

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-374

IN THE MATTER OF :
WILLIAM E. AGRAIT :
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: November 16, 1994

Decided: May 23, 1995

Thomas J. McCormick appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before the Board based on a disciplinary stipulation executed by respondent, William E. Agrait, and the Office of Attorney Ethics ("OAE"). Respondent admitted a violation of RPC 1.15(a), for the negligent misappropriation of client trust funds, and a violation of RPC 1.15(d), for the failure to comply

with the recordkeeping requirements of R 1:21-6.

Respondent was admitted to the New Jersey bar in 1983. He is a sole practitioner in Newark, New Jersey. He has no prior ethics history.

Respondent maintained the following bank accounts at the Broad National Bank: an "old" trust account #59-000655-1, a "new umbrella" trust account #31-000032-3 and a business account #12-560197-533.

A random compliance audit of respondent's books and records was conducted by OAE auditor Mimi Lakind on September 13 and 15, 1993. Lakind's findings were summarized in a memorandum dated October 22, 1993 and made a part of the disciplinary stipulation as Exhibit A.

Lakind found that respondent's conduct, giving rise to a finding of negligent misappropriation of client trust funds, resulted from two separate client matters. The first instance involved the Santiago matter. There, respondent received, on November 15, 1991, a personal injury check in the amount of \$9,000 for his client, Miriam Soto Santiago. He erroneously deposited the check into his attorney business account. Thereafter, respondent issued from his attorney trust account checks number 1782 and 1784 to Santiago in the amount of \$6,000 and \$500, respectively, as the proceeds of her settlement. Respondent also issued to himself, as attorney fees, check number 1783 for \$2,000 and check number 1785 for \$500, also from his trust account. These checks cleared his attorney trust account in November 1991. Payment of these checks

to himself and his client created a \$9,000 shortage in his trust account and caused the invasion of other clients' funds on deposit.

Respondent's business account carried a \$9,000 surplus until January 27, 1992, when respondent used the misdeposited Santiago monies to accommodate a shortage for another matter, DeMatos/Reis. Respondent issued a \$5,900 check against his business account, which he then deposited in his trust account to cover the DeMatos/Reis shortage.

In the DeMatos/Reis matter, respondent represented the buyers of real property sold by Pettoni and Sbaraglio. The closing took place on October 16, 1991. Respondent did not list on the RESPA statement the \$7,000 deposit held by the sellers' attorney, as a result of which the sellers tendered only \$6,274.51, instead of the \$13,274.51 required to make all disbursements listed on the RESPA. After all the disbursements were made, there was a \$7,000 shortage in respondent's trust account, which caused the invasion of other client monies for several months and at least until January 23, 1992, when respondent issued the \$5,900 business account check that partially replenished the shortage. It was not until February 26, 1992 that the trust account was made whole, when Pettoni's funds were sent to respondent by Pettoni's attorney.

In making the disbursements for the DeMatos/Reis closing, respondent failed to promptly and accurately record the transactions on his client trust ledger, identifying the name of the client, the date and source of all deposited funds and the date, amount, check number and name of the payee for each

disbursement. Respondent also failed to maintain an accurate receipts and disbursements journal for both his old and new trust account. He further failed to perform the quarterly reconciliations comparing the bank balance of both trust accounts with the checkbook balances and the ledger cards.

The OAE urged the Board to impose a reprimand.

* * *

Following a de novo review of the record, the Board is satisfied that there is clear and convincing evidence that respondent's conduct was unethical. A five-member majority of the Board is persuaded, however, that an admonition is adequate discipline for respondent's two instances of negligent misappropriation and recordkeeping infractions. Respondent did not abdicate his accounting responsibilities to a bookkeeper, as in In re Barker, 115 N.J. 30 (1989), or display recklessness in the maintenance of his attorney records, as in In re Lewinson, 126 N.J. 515 (1992). Both cases resulted in a reprimand.

In imposing an admonition, the Board majority also considered respondent's full cooperation with the OAE and his prompt measures to bring his records into compliance with the rules.

Two members would have imposed a reprimand. Two members did not participate.

The Board further directed respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/23/95



RAYMOND R. TROMBADORE
Chair
Disciplinary Review Board