

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 05-205  
District Docket Nos. XIV-01-386E;  
XIV-01-488E; XIV-03-006E and  
XIV-03-007E

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IN THE MATTER OF :  
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HARVEY H. ROTHMAN :  
:   
AN ATTORNEY AT LAW :  
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:

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Decision

Argued: September 15, 2005

Decided: November 2, 2005

Janice L. Richter 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 us on a disciplinary stipulation between the Office of Attorney Ethics ("OAE") and respondent. Respondent admitted violating RPC 1.1(a) (gross neglect), RPC 1.7(a)(1) (conflict of interest - representing a client where the representation may adversely affect another client), RPC 1.8(a)

(improper business transaction with a client), RPC 1.15(a) (failure to safeguard funds), RPC 1.15(b) (failure to promptly deliver funds to a third person), RPC 1.15(d) (recordkeeping violations), and RPC 5.3(a), (b), and (c) (failure to properly supervise a nonlawyer). The OAE recommends a reprimand.

Respondent was admitted to the New Jersey bar in 1989, the District of Columbia in 1994, and the Commonwealth of Massachusetts in 1998. At the relevant times, he maintained a law office in Howell, New Jersey. He has no history of discipline.

Docket No. XIV-01-0386E - Trust Overdraft

According to the stipulation, on August 28, 2001, respondent represented Robert and Kathleen Ryan, as the purchasers in a real estate transaction. Respondent's trust account check no. 1550 for \$148,380.05 was presented for payment on October 11, 2001, to pay off the seller's mortgage. It created an overdraft in respondent's trust account.

Respondent's poor recordkeeping, including his failure to reconcile his trust account, prevented him from detecting the reason for the overdraft. After reconstructing his trust account, respondent discovered that his secretary had stolen trust funds by forging trust account checks and depositing them

into the bank account of her boyfriend, who was incarcerated at the time. Respondent determined that his secretary had "misappropriated" four trust account checks from the Ryan closing. His secretary admitted taking \$50,270.79.

Respondent had permitted his secretary to write and record trust account checks without properly monitoring her actions, and without performing regular reconciliations of his trust account.

According to the stipulation, respondent's failure to properly supervise his secretary, coupled with his poor recordkeeping practices, enabled his secretary to embezzle trust funds. Respondent stipulated that he violated RPC 1.15(a) (failure to safeguard funds, RPC 1.15(d) (recordkeeping violations), and RPC 5.3(a), (b) and (c) (failure to supervise a nonlawyer employee).

Docket No. XIV-01-0488E - The Ficarra Grievance

Respondent was the closing agent in the August 28, 2001 Ryan/Ficarra closing mentioned above. Respondent delegated to his secretary the responsibility of recording the deed and mortgage and disbursing the title policy and realty transfer fees. However, respondent's secretary failed to file the deed and mortgage and to pay the title policy and realty transfer fees.

Respondent stipulated that he violated RPC 5.3(a), (b) and (c), by failing to adequately supervise his secretary, and RPC 1.1(a) (gross neglect), by failing to ensure that the appropriate documents were filed and the costs paid.

Docket No. XIV-03-006E - The Cormier Grievances

Respondent represented both the purchaser (Brahamachandri Bridges) and sellers (Mr. and Mrs. Cormier) of property located in Howell, New Jersey. In doing so, according to the stipulation, he engaged in a conflict of interest (RPC 1.7(a)(1)).

Respondent also obtained a \$5,000 loan for himself from the Cormiers, without fulfilling the requirements of RPC 1.8(a). He failed to advise the Cormiers of the potential conflict of interest, failed to advise them of the desirability of seeking independent counsel, and failed to obtain their consent to the representation in writing.

