

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-164

IN THE MATTER OF
FERNANDO REGOJO
AN ATTORNEY AT LAW

Decision

Argued: September 21, 2000

Decided: February 6, 2001

Nitza Blasini appeared on behalf of the Office of Attorney Ethics.

Joseph P. Castiglia appeared on behalf of respondent.

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

This matter was before us based on a recommendation for discipline filed by the District VI Ethics Committee ("DEC"). The four-count complaint charged respondent with violations of *RPC* 1.1(a) (gross neglect), *RPC* 1.15(b) (failure to promptly pay funds to third

parties and negligent misappropriation of client funds), and *RPC* 1.15(d) and *R.1:21-6(b)* (recordkeeping violations).

Respondent was admitted to the New Jersey bar in 1981. In 1997, after acknowledging a violation of *RPC* 1.3 (lack of diligence), respondent entered into an agreement in lieu of discipline and the matter was diverted pursuant to *R.1:20-3(i)(2)(B)(i)*. In 1999, after respondent complied with the terms of the agreement in lieu of discipline, the matter was dismissed. At all relevant times, respondent maintained a law office in Union City, Hudson County, New Jersey.

The Guerra Matter

Respondent represented Juan E. Guerra, the buyer in a real estate transaction that closed on April 25, 1996. As the settlement agent, respondent escrowed \$5,915.93 for the payment of New Jersey inheritance tax (the seller was a decedent's estate) and \$1,311.96 for the payment of municipal property taxes. Approximately six weeks after the closing, the seller's attorney, Robert S. Feder, contacted the Inheritance Tax Bureau because he had not received the necessary waivers from that agency. Feder learned then that respondent had not paid the inheritance tax, for which funds had been escrowed at the closing. When Feder contacted him, respondent promised to send a copy of the canceled check evidencing payment of the inheritance tax. Feder never heard from respondent.

In the meantime, Feder's client received delinquent tax notices from the Township of Weehawkin. Upon inquiry, Feder learned that respondent had also failed to pay the municipal taxes, for which funds had also been escrowed at the closing. On June 27, 1996 Feder contacted the Office of Attorney Ethics ("OAE"), which began an investigation of the matter.

On July 10, 1996 the OAE requested that respondent reply to Feder's allegations. Not satisfied with respondent's August 12, 1996 explanation, on August 19, 1996 the OAE requested respondent to submit copies of his bank statements from April through July 1996 and his trust reconciliations for that period. Although on August 27, 1996 respondent provided the bank statements, he did not supply the trust account reconciliations until February 20, 1997. Because the reconciliations did not compare the total client balance with the reconciled bank statement, the OAE deemed the reconciliations deficient and scheduled a select audit. On April 15, 1997 OAE auditor Mimi Lakind conducted the audit.

Although Lakind determined that the escrowed funds had remained intact, the audit revealed, and respondent conceded, that the inheritance tax was not paid until June 5, 1996 and the municipal property taxes were not paid until July 25, 1996, forty days and ninety days after the *Guerra* closing, respectively. In addition, respondent made the following disbursements between ten months and almost two years after the closing: realty transfer tax

(February 14, 1997); sewer bill (April 23, 1997); exterminator bill (March 25, 1998); surveyor bill (March 25, 1998).

Lakind noted that, although respondent did not pay the municipal property taxes until July 25, 1996, he "back-dated" the check to April 30, 1996 (five days after the closing). Lakind observed that the checks disbursed at the *Guerra* closing were numbered in the 4500 series, while the check for the municipal property taxes bore number 4720. According to Lakind, respondent was using the 4700 series of checks in July 1996.

In his answer to the complaint, respondent admitted that, although the checks for the inheritance tax and the property taxes were prepared shortly after the closing, they were not transmitted timely by his secretary. Respondent blamed on inadvertence the delay in the payment of the realty transfer tax and the sewer bill. Respondent testified that, following the *Guerra* closing, he attended another closing on the same day and had not been aware that the disbursements had not been made. He explained that the checks for the disbursements were out of sequence because, before the *Guerra* closing, he entered the items (including the check numbers) on the client ledger, based on the checks he had anticipated using. According to respondent, however, he used those checks for other payments; when he eventually made the *Guerra* disbursements, he failed to note the correct check numbers on the ledger.

