SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-247
District Docket No. XIV-00-094E

IN THE MATTER OF	:
JEFFREY W. TRUITT	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 21, 2004

Decided: December 13, 2004

John J. Janasie appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice.

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

This matter was before us on a recommendation for discipline (six-month suspension) filed by the District VB Ethics Committee ("DEC"). The three-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect) (mistakenly cited in the complaint as RPC 1.1(b)), RPC 1.3 (lack of diligence), RPC

1.15(a) (failure to hold property of clients separate from the lawyer's own property), (b) (failure to promptly deliver funds or property to a client or third person) and (c) (failure to maintain contested funds separate and intact until there is an accounting and severance of interests), RPC 1.15(d) and R. 1:21-6 (recordkeeping violations), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1996. During the relevant times, he maintained law offices in Plainfield and East Orange, New Jersey, as a sole practitioner. Respondent is also employed full-time as a high school teacher. He has no history of discipline.

Respondent testified at the April 15, 2004 DEC hearing via telephone. Because he admitted most of the allegations of the complaint, the presenter did not object to proceeding in that fashion.

The first count of the complaint related to respondent's failure to cooperate with the OAE investigation, recordkeeping violations, and failure to safeguard client funds.

Respondent maintained an attorney trust/escrow account at the First Union National Bank, from October 28, 1997 to April 30, 1999. Thereafter, he opened a trust account at Investors

Savings Bank on October 7, 1999, and another trust account at NorCrown Bank on June 19, 2000. He did not maintain an attorney business account during the relevant times.

By letter dated March 30, 2000, the Investors Savings Bank notified the OAE that, on March 28, 2000, an overdraft had occurred in respondent's attorney trust account.

Upon learning of the overdraft, the OAE sent a letter to respondent's law office in Plainfield, New Jersey, requesting, within ten business days, a written, documented explanation for the overdraft. Respondent failed to reply, prompting the OAE to send respondent a second letter on May 2, 2000, again requesting an explanation for the overdraft. Respondent failed to reply to this request as well.

On June 9, 2000, OAE investigator Nicholas Hall left a telephone message for respondent at the high school at which he is employed. Respondent returned the call on June 12, 2000, and informed Hall that he had not received the OAE's letters because he was no longer at the Plainfield address. Respondent explained that the overdraft had occurred because the $185 check he had written for the filing fee in his personal bankruptcy matter had cleared before the related deposit was posted to his account.

The OAE sent respondent a letter, dated June 13, 2000, to his Bayville, New Jersey address, again requesting respondent to

provide a written explanation for the trust overdraft within ten days. Because respondent did not reply, the OAE sent him a July 7, 2000 letter requiring him to appear for a demand audit on July 20, 2000.

At the audit, a review of respondent's trust records revealed that they were "grossly incomplete" and did not comply with R. 1:21-6. The OAE notified respondent that he would be receiving a letter instructing him to bring his records into compliance with the recordkeeping rules. At that time, the OAE gave respondent its manual on recordkeeping requirements. In addition, OAE staff reviewed examples of the requirements with respondent. Respondent claimed that he understood the rules, and could fix his records. The OAE recommended that he hire an accountant if he did not understand the rules or was incapable of bringing his records into compliance. According to an OAE memorandum, respondent had informed the OAE that, at the time, he did not maintain an attorney business account; he, therefore, left earned legal fees in the trust account until he needed funds.

By letter dated July 24, 2000, the OAE advised respondent of the deficiencies in his records, and directed him to submit the following records by September 22, 2000:

> a. Quarterly reconciliations of all funds in his trust account for the quarters ending

> September 30, 1999, December 31, 1999, March 31, 2000, and June 30, 2000. The reconciliations were to include copies of the pertinent bank statements, and a list of names and amounts held for clients at the end of each of the above quarters.
>
> b. Client ledger sheets for all clients for whom funds were held at the end of each of the above quarters.
>
> c. Receipts and disbursements journals for the one-year period preceding June 30, 2000.
>
> [C5.][1]

Respondent did not comply with the September deadline. Hall, therefore, telephoned respondent on October 2, 2000, and left a voicemail message. Respondent called Hall on October 4, 2000, and informed him that he had forwarded only a partial reconstruction of his trust records because he was missing two months of bank records.

