

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-211
District Docket No. XIV-03-200E

Disc.

IN THE MATTER OF :
PHILIP V. TORONTO :
AN ATTORNEY AT LAW :

Decision

Argued: September 15, 2005

Decided: October 26, 2005

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 was before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE").

Respondent was admitted to the New Jersey bar in 1982. By Order dated July 11, 1997, effective August 6, 1997, respondent was suspended from the practice of law for a period of three months for his conviction for simple assault, which arose out of his involvement in a domestic violence incident. In re Toronto,

150 N.J. 191 (1997). Respondent was reinstated on December 16, 1997. In re Toronto, 152 N.J. 75 (1997).

On March 11, 1997, respondent was reprimanded for misrepresenting to ethics authorities the facts involving his sexual relationship with a former student. In re Toronto, 148 N.J. 85 (1997).

On June 14, 2005, respondent entered into a disciplinary stipulation with the OAE, which is summarized below. Respondent stipulated that, as a result of poor recordkeeping practices, he negligently misappropriated \$59,176.82 of clients' funds.

The facts giving rise to the stipulation are set out in the OAE investigator's March 18, 2005 report, and are incorporated into the stipulation by reference.

On April 4, 2003, the OAE received notice of an overdraft in respondent's attorney trust account, in the amount of \$16,546.24. On July 28, 2003, the OAE conducted a demand audit of respondent's attorney trust account for the period July 1, 2001 through June 30, 2003. At that time, respondent was found to have been out-of-trust by at least \$41,262.23.

Between August and December 2003, the OAE made periodic visits to respondent's office, ultimately finding that respondent had negligently misappropriated client funds, as follows:

CLIENT	TOTAL NEGATIVE	DATE NEGATIVE	AMOUNT DEPOSITED	DATE CORRECTED	DAYS NEGATIVE
Ozari	\$42,949.50	10/22/01	\$32,949.50 \$10,000.00	08/01/03 07/24/03	648 640
Klink	\$8,337.73	8/18/00	\$8,337.73	10/20/03	1158
Thirty- four Various Clients	\$7,889.59		\$1,500.00 \$5,838.90	11/28/03 01/03/04	
TOTAL	\$59,176.82		\$58,626.13		
			-\$550.69*		

Respondent represented Salleh Ozari in his October 22, 2001 purchase of real estate in Paramus. Respondent received \$413,941.16 in closing proceeds, which he deposited to his trust account. However, when disbursing funds at closing, respondent accidentally returned Ozari's deposit to him (\$42,949.50), instead of the \$3,183.92 actually due. Ozari returned the funds to respondent in August 2003, which respondent then deposited into the trust account.

In August 2003, respondent represented Toni Klink in her purchase of real estate in Lawrence Township. Respondent was supposed to receive \$161,339.48 in closing proceeds from the parties, and he recorded that amount on his ledger card as having been received. Unbeknownst to respondent at the time, only \$153,226.75 had been deposited into his trust account for the transaction. This resulted in respondent's accidental

* This negative balance was offset by positive balances for some clients and earned fees belonging to respondent.

overpayment of \$8,293.22 to the sellers. On October 20, 2003, the funds were returned by the sellers' attorney, and deposited to respondent's trust account.

With respect to the miscellaneous thirty-four clients, the negligent misappropriations ranged from \$.01 to \$1,012.04. On January 3, 2004, respondent deposited \$5,838.90 into his trust account to cure the negative balances in those matters.

Respondent stipulated that he did not discover the shortages in the trust account until the overdrafts occurred, due to the large number of real estate matters in the office at the time, as well as his own poorly kept records.

The OAE audit disclosed ten types of recordkeeping violations: 1) client ledger cards contained debit balances; 2) separate ledger sheets were not maintained for bank charges; 3) the trust account contained inactive balances over extended periods of time; 4) client ledger cards were not properly descriptive; 5) the trust account receipts journal was not properly descriptive; 6) trust account was not reconciled monthly against the client ledger cards; 7) processed check-images did not comply with the rule allowing no more than two checks per page; 8) checks contained an improper designation; 9) the business account receipts journal was not properly

descriptive; and 10) the business account disbursements journal was not properly descriptive.

Respondent stipulated that his conduct constituted the negligent misappropriation of \$59,176.82 of clients' funds, a violation of RPC 1.15(a). In addition, respondent stipulated that his failure to maintain proper trust and business account records for the period of time covered by the OAE audit violated RPC 1.15(d) and R. 1:21-6.

The OAE recommended the imposition of a reprimand or censure.

After an independent review of the record, we are satisfied that the stipulation contains clear and convincing evidence of unethical conduct.

Respondent stipulated that his conduct violated the charged RPCs. First and foremost, he negligently misappropriated almost \$60,000 in client funds in several real estate transactions (RPC 1.15(a)). Sloppy recordkeeping, particularly the lack of proper reconciliations of the trust account, made it difficult for respondent to account for funds in his trust and business accounts. To his credit, as the misappropriations were brought to his attention through the audit process, he took action to recover the funds and deposit them into his trust account.

In addition, respondent violated RPC 1.15(d) and R. 1:21-6, by failing to maintain proper records of his trust and business accounts in ten different respects.

Ordinarily, a reprimand is imposed for negligent misappropriation of client's funds and recordkeeping violations. See, e.g., In re Blazsek, 154 N.J. 137 (1998); In re Zavodnick, 139 N.J. 607 (1995); In re Mitchell, 139 N.J. 608 (1995); In re Harrison, 139 N.J. 609 (1995); and In re Imperiale, 140 N.J. 75 (1995). Mitigating circumstances may lower the discipline to an admonition. See, e.g., In the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) (admonition imposed for negligent misappropriation and recordkeeping deficiencies; mitigation included attorney's full cooperation with ethics authorities, steps taken to correct the deficiencies, and lack of prior discipline); and In the Matter of Philip J. Matsikoudis, Docket No. DRB 00-189 (September 25, 2000) (admonition imposed where attorney miscalculated fees in his favor, thereby negligently misappropriating client funds, and failed to pay a physician's lien, as a result of poor recordkeeping; mitigation included steps taken to overcome deficiencies, and respondent's use of his own personal funds to pay the physician's lien).

In mitigation, respondent fully cooperated with ethics authorities here, took swift action to replenish his trust

account as the problems became known to him, and stipulated his misconduct.

In aggravation, however, respondent was suspended for three months in 1997 for simple assault and, earlier that same year, reprimanded for misrepresenting to ethics authorities the facts surrounding his relationship with a former student.

After a balance of the mitigating and aggravating circumstances, we determine that a reprimand is the appropriate quantum of discipline for respondent's infractions. In addition, we require respondent to provide the OAE with quarterly reconciliations of his trust account, to be performed by an OAE-approved accountant, for a period of two years, and to provide proof that he completed a continuing legal education course in law office management.

Vice-Chair O'Shaughnessy did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

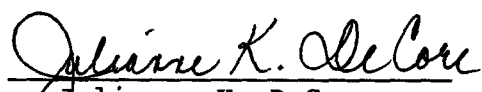
In the Matter of Philip V. Toronto
Docket No. DRB 05-211

Argued: September 15, 2005

Decided: October 26, 2005

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Did not participate
Maudsley			X		
O'Shaughnessy					X
Boylan			X		
Holmes			X		
Lolla			X		
Neuwirth			X		
Pashman			X		
Stanton			X		
Wissinger			X		
Total:			8		1


Julianne K. DeCore
Chief Counsel