Negligent Misappropriation of Client Funds

The OAE's audit of respondent's books and records revealed a \$7,550.14 trust account shortage caused by three factors: (1) during nine real estate closings, respondent disbursed \$7,152.96 more than he had received; (2) in one matter, respondent mistakenly paid a \$175 filing fee from his trust account, rather than his business account; and (3) respondent failed to maintain sufficient personal funds in the trust account to cover bank charges of \$222.18. Both in his answer to the complaint and at the ethics hearing, respondent conceded that he had made these errors.

Gross Negligence

During the audit, Lakind and respondent discussed real estate closing procedures, particularly with respect to completing the HUD-1 settlement statements ("RESPAs") and the client ledger cards. Lakind told respondent that he probably did not understand how to enter on the client ledger card figures taken from the RESPA. According to Lakind, respondent conceded that, only after the mortgage company approved the RESPA submitted before the closing, did he know that he had completed the RESPA properly. In addition, Lakind referred to several instances in which respondent made business account disbursements for such items as filing fees, exterminator fees and property taxes, instead of using his trust account. Respondent had either failed to collect those funds from his client

or had delayed payment, causing interest and penalties to accrue. Respondent used his personal funds to make these payments.

For his part, respondent testified that, at the time of the audit, he had handled many real estate closings and had not meant to imply to Lakind that he was not familiar with real estate procedures. He explained that many lenders require submission of the RESPA before the closing and that, although at times changes would be made, he understood that the RESPA and the client ledger sheet should reflect those changes.

Recordkeeping Violations

During the April 15, 1997 select audit, Lakind determined that respondent's books and records were not maintained in compliance with the recordkeeping requirements. On June 19, 1997 the OAE advised respondent of the following deficiencies:

- client ledger cards were not fully descriptive;
- client ledger cards had debit balances;
- inactive trust ledger balances remained in the trust account for extended periods;
- separate ledger sheets were not maintained for each trust client;
- quarterly trust reconciliations were not prepared;
- the trust account checkbook did not have a running balance;
- outstanding checks were not resolved;

- checks had been disbursed against uncollected funds;
- deposit slips were not sufficiently detailed to identify each deposit item;
- facsimile signature rubber stamp was used to sign trust account checks;
- business account receipts journal was not fully descriptive.

The OAE directed respondent to hire a certified public accountant ("CPA") and to submit to that office quarterly reconciliations, client ledger sheets and bank statements. Because respondent's records were in disarray, Lakind conducted additional audits on February 23, 24 and 25, 1998. She noted that, although respondent had been the subject of a random audit on April 14, 1987, ten years before the select audit, three of the original deficiencies remained uncorrected in 1998: failure to perform quarterly reconciliations, inactive trust ledger balances and failure to certify the trust account. According to Lakind, although respondent had made substantial progress by the time of the February 1998 audit, his books and records were still not in compliance with the rules and he still had not hired a CPA.

Respondent admitted his recordkeeping violations. He pointed out that, in many instances, the violations occurred in specific matters, not in his overall practice. Lakind agreed that many journal entries, ledger cards and deposit slips were fully descriptive and that respondent had maintained ledger cards for many, but not all, clients. Respondent had taken the following steps to cure the deficiencies: (1) he had instructed his staff not to use

a signature stamp for issuing checks; (2) he had removed all inactive trust account balances; (3) he had hired a CPA, who was in the process of reconciling his trust account, so that he could maintain a running balance in the checkbook; and (4) he had resolved all outstanding checks. Respondent, however, did not hire a CPA until the afternoon before the ethics hearing. Respondent pointed out that none of his clients suffered any harm as a result of his recordkeeping violations.

* * *

The DEC found that respondent failed to pay third parties promptly and fully, in violation of *RPC* 1.15(b), negligently misappropriated client funds, in violation of *RPC* 1.15(b), and had recordkeeping deficiencies, in violation of *RPC* 1.15(d) and *R.* 1:21-6. The DEC found insufficient evidence of gross negligence and recommended the dismissal of the charge of a violation of *RPC* 1.1(a). The DEC found as an aggravating factor respondent's failure to correct some of the recordkeeping violations revealed in the 1987 random audit. The DEC noted the following mitigating factors: respondent's long service as an attorney, without prior discipline; his long history of *pro bono* service; his involvement in charitable and civic organizations; and evidence of his good character.

