SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-074
District Docket No. XIV-05-217E

IN THE MATTER OF	
WILLIAM T. YADLON	
AN ATTORNEY AT LAW	

Decision

Argued: June 15, 2006

Decided: August 16, 2006

Meslissa A. Czartoryski appeared on behalf of the Office of Attorney Ethics.

Anthony P. 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 respondent and the Office of Attorney Ethics (OAE).

Respondent was admitted to the New Jersey bar in 1983. He maintains an office for the practice of law in East Brunswick. He has no disciplinary history.

On March 30, 2006, the parties entered into a disciplinary stipulation in which they agreed that respondent had "failed to perform quarterly reconciliations of his accounts, negligently misappropriated trust funds and had numerous recordkeeping violations all contrary to RPC 1.15(d) and R. 1:21-6." The OAE recommended that respondent be reprimanded. We agree that a reprimand is the appropriate quantum of discipline.

The stipulation contains no facts. Instead, the parties incorporated by reference a November 21, 2005 investigative report by OAE investigator M. Scott Fitz-Patrick.

On April 11, 2005, the New Jersey Law Journal published a summary of an unpublished federal district court opinion in a matter captioned Yadlon v. Fleet Bank, N.A. According to the summary, respondent sued Fleet for "its alleged mishandling of his IOLTA attorney trust account, paying 26 forged checks totaling $351,960 from plaintiff's account and improperly debiting plaintiff's account on three separate occasions for more than $10,949 pursuant to 'pre-authorized' DDA electronic debits payable to individuals with whom plaintiff has no

relation." The summary reported that all of the transactions were identified on respondent's bank statements, but that neither respondent nor anyone at his direction had reviewed them.

According to the Law Journal summary, the court granted the bank's summary judgment motion concerning the $10,949 in debits and $206,800 of the stolen funds (which totaled more than $350,000). As to the $145,160 balance, the sum stolen in the first thirty days (before a bank statement reflecting the transactions had been issued), the court denied the bank's motion, finding that there was a genuine issue of material fact. Ultimately, respondent settled the lawsuit for $95,000.

As a result of the Law Journal summary, on April 21, 2005, the OAE began an inquiry into possible unethical conduct on respondent's part. Fitz-Patrick interviewed respondent by telephone, and spoke with Sergeant Joseph Neuman of the East Brunswick Township police department. Thereafter, Fitz-Patrick and OAE assistant chief investigator Jeanine Verdel interviewed respondent at his office and inspected his trust and business account records.

The investigation revealed that the funds were purloined between October 30, 2001 and July 29, 2002. Respondent admitted

that he had not reconciled his trust and business accounts during this time because of the "high volume of real estate transactions he was handling at the time."

According to respondent, in July 2002, he directed a secretary to review his bank statements to prepare reconciliations for his trust and business accounts. As a result of his review, respondent learned that the trust account was out of trust, that there was a significant shortage of funds, and that there were "numerous unauthorized and apparent counterfeit checks drawn from his trust account." Nevertheless, because of the large volume of real estate closings and multiple deposits into respondent's trust account, no overdrafts had occurred, despite the large amount of money stolen.

Respondent contacted the police immediately. He also arranged to replace the missing sums with his own funds, as well as funds borrowed from family members. On August 27, 2002, respondent replenished the funds with a $352,802.57 deposit. On October 24, 2002, he deposited $10,949.98, after his accountant had informed him of the additional thefts, via fraudulent debit transactions. Respondent told Fitz-Patrick that he had made the trust account whole.

Unsure of whether he was required to report these third-party thefts to the OAE, respondent contacted attorney Bernard Freamon, a professor at Seton Hall Law School. Freamon researched the ethics rules and "regulations" and issued a written opinion concluding that respondent was not required to report the thefts to the OAE. Respondent provided the written opinion to Fitz-Patrick. Respondent also produced a written document titled "CHRONOLOGY," in which he detailed his actions following the discovery of the stolen funds.

Sergeant Neuman told Fitz-Patrick that he had investigated the thefts and concluded that respondent was not a suspect. Rather, Neuman believed, "an organized criminal group out of the New York Metropolitan area was responsible for the thefts." However, no definitive evidence had established Neuman's theory, and the investigation remained open.

On September 21, 2005, respondent provided the OAE with a list of the checks and debit transactions that resulted in the unlawful removal of $362,959.98 from his trust account. The transactions are detailed on page five of the November 21, 2005 investigative report.