According to the stipulation, because of misrepresentations made by Mr. Cormier, respondent believed that Mr. Cormier was a "mortgage-broker representative." Based on respondent's mistaken belief, he entrusted Mr. Cormier with the responsibility of filing the deed and mortgage and paying off the existing mortgage. Mr. Cormier, however, failed to carry out these tasks. Respondent admitted violating RPC 1.1(a) (gross neglect) and RPC

1.15(b) (failure to promptly deliver funds to a third person) by delegating those responsibilities to Cormier.

#### Recordkeeping Violations

Respondent stipulated that his failure to regularly reconcile his trust account contributed to the "theft of funds" by his secretary. The theft left financial institutions' and clients' funds in jeopardy, mortgage and title companies unpaid, and closing documents not recorded. Moreover, "[t]hird party victims were also subject to costly litigation." Respondent's conduct in this regard violated RPC 1.15(d) (recordkeeping violations).

As mitigation, respondent claimed that, during the relevant time, he was going through a "difficult divorce," which affected his attention to, and operation of, his law practice. In addition, a custody battle for his children and his dire financial issues were extremely time-consuming and left him emotionally drained.

Once respondent discovered that his secretary was embezzling funds, however, he immediately contacted the authorities, "instituted suit," and took other steps to ensure that his clients were made whole.

Respondent fully cooperated with the OAE, admitted his ethics violations, reconciled his trust account, and stopped practicing law as a sole practitioner.

As noted earlier, the OAE recommends the imposition of a reprimand.

Following a de novo review of the record, we find that the stipulated facts establish by clear and convincing evidence that respondent's conduct was unethical.

Respondent failed to properly maintain his records, a violation of RPC 1.15(d), and failed to safeguard his clients' funds, a violation of RPC 1.15(a). After he delegated tasks to his secretary and Mr. Cormier, he also failed to ensure that title policy and realty transfer fees were paid in the Ryan/Ficarra closing and that the mortgage was paid off in the Brahamachandri/Cormier closing, thereby violating RPC 1.15(b) (failure to promptly deliver funds to a third person).

According to the stipulation respondent violated RPC 5.3(a), (b) and (c). Those sections state, in relevant part:

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) every lawyer or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer . . . is compatible with the professional obligations of the lawyer.

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or ratifies the conduct involved;

(2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or

(3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

Respondent's conduct violated RPC 5.3(a) and (b) in that, as the secretary's employer and direct supervisor, he failed to ensure that his secretary's conduct was compatible with his professional obligations. The facts set forth in the stipulation, however, do not support finding a violation of RPC 5.3(c). Respondent did not stipulate that he ordered or ratified his secretary's conduct, that he knew of her conduct at a time when its consequences could be avoided or mitigated, or that his secretary had engaged in past instances of conduct incompatible with respondent's professional obligations. We, therefore, determine to dismiss the charged violation of RPC 5.3(c).

Respondent admitted that he was grossly negligent by failing to ensure that the appropriate documents were filed and costs paid in the Ryan/Ficarra and Brahamachandri/Cormier closings. Because respondent stipulated that his recordkeeping violations left financial institutions' and clients' funds in jeopardy, mortgage and title companies unpaid, and third-party victims subject to costly litigation, we also find a violation of RPC 1.1(a) (gross neglect).

Respondent admitted engaging in a conflict of interest (RPC 1.7(a)) by representing both the buyer and seller in the Cormier/Bridges transaction. Neither the stipulation, nor respondent, at oral argument before us, indicated at what point he undertook the representation (it is permissible for an attorney to represent both parties after negotiation of the contract (See In re Lanza, 65 N.J. 347 (1974))). Moreover, prior to 2004, the rules did not require a written waiver. Because the record does not disclose when the transaction occurred, we dismiss this charge as unsupported by sufficient facts. We find, however, that respondent violated RPC 1.8(a) by obtaining a loan from the Cormiers without complying with the requirements of full disclosure of the circumstances, notice of the desirability of seeking independent counsel, and written consent.