The DEC recommended the imposition of a reprimand.

* * *

Following a *de novo* review, we are satisfied that the DEC's finding of unethical conduct is supported by clear and convincing evidence. Respondent admitted that he failed to promptly disburse the *Guerra* closing funds, attributing the delay to oversight. He also conceded that the shortage in his trust account was caused by "overdisbursements" to clients in real estate closings, failure to deposit sufficient funds to cover bank charges and the inadvertent use of a trust account check, instead of a business account check, to pay a filing fee. Respondent further acknowledged that he had committed numerous recordkeeping violations.

Although respondent conceded that he had failed to promptly pay third parties, he contended that such failure did not amount to a violation of *RPC* 1.15(b). Respondent argued that he was guilty of inadvertence or simple negligence only, pointing out that his conduct was not wilful and that, because all of the funds remained intact in his trust account, he did not fail to safekeep property of others. *RPC* 1.15(b), however, does not require a wilful element, only that the attorney "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive." It is undisputed that, after the *Guerra* closing, respondent failed to promptly pay the inheritance tax, the property taxes, the realty transfer tax, the sewer bill, the exterminator bill and the surveyor

bill. Indeed, the two latter bills were paid almost two years after the closing. Moreover, Feder's inquiry to respondent about his failure to pay the inheritance tax and property taxes should have prompted him to make the other outstanding disbursements. Respondent also failed to reply to Feder's inquiry. Respondent, thus, clearly violated *RPC* 1.15(b) by failing to promptly pay third parties.

The DEC correctly dismissed the charge of gross neglect, however. Although respondent failed to collect sufficient funds from clients and overdisbursed funds at various real estate closings, such conduct amounted to simple negligence only. Gross neglect requires an element of intent or reckless disregard of the rights of others that is not present here. The charge of a violation of *RPC* 1.1(a) was, thus, dismissed.


Cases involving similar transgressions have led to reprimands. *See, e.g., In re Blazsek*, 154 *N.J.* 137 (1998) (reprimand where attorney negligently misappropriated client funds and failed to comply with recordkeeping requirements); *In re Fucetola*, 147 *N.J.* 255 (1997) (reprimand where attorney negligently misappropriated client funds on three occasions as a result of recordkeeping violations); *In re Imperiale*, 140 *N.J.* 75 (1995) (reprimand where attorney negligently misappropriated \$9,000 in client trust funds); *In re Mitchell*, 139 *N.J.* 608 (1995) (reprimand where attorney negligently misappropriated client funds and failed to maintain required records).

The above precedent requires the imposition of a reprimand, particularly in light of respondent's failure to correct the recordkeeping deficiencies identified in the 1987 random audit and his failure to hire a CPA until February 22, 2000, the day before the ethics hearing, despite the OAE's June 19, 1997 letter directing him to hire a CPA within forty-five days.

We, thus, unanimously determined to impose a reprimand for respondent's ethics infractions and to require him to submit quarterly trust account reconciliations to the OAE for a period of two years. Two members did not participate.

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

Dated: 2/6/01

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Fernando Regojo
Docket No. DRB 00-164**

Argued: September 21, 2000

Decided: February 6, 2001

Disposition: Reprimand

| Members | Disbar | Suspension | Reprimand | Admonition | Dismiss | Disqualified | Did not Participate |
|---------------|--------|------------|-----------|------------|---------|--------------|---------------------|
| Hymerling | | | X | | | | |
| Peterson | | | | | | | X |
| Boylan | | | X | | | | |
| Brody | | | X | | | | |
| Lolla | | | X | | | | |
| Maudsley | | | X | | | | |
| O'Shaughnessy | | | X | | | | |
| Schwartz | | | | | | | X |
| Wissinger | | | X | | | | |
| Total: | | | 7 | | | | 2 |

By Isabel Frank 6/6/01
Robyn M. Hill
Chief Counsel