The OAE did not receive the records that respondent claimed to have sent. Therefore, Hall contacted respondent on October 11, 2000. Respondent informed Hall that he had sent the OAE a partial reconstruction of his records on September 29, 2000, and would resubmit them. By letter dated October 17, 2000, respondent forwarded to the OAE a copy of his reconstructed checkbook register for his attorney trust account for the period October 16, 1999 to July 14, 2000. Respondent did not, however,

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[1] C refers to the ethics complaint, dated January 22, 2003.

include any of the records or other reconstructions that the OAE had requested.

Respondent's checkbook register contained a number of inaccuracies and omissions: for example, for the period October 16, 1999 to November 15, 1999, sixteen disbursements or withdrawals totaling $233,210.23 were not reflected.

Thereafter, on October 27, 2000, the OAE asked that respondent submit the previously requested records by November 22, 2000. Respondent failed to comply with that request. As a result, by letter dated December 12, 2000, the OAE scheduled a "Continuation of Demand Audit" for December 28, 2000, and directed respondent to bring the requested information. Respondent rescheduled the meeting to January 4, 2001. On that date, he appeared at the audit without any of the requested records.

Both at the end of the audit, and by letter dated January 8, 2001, the OAE instructed respondent to submit sixteen client files by January 16, 2001, and all bank statements, canceled checks, deposit tickets, and checkbook registers for the period June 1998 through the date of the audit, relating to respondent's escrow account at First Union Bank. The OAE also directed respondent to complete the reconstruction of his attorney trust records by February 16, 2001. Respondent failed

to provide the OAE with the requested records and with a completed reconstruction of his attorney trust records.

Respondent's trust account records revealed the following recordkeeping deficiencies:

> a. A trust receipts book [was] not maintained . . . ;
>
> b. A trust disbursements book [was] not maintained . . . ;
>
> c. A running cash balance [was] not kept in the trust account checkbook . . . ;
>
> d. Clients' trust ledger sheets [were] not fully descriptive . . . ;
>
> e. A separate ledger [was] not maintained detailing attorney funds held for bank charges . . . ;
>
> f. Inactive trust ledger balances [remained] in the trust account for an extended period of time . . . ;
>
> g. A separate ledger sheet [was] not maintained for each trust client . . . ;
>
> h. A schedule of clients' ledger accounts [was] not prepared and reconciled quarterly to the trust account bank statement . . . ;
>
> i. Checks were disbursed against uncollected funds . . . ;
>
> j. Attorney personal funds [were] commingled with trust funds . . . ;
>
> k. Old outstanding checks [were] to be resolved . . . ;
>
> l. An attorney business account [was] not maintained . . . ;

m. Inactive trust ledger balances [remained] in the trust account for an extended period of time . . . .

[C7;C8.]

The second count of the complaint alleged that, on November 30, 1998, respondent deposited a $1,000 check into his First Union Escrow account. The check was from a client, Claudette S. Williams, in connection with a real estate purchase. The transaction was never consummated. By February 9, 1999, disbursements unrelated to the Williams transaction, together with other debits from respondent's account, had reduced the balance in his account to $354.74. On February 10, 1999, respondent returned the $1,000 deposit to Williams by check number 1007, and, on that same date, deposited $700 in cash, which increased the balance in his account to $1,054.74. Respondent was, thus, charged with failure to safeguard client funds (RPC 1.15(a)). As seen below, there is no clear and convincing evidence that respondent knowingly misappropriated Williams' funds.

The third count of the complaint related to a real estate transaction between Irvin Green, the seller, and respondent's client, Crystal Lapeyrolerie, the purchaser. As the settlement agent for the November 3, 1999 transaction, respondent prepared

the closing papers and was responsible for collecting and disbursing the funds for the closing.

