

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-214
District Docket No. XIV-03-313E

IN THE MATTER OF :
FERNANDO J. REGOJO :
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.

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 on a stipulation signed by the Office of Attorney Ethics ("OAE") and respondent. Respondent admitted that he violated RPC 1.15(a) (failure to safeguard

client funds and commingling), RPC 1.15(b) (failure to deliver funds promptly to clients and third parties) and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations).

Respondent was admitted to the New Jersey bar in 1981. He received a reprimand on November 14, 2001, when, in one matter, he failed to promptly pay funds to third parties in a real estate transaction; in ten matters, he negligently misappropriated client funds; and he failed to maintain proper records. The Court also required respondent to submit to the OAE quarterly trust account reconciliations for two years. In re Regojo, 170 N.J. 67 (2001).

Respondent received a second reprimand in 2004 for gross neglect, lack of diligence, failure to communicate with a client, and negotiating a malpractice settlement without advising the client to seek independent counsel. In re Regojo, 180 N.J. 523 (2004).

As noted above, on November 14, 2001, the Court issued an order reprimanding respondent and requiring him to submit quarterly trust account reconciliations to the OAE for two years. At some point in 2002, respondent retained Steven M. Moskowitz, a certified public accountant to prepare the reconciliations. The stipulation recites four instances in which

respondent created trust account shortages caused by his failure to properly reconcile that account:

a. The Andrada ledger had a \$2,000 shortage because a mortgage payoff that was shown as paid for \$200,048.42 was actually paid for \$202,048.42. The \$202,048.42 payment was made on April 21, 1999 and respondent did not replace this shortage until June 4, 2002 after he retained Mr. Moskowitz. This \$2,000 trust account shortage would have been detected had the trust account been reconciled in 1999, 2000 or 2001.

b. In the Orestes Gonzales matter, respondent paid the Hudson County Register \$825 by a trust account check dated July 19, 1999. On February 18, 2000, respondent issued a second trust account check for \$825 also payable to the Hudson County Register.¹ Both checks were cashed by the Hudson County Register causing an \$825 trust account shortage. This shortage was not detected until after respondent retained Mr. Moskowitz, and the shortage was not reimbursed to the trust account until June 4, 2002. Had the trust account been properly reconciled in 1999, 2000 or 2001, the Orestes Gonzales shortage would have been detected.

c. In the Juan DeLaPaz matter, respondent paid himself a fee of \$1,282.50 on June 4, 1999. Thereafter on October 12, 1999, he again paid himself \$1,282.50 causing a trust account shortage of \$1,282.50. The \$1,295.40 shortage was not detected until after respondent retained his accountant. The

¹ Presumably, both checks were issued in payment of the same fee.

trust account was reimbursed by respondent's deposit on June 4, 2002. Had the trust account been reconciled during 1999, 2000 or 2001, the DeLaPaz shortage would have been detected.

d. In the Olain Rivera matter, the ledger showed that a check was issued in 1999 to R. Greenberg in the amount of \$905.50. That check was not recorded on the ledger so that the ledger continued to reflect a positive balance of \$905.50. Sometime in 2000 (the ledger is not legible), the respondent issued a separate check in the amount of \$905.50 to the client creating a shortage in the trust account of \$905.50. Had the trust account been reconciled during the year 2000 or 2001, the \$905.50 shortage would have been detected. Respondent deposited the money correcting the shortage in June of 2002.

[Stipulation at 2 to 3.]

The first trust account reconciliation that Moskowitz submitted to the OAE encompassed the first quarter of 2002, and listed nine client ledgers, including the above four, with shortages totaling \$7,069.46. Because respondent advanced funds from his trust account when he did not have corresponding funds on deposit in those nine client matters, respondent negligently misappropriated other clients' funds.

Respondent submitted subsequent trust account reconciliations that demonstrated the following recordkeeping, and other, violations. He used a general journal instead of cash receipts

and cash disbursements journals. On June 30, 2002, respondent's ledger revealed a balance of \$3,641.63 and indicated that he commingled personal and client funds in his trust account. On December 31, 2002, respondent was again guilty of commingling, as he maintained personal funds in the amount of \$2,864.44 in the trust account. In some cases, respondent failed to identify the purpose of the checks on his trust account ledger.

On April 30, 2003, Moskowitz submitted reconciliations for the first quarter of 2003, showing that respondent again negligently misappropriated client funds in the amount of \$6,258.32. It was not until the third quarter of 2003 that respondent submitted reconciliations without client shortages. However, the submissions revealed continued recordkeeping violations, including the presence of inactive client balances and commingling. The OAE auditor expressed concern that, after the fourth quarter of 2003, respondent will no longer be required to submit the trust account reconciliations to the OAE, and questioned whether respondent will be able to maintain his trust account in compliance with the rules without the assistance of an accountant.

The reconciliations for the final quarter of 2003 revealed the presence of ten outstanding checks totaling \$11,487.87. The

checks date back to February 2003, and show that respondent continued to permit checks to remain outstanding without investigating them.

The OAE contends that respondent's disciplinary history, which includes two reprimands, is an aggravating factor in this matter. Respondent advanced the following mitigating factors: his compliance with the requests of disciplinary authorities and his cooperation with them; his compliance with the Court order requiring a certified public accountant to review and monitor his trust account, thereby permitting him to conform to proper trust and business accounting practices; and his willingness to continue the accounting review for as long as necessary, at "considerable expense."

The OAE asserts that the appropriate range of discipline in this matter is a reprimand to a censure. Respondent suggests that a reprimand should be imposed.