On November 9, 2005, respondent's accountant provided to the OAE a July 2002 reconciliation report for respondent's trust

account. According to the investigative report, the information disclosed that

> [a]t that time there were 72 clients' funds totaling $56,568.70 respondent should have been holding in the trust account. Respondent's high volume of substantial funds being deposited and withdrawn at high frequencies in his trust account prevented an overdraft notice being generated by the shortage attributed to the thefts. The overlapping of deposited funds in the trust account inadvertently concealed the shortage of funds from the thefts that could have easily been detected by conducting the required 3-way reconciliation. In July 2002, for example, the ending FNB bank balance for the trust account showed it was a positive $2,347,947.10 when it was actually a negative balance of $362,959.98.
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> [Ex.A at 5-6.]

As stated previously, this was not the first time that the OAE had uncovered respondent's failure to reconcile his trust account. In 1992, a random audit uncovered certain inadequacies that required corrective action. The inadequacies stemmed from respondent's failure to perform the required reconciliations of his trust and business accounts.

Following a de novo review of the record, we are satisfied that clear and convincing evidence supports the conclusion that respondent's conduct was unethical.

RPC 1.15(a) requires attorneys to safeguard client funds; RPC 1.15(d) requires attorneys to comply with the provisions of R. 1:21-6; and R. 1:21-6 requires attorneys to reconcile their trust accounts and maintain sufficiently-descriptive client ledger cards. Respondent violated all of these rules.

Between October 30, 2001 and July 29, 2002, when the trust funds were stolen, respondent had not reconciled his trust and business accounts. In fact, he did not learn of the missing funds until the account was finally reconciled at the very end of July 2002. R. 1:21-6(c)(1)(H) requires an attorney to complete monthly reconciliations of "the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances." Respondent did not abide by this rule for at least nine months. Accordingly, he violated RPC 1.15(d).

As a result of respondent's failure to comply with R. 1:21-6(c)(1)(H), and, therefore, RPC 1.15(d), client funds were negligently misappropriated. Accordingly, he violated RPC 1.15(a).

We note, parenthetically, that under the facts of this case, respondent had no duty to report to the OAE the thefts,

which were committed by third parties who were not respondent's employees.

There remains the quantum of discipline to be imposed upon respondent for his violations of RPC 1.15(a) and RPC 1.15(d). Generally, a reprimand is the appropriate measure of discipline for recordkeeping deficiencies and negligent misappropriation of client funds. 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); In re Goldstein, 147 N.J. 287 (1997) (reprimand for negligent misappropriation of clients' funds and failure to maintain proper trust and business account records). A reprimand may still result even if the attorney had previously committed recordkeeping violations. See, e.g., In re Conroy, 185 N.J. 277 (2005) (reprimand imposed upon attorney after a random audit disclosed that his trust account was short $2800 due to more than $1000 in service charges and $1700 in debit transactions of which the attorney was unaware because he had failed to review his bank statements and reconcile the account; although the attorney fully cooperated with the OAE and promptly reimbursed the trust account and replied to the OAE's deficiency letter, a reprimand was nevertheless appropriate because an

audit ten years earlier also had uncovered recordkeeping violations); and In re Lehman, 182 N.J. 589 (2005) (attorney reprimanded for negligent misappropriation and recordkeeping violations as a result of his failure to maintain a ledger card for personal deposits into his trust account; although the attorney had an unblemished disciplinary record of more than thirty years, quickly replenished the trust account, and hired a bookkeeper, a reprimand was warranted because a 1995 random audit had uncovered recordkeeping violations and, therefore, had placed the attorney on notice of the importance of proper recordkeeping). As we observed in Conroy:

> Respondent should have been even more guarded in his handling of his attorney accounts because of his prior audit and prior recordkeeping violations. Even though he had not been disciplined for his recordkeeping improprieties, he should have recognized the importance of being mindful of the recordkeeping requirements.
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> [In re Conroy, Docket No. 05-173 (DRB September 15, 2005) (slip op. at 9-10).]

In this case, respondent was cited previously for recordkeeping violations. He admitted that he had not reconciled his trust account in the months during which the funds were stolen. Thus, we determine that a reprimand is the appropriate quantum of discipline for respondent's violations of

RPC 1.15(a) and RPC 1.15(d). In addition, we require respondent to provide the OAE with monthly reconciliations for a period of one year, followed by quarterly reconciliations for another year.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

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 William T. Yadlon
Docket No. DRB 06-074

Argued: June 15, 2006

Decided: August 16, 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