During the course of the OAE investigation, the investigator determined that a check listed in the RESPA/HUD-1 uniform settlement statement ("RESPA") had never cleared respondent's account because it had not been negotiated. The entry related to a judgment held by Atlanta Federal Credit Union ("AFCU")[2] against Green. According to the complaint, respondent was to have used closing funds in the amount of $7,500 as partial payment of AFCU'S $11,732.15 lien.

Prior to the closing, respondent had contacted AFCU to try to negotiate the amount of the judgment.[3] According to Altwarg, by letter dated October 22, 1999, respondent had forwarded a preliminary RESPA statement to him, falsely showing that Green would not realize sufficient funds from the closing to satisfy the judgment. Respondent proposed that AFCU accept $1,000 in full satisfaction of the judgment. One thousand dollars was the amount shown on the preliminary RESPA as Green's profit from the transaction. Altwarg declined the proposal.

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[2] Although the complaint refers to the lienholder as AFCU, Sheldon Altwarg, AFCU's attorney, clarified that AFCU's name is actually Atlanta Postal Credit Union. The complaint's designation of this judgment creditor has been retained to avoid confusion.

[3] The record does not explain why respondent was acting on Green's behalf.

The RESPA also indicated that closing funds were needed to pay off a second mortgage in the amount of $38,398.35, and a real estate broker commission in the amount of $8,520, when no such obligations existed.

In a letter dated October 28, 1999, Altwarg offered to release the lien on the property if Green paid $7,500 from the closing proceeds, and also consented to an order of wage execution for the balance of the lien. Altwarg tried to follow up on the proposal several times, but heard nothing further from respondent. Until the OAE contacted Altwarg, Altwarg assumed that the property had not been sold.

The complaint charged that respondent completed the closing for the transaction, but failed to make the required $7,500 payment to AFCU, and did not have the required wage-garnishment agreement executed. Therefore, the lien was not discharged against the property after the closing.

In connection with the closing, respondent issued three checks to Management Concepts Company ("MCC"), totaling $10,448.09: $2,788.77 on November 17, 1999; $1,137 on November 22, 1999; and $6,522.32 on January 25, 2000. None of the disbursements were reflected on the RESPA.

During the OAE audit, respondent explained that MCC was a company that assisted clients with credit problems to enable

them to qualify for a mortgage or to avoid foreclosure. MCC was owned by Dwayne Eddings, a non-lawyer, from whom respondent rented office space. Eddings was also a mortgage broker, who referred to respondent the majority of the closings that he handled.

As to the Green/Lapeyrolerie transaction, respondent informed the OAE auditors that Eddings was Lapeyrolerie's friend. Lapeyrolerie apparently had a problem getting the funds for the closing, and Eddings offered to take care of the situation. The record does not explain the nature of Eddings' offer.

On May 31, 2000, more than six months after the closing, respondent's office manager contacted Altwarg's office, attempting to settle the AFCU lien for $5,000. Thereafter, by letter dated July 16, 2001, respondent forwarded to Altwarg an affidavit signed by Green, listing Green's current address and employer. Respondent also informed Altwarg that Lapeyrolerie agreed to pay $2,500 of the $7,500 that was due to AFCU.

Lapeyrolerie sold the property on August 1, 2001. The $2,500 amount was deducted from her sales proceeds to pay off a portion of the AFCU lien. The remaining $5,000, in the form of a cashier's check, was paid by MCC.

At the July 20, 2000 OAE audit, respondent produced a reconstructed ledger for the Green/Lapeyrolerie closing that purportedly reflected all of the receipts and disbursements for the transaction. The ledger listed a $7,500 payment to AFCU. To the ledger respondent had attached a copy of his trust check number 1017, for $7,500, payable to AFCU. The OAE's review of respondent's trust account, however, revealed that the check had never been negotiated. Therefore, the documents that respondent submitted to the OAE falsely showed that the AFCU lien had been satisfied at the time of the Green/Lapeyrolerie closing.

As seen earlier, respondent also attached a false and misleading RESPA statement to his October 22, 1999 letter to Altwarg, to induce AFCU to settle the lien for a lesser amount.

