

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-214
District Docket No. XIV-05-0178E

IN THE MATTER OF
THOMAS A. GIAMANCO
AN ATTORNEY AT LAW

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Decision
Default [R. 1:20-4(f)]

Decided: October 19, 2006

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

This matter came before us on a certification of default filed
by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-4(f).
The complaint charged respondent with violating RPC 1.15(a)
(negligent misappropriation of client trust funds) and RPC 1.15(d)
(recordkeeping violations). We determine that a three-month
suspension is warranted.

Respondent was admitted to the New Jersey bar in 1983. At the
relevant time, he maintained a law office in Ridgewood, New Jersey.

In 1999, on a motion for discipline by consent, respondent was reprimanded for neglecting a workers' compensation and personal injury matter; the misconduct included gross neglect, lack of diligence, failure to communicate with a client, and misrepresentation. In re Giamanco, 161 N.J. 724 (1999). In 2005, respondent was censured for lack of diligence for failure to file a bankruptcy petition for fifteen months; conflict of interest for failing to withdraw from the representation after his client filed a civil suit against him; misrepresentation that the lawsuit against him was illegal because it was precluded by the fee arbitration process; and conduct prejudicial to the administration of justice for using threats and intimidation to try to convince his client to withdraw the civil suit against him. In re Giamanco, 185 N.J. 174 (2005).

Service of process was proper. On June 6, 2006, the OAE transmitted copies of the complaint to respondent's office address listed on the attorney registration records, 67 Godwin Avenue, Ridgewood, New Jersey 07450, via regular and certified mail. The regular and certified mailings were returned marked "forward time exp rtn to send: Thomas A Giamanco Esq, PO Box 308, Midland Park, N.J. 07432-0308, return to sender."

On June 15, 2005, the OAE sent copies of the complaint to respondent at the Midland Park address by regular and certified

mail. The certified mail was returned marked "return to sender, unclaimed, unable to forward." The regular mail was not returned.

On July 13, 2006, the OAE sent respondent a second letter to the Midland Park address via regular and certified mail. The letter notified respondent that, if he did not file an answer within five days, the allegations of the complaint would be deemed admitted, the matter would be certified to us for the imposition of discipline, and the complaint would be amended to include a violation of RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

As of the date of the certification of the record, July 24, 2006, neither the certified nor the regular mail was returned to the OAE. Respondent did not file an answer to the ethics complaint.

On May 14, 2003, respondent represented Forest Lyons in the purchase of Lyons' mother's house. Because of problems in obtaining a final survey, the closing was not concluded until June 2, 2003. The last minute disclosure of a home equity loan resulted in its omission from the HUD-1/RESPA statement. Even though the seller's home equity loan of \$64,229.31 was paid off at the closing, respondent's wife, who was acting as his secretary, relied on the RESPA statement and mistakenly disbursed that amount (\$64,229.31) to the seller through

respondent's trust account. Respondent signed the check without realizing the error in the RESPA statement.

Because neither respondent, nor anyone in his employ prepared routine reconciliations of his attorney trust account, he was not aware that he had invaded other clients' trust funds when the overdisbursement occurred. The OAE detected the overdisbursement on October 28, 2003, at a meeting with respondent. The record is silent on the purpose of the meeting or how the mistake was detected. Thereafter, the seller returned the funds, which were re-deposited into respondent's trust account on November 14, 2003.

Respondent executed an Agreement in Lieu of Discipline ("agreement") pursuant to R. 1:20-3(i)(2)(B), for his violations of RPC 1.15(a) (failure to safekeeping property - overdisbursement of funds) and RPC 1.15(d) (recordkeeping violations). The OAE accepted the agreement on April 5, 2005. The terms of the agreement required respondent to attend the New Jersey Bar Association Diversionary Continuing Legal Education Program within nine months after the entry of the agreement. Even though the OAE granted respondent an extension to fulfill this requirement, he failed to attend the program.

Based on respondent's failure to comply with the agreement's terms, the OAE filed the within ethics complaint, charging him with violations of RPC 1.15(a) and RPC 1.15(d).

The complaint contains sufficient facts to support a finding of unethical conduct. Because respondent failed to answer the complaint, the allegations are deemed admitted. R. 1:20-4(f).

Respondent's recordkeeping deficiencies resulted in his negligent misappropriation of client trust funds, a violation of RPC 1.15(a) and RPC 1.15(d).

Generally, a reprimand is imposed for these violations. See, e.g., In re Winkler, 175 N.J. 438 (2003) (reprimand for attorney who 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 reprimanded for the negligent misappropriation of \$31,000 in client funds and failure to comply with recordkeeping requirements); In re Goldstein, 147 N.J. 286 (1997) (reprimand for negligent misappropriation of clients' funds and failure to maintain proper trust and business account records); In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand for attorney who 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); In re Gilbert, 144 N.J. 581 (1996) (reprimand imposed for attorney who negligently misappropriated in excess of \$10,000 in client funds and violated the recordkeeping rules, including commingling personal and trust funds and depositing earned fees into the trust account; the attorney also failed to properly supervise his firm's employees with regard to the maintenance of the business and trust accounts); In re Imperiale, 140 N.J. 75 (1995) (attorney reprimanded for deficient recordkeeping and negligent misappropriation of \$9,600 in client funds); and In re Lazzaro, 127 N.J. 390 (1992) (reprimand imposed after poor recordkeeping resulted in negative client balances and a trust account shortage of more than \$14,000).

