (July 21, 2006) (attorney practiced law while ineligible, failed to cooperate with the OAE, and committed recordkeeping violations; compelling mitigating factors justified only an admonition, including the attorney's lack of knowledge of his ineligibility); In the Matter of Queen Esther Payton, (November 3, 2005) (discipline by consent for practicing while ineligible between September 2003 and August 2004 and also failing to cooperate with disciplinary authorities); In the Matter of William N. Stahl, DRB 04-166 (June 22, 2004) (attorney practiced law while ineligible and failed to maintain a trust and a business account; specifically, the attorney filed a complaint on behalf of a client and made a court appearance on behalf of another client; mitigating factors were the attorney's lack of knowledge of his ineligibility, his prompt action in correcting his ineligibility status, and the absence of self-benefit; in representing the clients, the attorney was moved by humanitarian reasons); In the Matter of Samuel Fishman, DRB 04-142 (June 22, 2004) (while ineligible to practice law, attorney

represented one client in a lawsuit and signed a retainer agreement in connection with another client matter; the attorney also failed to maintain a trust and a business account; mitigating factors were the attorney's lack of knowledge of his ineligibility, his contrition at the hearing, his quick action in remedying the recordkeeping deficiency, and the lack of disciplinary history); In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (discipline by consent for attorney who practiced law while ineligible, failed to communicate with the client, and delayed the payment of the client's medical expenses as well as the disbursement of the client's share of settlement proceeds; in mitigation, we noted that the attorney was suffering from depression at the time of the misdeeds and had no disciplinary history since his admission to the bar in 1983); In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (attorney practiced law while ineligible for two and a half years, was guilty of numerous recordkeeping deficiencies, and failed to satisfy a client's medical bill out of trust funds for three and a half years; in mitigation, we considered that the attorney was suffering from depression at the time, was going through bankruptcy and divorce proceedings, was no longer practicing law in New Jersey, had paid all sums due to the Client Protection Fund, and showed

contrition for his ethics infractions); and In the Matter of Judith E. Goldenberg, DRB 01-449 and 01-450 (March 22, 2002) (discipline by consent for attorney who, while ineligible to practice law, made two appearances before an immigration court; the attorney also lacked diligence in handling one matter; the attorney was unaware of her ineligibility).

Finally, an admonition is the typical measure of discipline for failure to maintain a trust account. See, e.g., In the Matter of Arthur B. Field, DRB 99-142 (July 19, 1999) (admonition for attorney who did not maintain an attorney trust account in a New Jersey banking institution).

Thus far, a reprimand would be appropriate for respondent's recordkeeping violations and negligent misappropriation, a reprimand for his misrepresentations on closing documents, and an admonition for his practicing law while ineligible. The question is whether the combination of offenses warrants more serious discipline than the reprimand urged by the OAE. We conclude that it does not. As seen by the above precedent, the combination of respondent's violations may still result in a reprimand. There are no aggravating factors to be considered. In mitigation, we noted respondent's lack of prior discipline.

We, therefore, determine that a reprimand is sufficient discipline for his overall conduct.

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 Jeffrey Feinerman
Docket No. DRB 09-354

Argued: January 21, 2010

Decided: March 16, 2010

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