In addition, respondent prepared a second RESPA for the closing, dated November 3, 1999, that falsely showed that a $28,400 deposit had been made for the Green/Lapeyrolerie closing. However, Lapeyrolerie denied making such a deposit.

As noted above, respondent admitted most of the allegations of the complaint. In his answer, he admitted, as to the first count, that his records were "inaccurate, incomplete and not in compliance with R. 1:21-6." He further admitted that he was unable to reconcile his records because "they were so poorly done initially as to make it virtually impossible."

With regard to the Williams' matter (second count), respondent stated that, initially, his recordkeeping was nonexistent and, therefore, could have resulted in his failure to safeguard funds. He also claimed that many of his records had been left at the Century Finance Company's office, where he conducted closings, and that the office had moved several times; as a result, he did not have access to all of the records because they were either misplaced or thrown out. Respondent also acknowledged that, when he began conducting real estate closings for that office, he was "ignorant as to the banking procedures and made many mistakes."

As to the Green/Lapeyrolerie matter (count three), respondent admitted all but the charge that he violated RPC 8.4(c).

The DEC was satisfied that respondent's waiver of his right to appear in person and his decision to appear by telephone were made freely and voluntarily.

As to count one, the DEC concluded that the record supported the charges that respondent did not maintain proper records and failed to cooperate with the OAE investigator; as to count two, the facts showed that respondent's trust account balance fell to $349, when he should have had $1,000 on deposit in connection with the Williams matter, thereby failing to

safeguard client funds. Ostensibly, the DEC believed respondent's assertion that this trust account shortage was the product of shoddy recordkeeping.

In count three, the DEC found that respondent never made the payment to AFCU that was reflected in the RESPA; that he listed on the RESPA a $28,400 deposit and a $1,350 payment to the title insurer that were never made; and that he made payments to MCC totaling approximately $10,000, which were not reflected on the RESPA.

The DEC further found that respondent presented a false RESPA to Altwarg, in an attempt to negotiate a lower judgment against Green. Also, the DEC noted that respondent never contacted Altwarg after the negotiations, or sent him a check after the closing. As a result, Altwarg assumed that the closing had not taken place. It was not until Lapeyrolerie attempted to sell the property, one and one-half years later, that a title search revealed that the judgment on the property had never been satisfied.

The DEC found respondent guilty of all of the charged violations, and recommended a six-month suspension.

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

Respondent's admissions to most of the allegations of the ethics complaint, the documents, and the limited testimony at the DEC hearing support a finding of all of the charged RPCs, with the exception of RPC 1.15(c).

As to count one, respondent admitted that his records were inaccurate, incomplete, and not in compliance with R. 1:21-6. Paragraph 22 of the complaint listed the numerous deficiencies in respondent's recordkeeping practices, which violated RPC 1.15(d).

Respondent's failure to reply to the OAE's numerous requests for information about his trust account overdraft, his failure to provide the OAE with the requested records, and his failure to comply with the OAE's directives to bring his records into compliance with the rules, even after receiving the OAE's manual on recordkeeping requirements, violated RPC 8.1(b). Also, the overdraft in respondent's trust account resulted in the invasion of other client funds, a violation of RPC 1.15(a).

As to count two, respondent deposited a $1,000 check into his trust account in connection with Williams' anticipated real estate purchase. Even though the purchase was never consummated, disbursements unrelated to the Williams matter caused respondent's trust account balance to be reduced to $354.74. Although respondent replenished the account on the same day that

he refunded Williams' money, he, nevertheless, invaded trust funds. Respondent, therefore, failed to safeguard Williams' and other clients' funds, a violation of RPC 1.15(a).

Because respondent left his legal fees in the account and because he had abysmal recordkeeping practices, it cannot be found that he knowingly or purposefully invaded Williams' funds. Furthermore, the complaint did not charge him with knowing misappropriation of trust funds, nor was there any reference to such conduct in the evidence presented. We, therefore, did not consider whether respondent's overdraft was the result of knowing misappropriation.

