

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-273  
District Docket No. XIV-06-223E

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IN THE MATTER OF  
HAMDI M. RIFAI  
AN ATTORNEY AT LAW

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Decision

Argued: November 16, 2005

Decided: December 18, 2006

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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 respondent and the Office of Attorney Ethics ("OAE"). Respondent admitted that he negligently misappropriated client trust funds, and that he committed a number of recordkeeping violations. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1994. He maintains an office for the practice of law in Clifton, Passaic County. He was the subject of a random compliance audit conducted in June 2005.

Respondent was reprimanded in 2002, on a motion for discipline by consent, for gross neglect, lack of diligence, failure to communicate with the client, and failure to turn over the client's file. In re Rifai, 171 N.J. 435 (2002).

#### The Boyko Matter

In November 2003, respondent handled a mortgage loan re-financing for clients John and Carrie Boyko. According to the HUD-1, the mortgage pay-off amount was \$172,504.63. Respondent erroneously paid the mortgagee \$176,722.77, which was the total amount due from the borrower, rather than the mortgage pay-off amount. The overdisbursement caused a \$4,172.43 negative balance in respondent's trust account. Because respondent did not reconcile his trust account on a monthly basis, as required by R. 1:21-6, the Boyko trust account shortage went undiscovered for more than two years. Respondent ultimately contacted his clients and, in May 2005, received reimbursement from them in the amount of \$4,172.43. Those funds were deposited into respondent's trust account to correct the shortage.

From December 2003, when the Boyko disbursements were made, until May 2005, when the Boykos' reimbursement check was deposited in respondent's trust account, other clients' funds were invaded by the Boyko overdisbursement.

Respondent stipulated that he violated RPC 1.15(a) (negligent misappropriation of client trust funds).

#### The Rivers Matter

Respondent represented his secretary, Michelle Rivers, in a civil matter. In April 2004, respondent received a \$3,000 settlement check from opposing counsel. Respondent mistakenly deposited the settlement check into his business account, as part of a larger deposit. Respondent then disbursed \$3,000 to Rivers from his trust account. That disbursement invaded other client funds.

Respondent admitted that his conduct constituted negligent misappropriation of client trust funds, in violation of RPC 1.15(a).

#### ATM Withdrawals and Bank Charges

A reconciliation of respondent's trust account for the period ending May 31, 2005, which was performed during the above-mentioned audit, revealed that respondent had incurred

bank charges and made ATM withdrawals, both totaling \$956.42. The shortage of \$956.42 went uncorrected from May 2003 until June 2005, when respondent made a correcting deposit.

Respondent admitted that his conduct constituted negligent misappropriation of client trust funds, in violation of RPC 1.15(a).

#### **Failure to Reconcile the Trust Account**

In November 2000, respondent deposited a \$35,000 settlement draft from Liberty Mutual Insurance Company into his trust account, in connection with the settlement of a matter for client Orell McClain. Respondent's bank credited his account only \$5,000. Because respondent did not reconcile his trust account, it took him over two years to discover the bank's error.

In September 2002, there were two overdrafts in respondent's trust account. The overdrafts placed respondent on notice that there were problems in his trust account, and that he should have been reconciling the account regularly, as required by R. 1:21-6. Despite these warning signs, respondent failed to reconcile his trust account from at least November 2003 through May 2005, when he received notice of the random audit.

Respondent conceded that he failed to reconcile the trust account and that such failure caused the negligent misappropriation of client funds.

#### Other Recordkeeping Violations

The random audit of respondent's attorney books and records revealed the following bookkeeping violations:

- (a) Trust account designation improper on checks and deposit slips [R. 1:21-6(a)(1)].
- (b) Client ledger cards not fully descriptive [R. 1:21-6(c)(1)(B)].
- (c) Client ledger cards with debit balances [R. 1:21-6(d)].
- (d) Trust account checks payable to 'Cash' [R. 1:21-6(c)(1)(A)].
- (e) Trust checks used out of prenumbered sequence [R. 1:21-6(c)(1)(G)].
- (f) Attorney personal funds commingled in trust account [RPC 1.15(a)].
- (g) Improper image processed trust checks [R. 1:21-6(b)].
- (h) Business account designation on deposit slips improper [R. 1:21-6(a)(2)].
- (i) Business receipts journal not fully descriptive [R. 1:21-6(c)(1)(A)].
- (j) Improper image processed business checks [R. 1:21-6(b)].

(k) Professional Corporation without malpractice insurance [R. 1:21-1(a)(3)].

[S5.]<sup>1</sup>

The OAE recommended that respondent receive a reprimand.

Upon a de novo review of the record, we are satisfied that respondent is guilty of the stipulated misconduct.

Generally, a reprimand is imposed for recordkeeping deficiencies and negligent misappropriation of client funds. See, e.g., In re Conroy, 185 N.J. 277 (2005) (reprimand for attorney who negligently misappropriated client trust funds, failed to turn over funds to a client, and failed to comply with recordkeeping requirements; the attorney had been the subject of a previous random audit); In re Lehman, 182 N.J. 589 (2005) (reprimand for attorney who negligently misappropriated trust funds, and failed to comply with recordkeeping requirements); In re Patel, 182 N.J. 587 (2005) (reprimand for attorney who negligently misappropriated trust funds and committed recordkeeping violations); 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

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<sup>1</sup> S refers to the September 2006 stipulation between respondent and the OAE.

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); and 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).

A reprimand may still result even if the attorney's disciplinary record includes a prior recordkeeping violation or other ethics transgressions. 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 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 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 for engaging in a pattern of neglect in six matters and for failing to communicate with clients).

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 the recordkeeping rules; in mitigation, we considered 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).

Here, respondent's negligent misappropriation of client trust funds, and his recordkeeping violations fit squarely within the reprimand cases. Although his disciplinary record includes a prior reprimand (for unrelated conduct), a reprimand may still result, as seen from Toronto, Regojo, Rosenberg, and Marcus. Taking into account that, in at least two instances (Boyko and Rivers), the negligent misappropriation was the result of inadvertence, we see no compelling reason to impose discipline more severe than a reprimand.

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 O'Shaughnessy, Chair

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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Hamdi M. Rifai  
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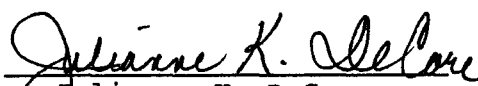
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Argued: November 16, 2006

Decided: December 18, 2006

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	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:			9			

  
Julianne K. DeCore  
Chief Counsel