Following a de novo review of the record, we find that the stipulated facts clearly and convincingly establish that respondent's conduct was unethical. Respondent acknowledged that he violated RPC 1.15(a), (b) and (c) and R. 1:21-6. He negligently misappropriated client funds in excess of \$7,000 when, on nine occasions during the first quarter of 2002, he disbursed funds to

clients without having sufficient funds on deposit for those clients. Later, in the first quarter of 2003, respondent again negligently misappropriated more than \$6,000 in client funds. Respondent, thus, violated RPC 1.15(a) by failing to safeguard client funds.

Respondent also violated RPC 1.15(a) by commingling personal and client funds. On June 30, 2002, he maintained more than \$3,600 of personal funds in his trust account, well in excess of an amount, permitted by the rule, that is reasonably sufficient to pay bank charges. By December 31, 2002, the amount of personal funds in the trust account had decreased to \$2,864.44, but was still an excessive sum. Nine months later, the reconciliations for the third quarter of 2003 revealed that respondent continued to commingle personal and client funds in his trust account.

Furthermore, respondent's maintenance of outstanding client checks totaling \$11,487.87 constituted a violation of RPC 1.15(b).

Finally, respondent violated RPC 1.15(d) and R. 1:21-6 by failing to maintain required records.

The remaining issue is the quantum of discipline. Generally, a reprimand is imposed in cases involving failure to safeguard funds, failure to promptly deliver funds, and recordkeeping violations. 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; the attorney withdrew from his trust 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); 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); 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); In re Liotta-Neff, 147 N.J. 283 (1997) (reprimand for attorney who negligently misappropriated approximately \$5,000 in client funds after commingling personal and client funds; the attorney left \$20,000 of her own funds in the account, against which she drew funds for her personal obligations; the attorney was also guilty

of poor recordkeeping practices); 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 Gilbert, 144 N.J. 581 (1996) (reprimand imposed on attorney who negligently misappropriated in excess of \$10,000 in client funds and violated the recordkeeping rules, including commingling personal and trust funds and depositing earned fees into the trust account; the attorney also failed to properly supervise his firm's employees with regard to the maintenance of the business and trust accounts); 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); In re Imperiale, 140 N.J. 75 (1995) (attorney reprimanded for deficient recordkeeping and negligent misappropriation of \$9,600 in client funds); In re Lazzaro, 127 N.J. 390 (1992) (reprimand imposed after poor recordkeeping resulted in negative client balances and a trust account shortage of more than \$14,000).

If compelling mitigating factors are present, the reprimand may be reduced to an admonition. See, e.g., In the Matter of Michael A. Mark, DRB 01-425 (February 13, 2002) (admonition by

consent for an attorney who negligently misappropriated client funds for a period of two years, as a result of failure to follow proper recordkeeping procedures; mitigating factors were the attorney's prompt replacement of the trust funds and his hiring of a CPA to reconstruct the trust records, to correct all recordkeeping deficiencies, and to insure that all client funds were on deposit; the attorney had a prior three-month suspension); In the Matter of Cassandra Corbett, Docket No. DRB 00-261 (January 12, 2001) (admonition where the attorney's deficient recordkeeping resulted in a \$7,011.02 trust account shortage; in imposing only an admonition, it was considered that the attorney had reimbursed all missing funds, admitted her wrongdoing, cooperated with the Office of Attorney Ethics, and hired an accountant to reconstruct her records); In the Matter of Bette R. Grayson, Docket No. DRB 97-338 (May 27, 1998) (admonition where the attorney's deficient recordkeeping resulted in the negligent misappropriation of \$6,500 in client trust funds; in mitigation, it was considered that the attorney fully cooperated with the Office of Attorney Ethics, took subsequent steps to straighten out her records, and had no prior discipline); In the Matter of Joseph S. Caruso, Docket No. DRB 96-0076 (May 21, 1996) (admonition imposed where the

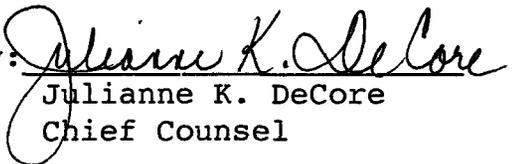
misrecording of a deposit led to a trust account shortage and the attorney committed a number of violations in the maintenance of his trust account; in imposing only an admonition, we considered that the attorney was newly admitted to the bar at the time, corrected all deficiencies, implemented a computerized system to avoid reoccurrences, and fully cooperated with the Office of Attorney Ethics; moreover, the attorney's conduct caused no harm to any clients).

In this case, in addition to the substantial mitigating factors advanced by respondent's counsel mentioned above, we note that the trust account shortages described in the stipulation were created before respondent's 2001 reprimand. Thus, this is not a case in which an attorney failed to learn from prior mistakes. Respondent now appears to recognize his recordkeeping shortcomings and has taken steps to ensure that his accountant periodically reviews his books and records. Despite the presence of mitigating factors, based on respondent's prior reprimand for similar conduct, we determine that a reprimand is the appropriate level of discipline in this matter. In addition, respondent shall retain a certified public accountant for a two-year period to oversee his accounting and recordkeeping compliance and shall submit quarterly trust account

reconciliations to the OAE for two years. Vice-Chair William O'Shaughnessy did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

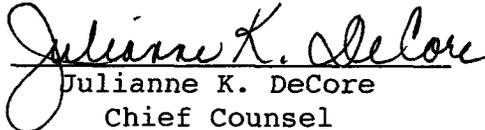
In the Matter of Fernando J. Regojo
Docket No. DRB 05-214

Argued: September 15, 2005

Decided: October 26, 2005

Disposition: Reprimand

| Members | Disbar | Suspension | Reprimand | Dismiss | Disqualified | 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