Count three related to respondent's most serious conduct. Although we find that respondent's actions in counts one and two were, for the most part, the product of respondent's ignorance of recordkeeping practices and his sloppy bookkeeping, we are convinced that his conduct in the Green/Lapeyrolerie transaction was intentional.

Respondent clearly intended to deceive Altwarg with the false preliminary RESPA statement. In that RESPA, in order to negotiate a lesser judgment amount due on the property, respondent misrepresented the amount that Green would realize

from the sale.[4] Respondent made a number of false entries on that RESPA statement, including that closing funds were used to pay off a second mortgage and a real estate broker's commission. Neither obligation existed. The second RESPA, too, which respondent prepared for the actual closing, contained false information, that is, a $28,400 deposit towards the purchase price, a $7,500 payment to AFCU, and a $1,300 payment to the title insurance company. In addition, respondent did not disclose a $10,000 payment to MCC. Respondent's conduct in this regard, thus, violated RPC 8.4(c).

Also, respondent's failure to pay off the AFCU judgment was not uncovered until Lapeyrolerie attempted to resell the property, more than a year later. As a result, Lapeyrolerie had to satisfy a portion of Green's judgment in order to consummate the sale of the property. Respondent's failure to timely satisfy the AFCU judgment affected (1) the interests of Lapeyrolerie, in that she owned property subject to a lien against the seller, (2) the interests of the lender, to the extent that it did not hold a first lien on the property, and (3) the interests of the title company, which believed it was insuring clear title. Respondent, thus, violated RPC 1.1(a), RPC 1.3 and RPC 1.15(b).

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[4] As noted earlier, respondent's motives for attempting to negotiate Green's lien are not known. Ostensibly, he was representing only Lapeyrolerie in the transaction.

We dismiss, however, the charge that respondent violated RPC 1.15(c). That rule is inapplicable to the facts of this matter.

Respondent's conduct in the Green/Lapeyrolerie matter was very serious. Although we harbor a strong suspicion that his conduct was undertaken to assist Lapeyrolerie in fraudulently obtaining a mortgage, the proofs do not clearly and convincingly establish that he was involved in a scheme to defraud the mortgage lender, as was the case in In re Newton, 159 N.J. 526 (1999) (one-year suspension).

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.15(a), RPC 1.15(b), RPC 1.15(d), RPC 8.1(b), and RPC 8.4(c).

There remains the issue of appropriate discipline for respondent's ethics offenses, which are generally deserving of a term of suspension. See, e.g., In re Fink, 141 N.J. 231 (1995) (attorney received a six-month suspension when he failed to disclose the existence of secondary financing in five residential real estate transactions, prepared and took the acknowledgment on false RESPA statements, affidavits of title, and Fannie Mae affidavits and agreements, and made false statements to a prosecutor regarding the closing documents; the real estate agent involved in the transactions instructed Fink on how to structure the loans, and advised him to omit any

references to the second mortgages on the RESPA statements and Fannie Mae affidavits; Fink assumed that the mortgage companies were aware of the second mortgages but did not want them listed because they were short-term loans; there was no evidence that Fink was involved in a scheme to defraud the lenders or that he derived any personal benefit from his conduct; mitigating circumstances were the attorney's loss of a lucrative position, the tarnishing of his personal reputation, and his many contributions to the community); In re Frost, 156 N.J. 416 (1998) (two-year suspension where the attorney breached an escrow agreement, failed to honor closing instructions, and prepared misleading closing documents, including the note and mortgage, the Fannie Mae affidavit, the affidavit of title, and the settlement statement; the attorney's ethics history included two private reprimands, a three-month suspension, and a six-month suspension).

