SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-399
District Docket No. XIV-05-452E

IN THE MATTER OF	
JAMES R. LISA	
AN ATTORNEY AT LAW	

Decision

Argued: March 20, 2008

Decided: May 7, 2008

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

Anthony Ambrosio appeared on behalf of respondent.

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 the Office of Attorney Ethics (OAE) and respondent. Respondent stipulated to violating RPC 1.15(a) (negligent misappropriation of trust funds), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), and RPC 8.4(c) (misrepresentation).

The OAE recommends discipline in the range of a censure to a six-month suspension. We determine that a censure is proper, given the circumstances of this case.

Respondent was admitted to the New Jersey bar in 1984. He maintains a law office in Morganville, New Jersey.

Respondent was admonished in 1995, for using his trust account as a personal business account, displaying recordkeeping deficiencies, and failing to comply with the OAE's requests for a certification that the deficiencies had been corrected. In the Matter of James R. Lisa, DRB 95-124 (May 23, 1995). In 1998, he was suspended for three months for violating RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects). Respondent stipulated that he was guilty of being under the influence of cocaine and of unlawful possession of cocaine and drug paraphernalia. In re Lisa, 152 N.J. 455 (1998).

Respondent was again suspended in 1999, for a one-year period. After his 1998 suspension, he appeared before a New York judge and requested permission to act as co-counsel for a criminal defendant. Respondent failed to inform the judge of his New Jersey suspension. To be admitted pro hac vice, respondent had to file an affidavit representing that he was in good standing in New Jersey. He did not file any papers and

misrepresented his status when the judge specifically questioned him about it, thereby violating RPC 3.3(a)(1) (making a false statement of material fact to a court); RPC 5.5(a) (unauthorized practice of law); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). We considered, as mitigation, a serious childhood incident that had caused respondent to be highly anxious about offending people or refusing their requests. In the New York matter, respondent had agreed to assist as "second chair," out of fear of offending a close friend. We did not find any venality or personal gain from respondent's actions. He did not charge for the representation. In re Lisa, 158 N.J. 5 (1999).

In 2001, respondent received a six-month suspension, retroactive to March 23, 2000, for violating RPC 8.4(a) (attempting to violate the Rules of Professional Conduct). There, respondent attempted to set up an inappropriate fee-sharing arrangement with a corrections officer at the Hudson County Correctional Center. In re Lisa, 169 N.J. 419 (2001). He was reinstated to practice on January 10, 2002.

The New Jersey Lawyers' Fund for Client Protection report shows that respondent was twice on the ineligible list for

failure to pay the annual assessment: from July 3, 1986 to April 13, 1987, and for a couple of days in September 1996.

We now turn to the facts of this matter.

As a result of a grievance alleging that respondent overcharged a former client during a refinancing closing, the OAE conducted an audit of respondent's books and records, for the period between May 1, 2004 and May 31, 2006. The audit revealed the following recordkeeping violations:

> a. A schedule of client ledgers was not prepared and reconciled monthly to the trust account bank statement as required by R. 1:21-6(c)(1)(h).
>
> b. Inactive balances remained in the attorney trust accounts for extended periods of time and old outstanding checks were not resolved contrary to R. 1:21-6(d).
>
> c. A signature stamp was impermissibly used on trust account checks contrary to R. 1:21-(6)(1)(a).
>
> [S2¶3.] [1]

While preparing for the demand audit, respondent became aware of a shortage in his trust account, relating to a real estate closing. Prior to the audit, he disclosed the shortage to the OAE.

According to the stipulation, in March 2005, respondent handled a real estate closing, in which Linneth Smith sold her

[1] S refers to the disciplinary stipulation between respondent and the OAE.

house to her son, Andy. At the closing, Andy gave Linneth a March 9, 2005 Continental Federal Credit Union cashier's check for $52,888.73, representing cash to seller. However, respondent's bookkeeper/accountant mistakenly recorded that payment as a deposit into respondent's trust account. Believing that Linneth had not been paid at the closing, on April 5, 2005, respondent issued her a trust account check for $57,445.25.

In August 2006, respondent corrected the shortage by depositing his personal funds into his trust account. Because of the error in the Smith real estate transaction, from April 5, 2005 through August 2006, respondent's trust account was short by $57,445.25, thereby resulting in the negligent misappropriation of other client funds on deposit during this period. Presumably, respondent did not reconcile his trust account during this time.

During the course of the OAE audit, respondent became aware of another trust account shortage, involving another real estate closing. He brought it to the attention of the OAE. On April 18, 2005, respondent had handled the refinancing of a property for Massimo Perrone. On June 21, 2005, respondent satisfied a tax lien on the property by issuing a $25,562.71 trust account check (#1889) to the State of New Jersey. Perrone later contacted respondent and notified him that his tax lien had been satisfied. He requested the return of any monies remaining in respondent's trust account.

By letter dated October 15, 2005, Perrone's accountant asked respondent to release the $25,562.71 escrow. He provided respondent with a copy of the warrant of satisfaction of judgment, showing that the tax lien had been paid. Accordingly, on November 1, 2005, respondent issued a trust account check (#2784) to Perrone for $25,562.71, mistakenly believing that the monies were still in his trust account.

In February 2007, respondent corrected the trust account deficiency by depositing his personal funds into the trust account. Because of this error, from November 1, 2005 to February 2007, respondent's trust account was short by $25,562.71. Presumably, respondent did not reconcile his trust account during this time period. Respondent, therefore, negligently misappropriated other client funds that were on deposit at that time.

Respondent's improprieties did not stop there. His law practice consists exclusively of real estate matters. His general practice for a closing was to estimate the costs for recording the mortgage and deed and to list the estimated, rather than the actual costs, on the RESPA form. Respondent did not inform the parties against whom the costs were assessed that the costs listed on the RESPA were estimates. Consequently, according to the stipulation, "the recording costs listed by the respondent on the RESPA form misrepresented to the parties the true cost."

As part of its investigation, the OAE required respondent to review his real estate files from January 1, 2005 through December 31, 2005, and to prepare a comparison analysis of the recording fees charged to the client to the actual recording fee costs paid by respondent. In 2005, respondent processed 266 closings through his trust account at Provident Bank. The overcharges for recording fees totaled $24,515. During that same year, respondent processed fifty-seven closings through his trust account at Commerce Bank, resulting in overcharges for recording fees totaling $4,890.

Respondent profited from the overcharges. As a result of the OAE's investigation, respondent offered to reimburse the clients whom he overcharged. As of the date of the stipulation, he was in the process of reimbursing those clients. He has also voluntarily ceased his former practice of estimating recording costs. The stipulation states that, currently, "to the greatest extent possible, [respondent] ascertains the actual cost of recording the deed and mortgage prior to listing it on the RESPA form."

As previously mentioned, the OAE proposed a broad range of discipline – a censure to a six-month suspension. The OAE properly noted that, generally, a reprimand is appropriate discipline for recordkeeping deficiencies and negligent misappropriation of funds, citing In re Conroy, 185 N.J. 277

(2005) (negligent misappropriation of $2,803 of trust funds and recordkeeping violations previously discovered during an OAE random audit), In re Imperiale, 140 N.J. 75 (1995) (deficient recordkeeping and negligent misappropriation of $9,632), and In re Lazzaro, 127 N.J. 390 (1992) (poor recordkeeping resulted in a trust account shortage of more than $14,000).

As for the overcharges for recording costs, the OAE noted the lack of precedent on this issue and looked to In re Andril, 188 N.J. 385 (2006) for guidance. In that case, the attorney was censured for his secretaries' routine overcharges of costs of title insurance and surveys. The secretaries' purpose was to spare the firm from absorbing the costs associated with the secretaries' late payment of mortgage pay-offs. In re Andril, DRB 06-174 (July 20, 2006) (slip op. at 2). Over a seventeen-month period, the attorney handled 241 closings, resulting in overages of $38,222.33. The attorney was not aware that his staff was overcharging clients. He was found guilty only of making misrepresentations to the OAE, during its investigation, and failure to supervise his non-lawyer staff.

Following a full review of the stipulation, we find that the facts contained therein fully support a finding that respondent's conduct was unethical.

The stipulation established that respondent negligently misappropriated client funds and engaged in recordkeeping violations, contrary to RPC 1.15(a) and RPC 1.15(d). Respondent also stipulated to making misrepresentations (RPC 8.4(c)). According to the stipulation, respondent was aware that the recording fees listed on the RESPAs were estimates, rather than actual costs; he did not disclose this circumstance to the clients; and he kept the excess monies. We find, however, that respondent's failure to disburse the funds, once the true costs were ascertained, was, more properly, a violation of RPC 1.15(b) (failure to promptly deliver funds to a third person). Although RPC 1.15(b) was not cited in the stipulation, respondent's due process rights to notice of the allegations against him have not been violated in this instance because (1) the facts leading to this charge are clearly set out in the stipulation and (2) a violation of RPC 1.15(b) is a less serious offense than a violation of RPC 8.4(c). Indeed, although respondent stipulated to violating RPC 8.4(c), the stipulation does not establish that he was aware that the estimated costs exceeded the actual costs.

We now address the appropriate quantum of discipline for respondent's violations of RPC 1.15(a), (b), and (d). As the OAE properly noted, generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See,

e.g., 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); In re Blazsek, 154 N.J. 137 (1998) (attorney negligently misappropriated $31,000 in client funds and failed to comply with recordkeeping requirements); In re Goldstein, 147 N.J. 286 (1997) (negligent misappropriation of clients' funds and failure to maintain proper trust and business account records); and In re Liotta-Neff, 147 N.J. 283 (1997) (attorney negligently misappropriated approximately $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).

At times, a reprimand may still result, even if the attorney's disciplinary record includes either 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 committed recordkeeping violations; the attorney had a prior three-month suspension for conviction of simple assault, arising out of a domestic violence incident, and a 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 misappropriations occurred because 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) (attorney negligently misappropriated client funds as a result of numerous recordkeeping violations and commingled personal and clients' funds; the attorney had received a prior reprimand).

Respondent's ethics history is substantial. Three of his prior matters resulted in suspensions: a 1998 three-month suspension for use of cocaine and unlawful possession of cocaine and drug paraphernalia; a 1999 one-year suspension for unauthorized practice of law and false statements to a court; and a 2001 six-month retroactive suspension for attempting to set up an inappropriate fee-sharing arrangement with a non-lawyer.

We have considered, in mitigation, that all of respondent's prior matters occurred between ten and thirteen years ago; that this is not a case of failure to learn from prior, similar mistakes; that respondent fully cooperated with the OAE investigation and even pointed out the two matters leading to the negligent misappropriation of client funds; that he reviewed his files and prepared the analysis that showed that the overages in the 2005 recording fees amounted to more than $29,000; that, as of the date of the oral argument before us,

respondent was reimbursing the overages to his clients; and that, currently, he does not practice law in New Jersey.

We find that Andril (censure) is similar to this case, in terms of the underlying conduct – overcharging costs of title insurance and surveys totaling more than $38,000 (respondent's overcharges totaled slightly more than $29,000). We are aware that, unlike respondent, Andril was not an active participant in the wrongdoing, of which he was unaware. Nevertheless, the significant mitigating circumstances present in this matter convince us that a censure adequately addresses respondent's misconduct.

Members Frost and Baugh voted to impose a three-month suspension. Member Neuwirth did not participate.

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
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James R. Lisa
Docket No. DRB 07-399

Argued: March 20, 2008

Decided: May 7, 2008

Disposition: Censure

Members	Disbar	Three-month suspension	Censure	Dismiss	Disqualified	Did not participate
O'Shaughnessy			X			
Pashman			X			
Baugh		X				
Boylan			X			
Frost		X				
Lolla			X			
Neuwirth						X
Stanton			X			
Wissinger			X			
Total:		2	6			1

Julianne K. DeCore
Chief Counsel