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SUPREME COURT OF NEW JERSEY

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February 26, 2009

Stephen W. Townsend, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Robert Weinberg
Docket No. DRB 08-357
District Docket No. XIV-06-002E
Consent to Discipline

Dear Mr. Townsend:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board may determine is warranted) filed by the Office of Attorney Ethics pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate discipline for respondent's violations of RPC 1.15(a) (negligent misappropriation) and RPC 1.15(d) and R. 1:21-6 (recordkeeping deficiencies).

Specifically, respondent maintained his attorney trust account at Wachovia Bank. In December 2005, Wachovia notified the Office of Attorney Ethics of an overdraft in respondent's trust account. The overdraft occurred on December 14, 2005, when respondent's check in the amount of \$32,221 was presented for payment. At the time, the balance in the trust account was \$24,232.03, with a shortage of \$7,998.97. Respondent was unable to identify the cause of the overdraft, but took remedial action by depositing \$50,000 of personal funds in the account on December 19, 2005. Respondent issued a replacement check, which cleared the bank in January 2006.

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Respondent deposited an additional \$31,174.79, on January 17, 2006, and \$18,825.21 one week later. He also took out a line of credit with Pamrapo Savings bank for \$250,000 to cover the remainder of the overdraft. He deposited an additional \$125,000 in April 2006, bringing to \$225,000 the total of personal funds deposited in the account.

The cause of the overdraft was an unrecorded June 10, 2003 \$385,000 wire transfer out of respondent's account on behalf of a client, Robert Frankel. Respondent represented Frankel in the purchase and sale of mortgages. Multiple transactions regularly occurred relating to Frankel. Because respondent did not reconcile his trust account, the unrecorded transfer went unnoticed until the overdraft occurred. After the overdraft, respondent discovered the Frankel error and reconstructed the Frankel ledger card. The reconstructed balance was -\$254,018.93. As of the date of the stipulation, September 2008, respondent and Frankel were involved in litigation.

Respondent maintained client ledger cards and checkbook stubs. He failed, however, to maintain a running checkbook balance, to prepare three-way reconciliations, and to maintain receipts and disbursement ledgers.

Respondent's failure to perform regular reconciliations of his trust account caused his negligent misappropriation of funds, a violation of RPC 1.15(a). His failure to perform the reconciliations violated RPC 1.15(d) and R. 1:21-6.

In mitigation, the parties stipulated that respondent cooperated with the OAE, hired an accountant to reconstruct his trust account records, opened a new trust account, and performed reconciliations for the new account. In addition, respondent installed a computer software package to help reconcile his financial information and uses a separate computer to back up files.

The Board agrees that a reprimand is the appropriate discipline for respondent's conduct. See, e.g., In re Philpitt 193 N.J. 597 (2008) (negligent misappropriation of trust funds as a result of the attorney's failure to reconcile his trust account; the attorney was also guilty of recordkeeping violations); In re Conner, 193 N.J. 25 (2007) (in two matters, the attorney inadvertently deposited client funds into his business

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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 depositing corresponding settlement funds, believing that he was withdrawing against a "cushion" of his own funds left in the trust account).

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated September 22, 2008.
2. Stipulation of discipline by consent, dated September 22, 2008.
3. Affidavit of consent, dated September 18, 2008.
4. Ethics history, dated February 26, 2009.

Very truly yours,



Julianne K. DeCore
Chief Counsel

JKD/sj
Encls.

c: Louis Pashman, Chair, Disciplinary Review Board
Charles Centinaro, Director, Office of Attorney Ethics
Leon B. Piechta, Respondent's Counsel