Other real estate cases involving the use of documents containing fraudulent information have also led to severe discipline. See, e.g., In re Silberberg, 144 N.J. 215 (1996) (two-year suspension where, at a closing, the attorney witnessed and notarized a "signature" of a person whom he knew to be deceased, in order to proceed with the transaction; the attorney also made false statements of material fact to ethics

authorities on two occasions about the circumstances leading to the execution of the documents); In re Weston, 118 N.J. 477 (1990) (two-year suspension where the attorney forged the sellers' signatures on a deed, affidavit of title, and discharge of a real estate contract, without their authorization or knowledge, lied to the buyer's attorney that the signatures were genuine, had his secretary take the acknowledgment although the sellers were in another state, and admitted his conduct only after the buyer hired a handwriting expert); and In re Stier, 108 N.J. 455 (1987) (one-year suspension for an attorney convicted of a disorderly person's offense of tampering with public records by making a false entry in a document of record; in two separate real estate ventures, the attorney recorded documents that he knew contained inflated purchase prices).

This matter involved only one real estate transaction. However, because of respondent's inadequate records and shoddy recordkeeping practices, the OAE investigator may have been thwarted in his ability to determine whether respondent's conduct was farther reaching, and whether it involved an ongoing scheme. Although respondent's conduct was confined to one matter, it was, nevertheless, egregious. He used fraudulent information to attempt to negotiate the AFCU judgment downward, and drafted a second RESPA that included false information and

also omitted other important information. Additionally, his failure to timely and properly disburse the closing proceeds caused financial damage to his client Lapeyrolerie, when she attempted to resell the property, because respondent had not paid off the AFCU judgment. It also affected the lender's first lien interest on the property. In addition, respondent submitted false information to the OAE during its audit.

Although respondent's inadequate records may have spared him from a finding that he knowingly misappropriated client funds he, nevertheless, negligently invaded client funds and commingled personal and client funds. His sloppy bookkeeping led to the overdraft that triggered the investigation in this matter. Also, he willfully failed to comply with the OAE's repeated requests for information. He promised to provide reconstructed records to the OAE. He went so far as to assure the auditor that he understood the recordkeeping rules and could "fix" his records without the assistance of a hired accountant. Yet, from March 2000 to January 2001, he failed to submit anything more to the OAE than "grossly incomplete" trust records. Later, respondent claimed that he sent the OAE a partial reconstruction of his trust records, but the OAE never received the document. When respondent offered to resubmit the

information, he forwarded only a reconstructed checkbook register for his attorney account.

We draw no negative inferences from respondent's failure to personally appear at either the DEC hearing or oral argument before us. But we note that, as a result, we are left with many unanswered questions and are able only to speculate about respondent's motives for deliberately misleading Altwarg in an attempt to negotiate Green's lien, and for including false information in the second RESPA statement.

As a final note, we underscore the fact that, unlike the attorney in Fink (six-month suspension), respondent did not present any mitigating factors relating to his reputation, professional conduct or general good character. Furthermore, respondent's conduct was not as repugnant as Silberberg's (two-year suspension), who notarized the signature of a decedent in order to consummate a transaction, or as Weston's (two-year suspension) who forged signatures on several real estate documents and then lied to the buyer that the signatures were authentic. Nor did respondent have an ethics history as did Frost (two-year suspension).

Thus, for respondent's failure to safeguard client funds, recordkeeping violations, failure to cooperate with the OAE investigation, gross neglect, lack of diligence, and conduct

involving dishonesty, fraud, deceit or misrepresentation, we determine that a one-year suspension is warranted. Vice-Chair William J. O'Shaughnessy and Members Matthew P. Boylan, Esq. and Barbara Schwartz did not participate.

We also determine that, prior to reinstatement, respondent must provide proof of completion of twelve hours of courses on professional responsibility, real estate, and accounting for attorneys. We also require respondent to submit to the OAE, for a one-year period, monthly reconciliations of his attorney accounts, certified by an accountant approved by the OAE.

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

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 Jeffrey W. Truitt
Docket No. DRB 04-247

Argued: October 21, 2004

Decided: December 13, 2004

Disposition: One-year suspension

Members	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy					X
Boylan					X
Holmes	X				
Lolla	X				
Pashman	X				
Schwartz					X
Stanton	X				
Wissinger	X				
Total:	6				3

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel