

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-080

IN THE MATTER OF :
A. DAVID DASHOFF, :
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: April 19, 1995

Decided: August 11, 1995

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent failed to appear for oral argument, despite proper notice of the hearing.

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

This matter was before the Board based on a recommendation for discipline filed by the District IIIB Ethics Committee.

Respondent was admitted to the New Jersey bar in 1976. He maintains a law office in Voorhees, New Jersey. Respondent was publicly reprimanded on October 6, 1987 for exhibiting a pattern of neglect in three matters. He also received a private reprimand on May 19, 1989 for failure to pursue a medical malpractice action and to keep his clients reasonably informed about the status of their matter.

In 1985, respondent was the subject of a select audit of his attorney records performed by the Office of Attorney Ethics ("OAE"). The audit revealed numerous recordkeeping deficiencies. By letter dated June 23, 1986, the OAE notified respondent of the results of the audit and asked him to certify that all deficiencies had been corrected. Respondent did not reply to that letter. On September 8, 1986, the OAE sent a second letter, again instructing respondent to bring his records into compliance with the rules.

Six years later, on July 7, 1992, the OAE received a bank notification that respondent trust account was overdrafted by \$81.55. By letter dated July 13, 1992, the OAE requested that respondent submit a detailed, documented explanation for the overdraft. Respondent did not reply to that letter. Consequently, the OAE scheduled a demand audit of respondent's attorney records for September 9, 1992, at which respondent appeared. That 1992 audit uncovered numerous recordkeeping deficiencies, including two that had been detected during the first audit in 1985. The deficiencies were:

- (a) the trust account bore an improper designation.
- (b) the trust receipt and disbursement journals were not maintained according to generally accepted accounting principles.
- (c) the trust account checkbook had no running balance.
- (d) the schedule of client ledger accounts was not prepared and reconciled with the bank statements.
- (e) the trust account was used for matters unrelated to respondent's law practice, as shown by trust account checks issued to cash or for personal expenses.
- (f) the trust deposits were not fully descriptive.
- (g) the client ledger cards did not reflect all receipts and disbursements, the payee or payor, the transaction dates or a running balance.

By letter of September 16, 1992, respondent was notified of the above deficiencies and required to submit reconstructed books and records to the OAE by not later than November 2, 1992. Although respondent submitted a reply, it was determined that his records had not been corrected in accordance with either R. 1:21-6 or generally accepted accounting principles. Specifically, the following deficiencies were still noted:

- A. a corrected trust receipts and disbursements journal was not submitted.
- B. the trust deposit tickets were not corrected to identify the client to whom the funds related.
- C. the running balance for the trust account checkbook was not calculated.
- D. the business account receipts and disbursements journal was prepared in the same incorrect manner as the trust account journal.
- E. quarterly reconciliations were incorrectly prepared to the extent that receipts/disbursements were not reconciled with the checkbook, client ledgers or the bank statement.
- F. client ledger cards were not fully descriptive, in that they did not indicate the date, source of funds or the party to whom the funds were disbursed.

At the same time, it was determined that the \$81.55 trust account overdraft had been caused by respondent's payment of a personal item, a telephone bill, with a trust account check. The OAE concluded that no client trust funds had been invaded inasmuch as respondent kept personal funds in his trust account.

In addition to charging respondent with recordkeeping violations, the formal ethics complaint charged him with failure to

cooperate with the OAE, in violation of RPC 8.1(b), for his failure to remedy the deficiencies revealed by the 1985 select audit and to comply with the OAE's request for an explanation for the 1992 trust account overdraft.

Lastly, the complaint charged respondent with commingling personal, business and client funds in his trust account, in violation of RPC 1.15(a).

At the DEC hearing, respondent denied having received the OAE letters of June 23, 1986, September 8, 1986 and October 28, 1986, notifying him of the results of the 1985 select audit and directing him to certify that the noted recordkeeping deficiencies had been corrected. Exhibit OAE-13. Respondent denied receipt of those letters, even though they had been sent to his Voorhees office address and had been signed by a "D. Dugan," who, respondent admitted, worked in his office building. Respondent also denied having received the OAE's letter of July 13, 1992, requesting an explanation for the \$81.55 overdraft (Exhibit OAE-1), despite the fact that his office address was correct and that the certified mail return receipt card had been signed by a "C.D. Erasmo." Respondent asserted that that name was unfamiliar to him. According to respondent, there have been problems with the delivery of mail to his office building.

Respondent admitted that he had issued a trust account check to pay for a personal expense, the telephone bill.

* * *

At the conclusion of the ethics hearing, the DEC found that respondent had violated R. 1:21-6 and RPC 1.15(d), when he failed to maintain proper trust account records and to correct noted deficiencies from December 1985 to September 1992. The DEC also found that respondent violated RPC 8.1(b), when he failed to correct the deficiencies disclosed by the 1985 audit and when he failed to reply to the OAE's letter requesting an explanation for the 1992 trust account overdraft. The DEC rejected as not credible respondent's explanation for his failure to reply to the OAE's letter demanding an explanation for the trust account overdraft. Finally, the DEC found that respondent mingled client and personal funds in his trust account, in violation of RPC 1.15(a).

* * *

Following an independent, de novo review of the record, the Board is satisfied that the DEC's conclusions that respondent's conduct was unethical are fully supported by clear and convincing evidence. Specifically, numerous recordkeeping deficiencies were detected in 1985, respondent failed to correct two of the deficiencies uncovered by the 1985 audit, developed other deficient accounting practices after the 1985 audit, as disclosed by the 1992 audit, did not reply to the OAE's letter of July 13, 1992, asking for a detailed explanation for the \$81.55 overdraft in his trust

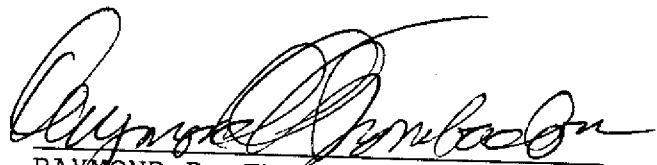
account, and submitted to the OAE reconstructed records that were still not in compliance with the rules.

In In re Macias, 121 N.J. 243 (1990), the attorney received a public reprimand for his failure to cooperate with the OAE after he was directed to cure certain accounting deficiencies. The attorney had not been previously disciplined. Here, respondent repeatedly failed to abide by the OAE's instructions to bring his records into compliance with the rules and the OAE's request to submit an explanation for a trust account overdraft. His recordkeeping responsibilities were also repeatedly overlooked. Furthermore, twice before this respondent has been the subject of discipline. Accordingly, the Board unanimously voted to suspend him for a period of three months. The Board also determined to require respondent to provide a certified annual audit of his attorney records to the OAE for a three-year period following his reinstatement to the practice of law. One member did not participate.

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

Dated:

5/11/95



RAYMOND R. TROMBADORE
Chair
Disciplinary Review Board