In some situations, a reprimand may still result even if the attorney's disciplinary record includes either a prior recordkeeping violation or other ethics transgressions. See In re Toronto, 185 N.J. 399 (2005) (attorney reprimanded for negligent misappropriation of \$59,000 in client funds and 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) (reprimand imposed on attorney who 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) (reprimand imposed on attorney who 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 needed without determining whether he had sufficient fees from a particular client to cover the withdrawals; prior private reprimand for unrelated violations); In re Marcus, 140 N.J. 518 (1995) (attorney reprimanded for negligently misappropriating client funds as a result of numerous recordkeeping violations and commingling personal and clients' funds; the attorney had received a prior reprimand).

If compelling mitigating factors are present, the reprimand may be reduced to an admonition. See, e.g., In re Michals, 185 N.J. 126 (2005) (admonition for attorney who negligently misappropriated \$2,000 for one day and \$187.43 for two days, respectively, commingled personal and trust funds, and violated recordkeeping rules; the mitigation considered was that the trust account shortage was limited to a few days, that the attorney fully cooperated with ethics authorities, that he had no prior encounters with the disciplinary system, that he assumed full responsibility for the problems with this practice, and that he subsequently made recordkeeping a priority); In the Matter of Michael A. Mark, DRB 01-425 (February 13, 2002) (admonition by consent for attorney who negligently misappropriated client funds for a period of two years, as a result of failure to follow proper recordkeeping procedures; the misappropriation occurred when the attorney erroneously withdrew a legal fee of \$4,000, failed to reimburse the trust account for bank service charges in the amount of \$100, mistakenly advanced client costs in the amount of \$350 from the trust account, instead of the business account, and failed to reconcile the account on a quarterly basis; an OAE audit also disclosed several recordkeeping violations; mitigating factors were the attorney's prompt replacement of the trust funds and his hiring of a CPA to

reconstruct the trust records, to correct all recordkeeping deficiencies, and to insure that all client funds were on deposit; prior three-month suspension); and In the Matter of Cassandra Corbett, DRB 00-261 (January 12, 2001) (admonition for attorney whose deficient recordkeeping resulted in a \$7,011.02 trust account shortage; in imposing only an admonition, we noted that the attorney had reimbursed all missing funds, admitted her wrongdoing, cooperated with the OAE, and hired an accountant to reconstruct her records).

We find no mitigating factors present here. Thus, the benchmark for discipline in this case is a reprimand. However, aggravating factors exist. First, we considered the default nature of these proceedings, which warrants enhanced discipline to reflect an attorney's failure to cooperate with disciplinary authorities. See, e.g., In re Nemshick, 180 N.J. 304 (2004) (three-month suspension in a default for infractions that generally result in a reprimand; attorney had no ethics history).

Second, respondent has an ethics history that consists of a reprimand and a censure.

One more point warrants mention. Although respondent was not charged with failure to comply with the terms of the agreement in lieu of discipline, when an attorney fails to do so the matter must proceed to a complaint and a hearing (as it would have here

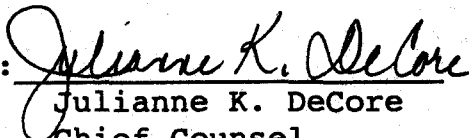
had respondent not defaulted), requiring additional and duplicative efforts on the part of the disciplinary system. The Court has found that this conduct constitutes a violation of RPC 8.1(b) (failure to cooperate with a disciplinary authority). See, e.g., In re Brummell, 174 N.J. 297 (2002) (reprimand for gross neglect, lack of diligence failure to communicate and failure to comply with the terms of an agreement in lieu of discipline, resulting in a violation of RPC 8.1(b)). Because, however, the OAE amended the present complaint to include such a violation for respondent's failure to file an answer, his failure to comply with the terms of the agreement is subsumed in that charge.

Given respondent's failure to cooperate with disciplinary authorities, his ethics history, and the principle of progressive discipline, we determine to impose a three-month suspension.

Members Boylan, Stanton and Wissinger 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
Chief Counsel

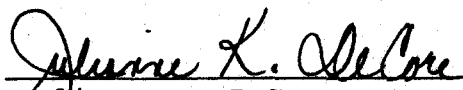
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Thomas A. Giamanco
Docket No. DRB 06-214

Decided: October 19, 2006

Disposition: Three-month suspension

Members	Three-month suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman	X				
Baugh	X				
Boylan					X
Frost	X				
Lolla	X				
Neuwirth	X				
Stanton					X
Wissinger					X
Total:	6				3


Julianne K. DeCore
Chief Counsel