At oral argument before us, respondent made it clear that the problems in his law practice were aggravated by his marital woes. Nevertheless, he admitted that he failed to maintain proper trust account records, delegated too much responsibility to his secretary, and failed to properly supervise her. As a result of respondent's inattention to his practice, his secretary stole trust account funds, which contributed to a trust account overdraft.

The only issue left for determination is the proper quantum of discipline for respondent's violations of RPC 1.1(a), RPC 1.8(a), RPC 1.15(a), RPC 1.15(b), RPC 1.15(d) and RPC 5.3(a) and (b). It is well-settled that, absent egregious circumstances or serious economic injury to clients, a reprimand is the appropriate discipline in conflict of interest situations. In re Berkowitz, 136 N.J. 134, 148 (1994). A reprimand would also be sufficient discipline for a conflict of interest even if other violations are present. See, e.g., In re Levine, 167 N.J. 608 (2001) (reprimand where attorney borrowed client funds without making the required disclosures or obtaining the necessary consents, commingled personal and trust funds, failed to comply with recordkeeping requirements, and failed to safeguard client funds); and In re Chazkel, 170 N.J. 69 (2001) (reprimand for attorney who engaged in a conflict of interest (RPC 1.7(b)),

knowingly acquired a pecuniary interest adverse to the client (RPC 1.8(a)), charged an unreasonable fee in a collection matter, failed to withdraw from representation upon discovery of the conflict, failed to safeguard property or to keep property separate, and failed to provide client with an explanation of the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).

For failure to supervise employees, attorneys have typically received admonitions or reprimands. See, e.g., In re Barrett, 165 N.J. 562 (2000) and In re Bergman, 165 N.J. 560 (2000) (attorneys reprimanded for failure to properly supervise an employee acting as secretary/bookkeeper/office manager, who the attorneys assumed was properly reconciling bank accounts, but embezzled more than \$350,000 of client trust funds); In re Gilbert, 144 N.J. 581 (1996) (reprimand where the attorney failed to properly supervise his firm's employees with regard to the business and trust accounts, negligently misappropriated more than \$10,000 in client funds, and failed to comply with recordkeeping requirements, including commingling of personal and trust funds, and leaving earned fees in the trust account); In re Tighe, 143 N.J. 304 (1996) (reprimand where the attorney failed to properly supervise her staff, resulting in the negligent misappropriation of clients' trust funds); In re Weiner, 140 N.J. 621 (1995)

(reprimand where the attorney failed to supervise non-lawyer staff by condoning staff's signing of clients' names to documents); and In the Matter of Samuel L. Sachs, DRB 01-429 (February 14, 2002) (admonition where the attorney failed to properly supervise his secretary, resulting in the dismissal of three cases for various deficiencies; the attorney also neglected a fourth matter, resulting in the client's termination of the attorney's representation).

In this matter, there is no evidence that respondent's clients suffered economic injury or other serious, irreparable consequences. In fact, once respondent discovered his secretary's defalcations, he contacted the authorities and took steps to ensure that his clients were made whole. At oral argument before us, respondent was extremely contrite and explained the emotional toll that his divorce and child custody battle took on him. He also detailed the rigors of being a sole practitioner, his problems in undertaking the administrative aspects of his practice, and his dire financial circumstances during this time period. As the result of the confluence of factors, respondent stopped practicing law as a sole practitioner. He cooperated with the OAE, reconciled his trust account, admitted his ethics violations and has no ethics history. Based on these mitigating factors, we determine that a reprimand is appropriate discipline

for his ethics transgressions. Vice Chair O'Shaughnessy did not participate.

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  
By Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Harvey H. Rothman  
Docket No. DRB 05-205

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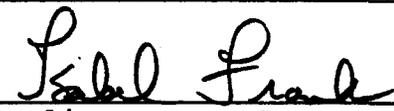
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Argued: September 21, 2005

Decided: November 2, 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

By   
Julianne K. DeCore  
Chief Counsel